

Application of Referendums in Taiwan

KAO, Yuang-kuang

Abstract

The first section of this article deals with the origin of the Referendum Act in Taiwan. The way in which President Chen Shui-bian had “defensive” referendums held alongside the presidential election in 2004 is described in the second section. The third section depicts how two referendums were proposed by the ruling Democratic Progressive Party and the opposition Kuomintang. The fourth section analyzes the reason why Chen wants to call a UN-membership referendum at the same time with the presidential election of 2008 and evaluates the reaction of the opposite party. In the following two sections, the response from the United States and the People’s Republic of China to Chen’s UN bid is presented and analyzed. A conclusion is drawn in the last section.

Key Words: referendum, Taiwan Independence, cross-strait relations.

1. Origin of Taiwan's Referendum Act

The question of referendum was widely discussed in Taiwan throughout the 1990s. Though the Constitution guarantees the people of the right of referendum, no law was passed for decades to stipulate how referendums should be held. One reason for the delay was that the Kuomintang tried to prevent the Democratic Progressive Party (DPP) from calling referendums to promote Taiwan's *de jure* independence. After the DPP came into power in 2000, the Kuomintang could not continue to oppose legislation of referendum.

Opposition weakened further as support for referendum grew within the Kuomintang after the latter half of 2003. Supporters agreed with the DPP that referendum is the embodiment of the will of the people. They believed the Kuomintang's continued opposition would get it labeled as an anti-democratic party. Lien Chan, chairman of the Kuomintang, was convinced that legislation of referendum was part of democratic reform the party was doing what it could to promote. Opponents were persuaded to drop opposition, and the Kuomintang finally decided to support adoption of a referendum law.

With the support of the two major parties, the Legislative Yuan passed a referendum bill, which was signed into law as the Referendum Act on December 31, 2003.

The newly-enacted law specifically prohibits referendums on the controversial sovereignty issues in Taiwan. No referendums can be held to change the official name of the country, national flag or territorial status. It is so stipulated in Article 2 of the Referendum Act.

Another article forbids the president or the Executive Yuan (Cabinet) to initiate a referendum. It can only be initiated by the Legislative Yuan or through a public petition endorsed by 5 percent of the electorate.

The Referendum Act, however, allows the Cabinet to call "defensive referendums" when the nation's sov-

ereignty is under threat.

Although the Kuomintang, which held the majority of seats in the Legislative Yuan, was dissatisfied with the referendum bill as proposed, it voted for adoption. Justin Chou, Kuomintang spokesman, explained why the party voted for the bill. He told a British Broadcasting Company correspondent:

"We believe a referendum is a right of the people, and we don't want any referendum [to] endanger cross-strait relations. So our bill can solve all the problems, people can defend their rights and at the same time the cross-strait relationship can stay the same... This isn't for China; this is because we think Taiwan needs to maintain stability." (<http://news.bbc.co.uk/1/hi/world/asia-pacific/3245498.stm>)

2. Defensive Referendums of 2004

President Chen Shui-bian and Vice President Annette Lu sought reelection in 2004. They were challenged by Lien Chan, the Kuomintang standard bearer and his running mate James Soong of the People First Party (PFP). Poll after poll during the campaign of 2004 showed the challengers led the incumbents by a large margin. To boost voter support for the Democratic Progressive Party, President Chen decided to call "defensive" referendums. They are so described because they relate to the defense of the nation. Article 17 of the Referendum Act reads:

"When the nation is threatened by external forces to a degree that its sovereignty is possible to be altered, the President, via the resolution of the Executive Yuan general meeting, is entitled to launch a referendum to issues related to national security. The referendum described above is not under the restriction of article 18 and 24."

Articles 18 and 24 stipulate when a referendum should be held. According to Article 17, the president can call a defensive referendum at any time and in an arbitrary way.

President Chen had proposed two referendums. Referendum One was to strengthening national defense. The question asked was:

“The People of Taiwan demand that the Taiwan Strait issue be resolved through peaceful means. Should Communist China refuse to withdraw the missiles it has targeted at Taiwan and to openly renounce the use of force against us, would you agree that the Government should acquire more advanced anti-missile weapons to strengthen Taiwan's self-defense capabilities?”

Referendum Two concerns “reciprocal negotiations.” The question asked read:

“Would you agree that our Government should engage in negotiation with Communist China on the establishment of a “peace and stability” framework for cross-strait interactions in order to build consensus and for the welfare of the peoples on both sides?”

The two referendums were held simultaneously with the presidential election on March 20, 2004. The results are shown in the following table.

Table 1: Results of Referendums on March 20, 2004

Referendum One			Referendum Two		
	Votes	Percentage		Votes	Percentages
Yes	6,511,216	91.80%	Yes	6,319,663	92.05%
No	581,413	8.20%	No	545,911	7.95%
Votes Cast	7,452,340	45.15% of registered voters	Votes Cast	7,444,148	45.10% of registered voters
Valid Votes	7,092,629	95.17% of votes cast	Valid Votes	6,865,574	92.23% of votes cast
Invalid Votes	359,711	4.83% of votes cast	Invalid Votes	578,574	7.77% of votes cast

The turnout was 45.17% for Referendum One and 45.12% for Referendum Two. Neither was enough to fulfill the requirement of Article 30 of the Referendum Act which reads:

“For a referendum to be approved, the turnout should exceed the half of the total number of qualified voters (in the whole nation, a municipality, city or county) in that referendum and the approving votes should exceed the half of all the valid votes. In case the turnout does not exceed the half of all the qualified voters or the approving votes do not exceed the half of all the valid votes, that referendum should be considered vetoed.”

Both referendums were vetoed. That did not matter to President Chen, however. All he wanted was to evoke the fear of the People's Republic of China among

the people of Taiwan to swing the election in his and his running mate's favor. The referendums served his purposes.

3. “Recovery of Kuomintang Assets” vis-à-vis “Anti-Corruption”

Chen Shui-bian and Annette Lu were shot at by a gunman at Tainan on March 19, 2004. They were re-elected on the following day with a paper-thin margin of 0.2 percent. Many people believed that they won thanks to sympathy votes. Others thought the shooting was a dirty trick to win at any cost. The opposition Kuomintang contested the outcome of the presidential election. While the long litigation over the election was going on, the Democratic Progressive Party began to raise again the issue of what it calls the “ill-gotten assets” of the Kuomintang. The ruling party proposed a

bill to recover for the national treasury the assets the Kuomintang acquired during its 50-year rule of Taiwan. The bill is titled "the Disposal of Ill-Gotten Assets by Political Parties." On September 4, 2006, the ruling party initiated a referendum for recovery of ill-gotten assets of the Kuomintang. Voters are to answer the question:

"In order to make the Kuomintang return its assets to the whole people, do you agree to enact a law on "the Disposal of Ill-Gotten Assets of Political Parties," the said 'ill-gotten assets being defined as all the assets of the Kuomintang and its affiliated organizations, except membership dues, political contributions and election subsidies, so that such assets could be so returned?"

The Kuomintang was alarmed. The referendum might be held alongside the legislative elections scheduled for December 2007 or early January 2008. According to Article 24 of the Referendum Act, "The Central Election Committee should hold a referendum in less than six months after the proclamation of the agenda of that referendum, and a referendum is permitted to be held on the same day with a national election."

The opposition learned a lesson in 2004. President Chen called two referendums to sway the election in his favor. Wang Jiang-xuan, a former chairman of the New Party, proposed an "anti-corruption" referendum as a countermeasure. The New Party is a Kuomintang ally.

Wang initiated the referendum on September 22, 2006 after President Chen's son-in-law, Chao Chien-ming, had been indicted for insider trading in connection with the Taiwan Development Corporation scandal, while first lady Wu Shu-chen was facing charges of embezzling a public fund under her husband's control for the conduct of "affairs of state." At the same time, many top government officials, including President Chen's associates, were also involved in corruption scandals. The Kuomintang supported Wang's initiative.

Wang's referendum question is: "Do you agree to

enact laws to empower the Legislative Yuan to establish a special committee to investigate the head of state as well as his relatives and subordinates for the wrongs they do, purposely or unintentionally, to seriously harm our nation, and to compel government agencies concerned to cooperate, without resistance, with the said committee in order to punish the wrongdoers, reclaim their ill-gotten income and protect the benefit of the whole people?"

The competent authority of referendum is the Executive Yuan (Article 3 Paragraph 1, Referendum Act). A referendum initiated is first acted on by the Referendum Review Committee, which is under control of the Executive Yuan. Article 34 of the Referendum Act reads:

"The Executive Yuan should establish a national Referendum Review Committee responsible for (1) identifying contents of a national referendum, and (2) ascertaining whether the proposed referendum is an "identical" one referred to in Article 33."¹

Its Article 30 stipulates:

"The Referendum Review Committee is composed of 21 members on a three-year term. The members are recommended by political parties according to each party's share of seats in the Legislative Yuan and nominated by the competent authority of referendum for appointment by the President. The chairperson of the Committee is elected from among themselves. The Committee's organizational regulations and reviewing rules should be submitted to the Legislative Yuan for reference."

The Referendum Review Committee therefore consists of nine members recommended by the Kuo-

¹ According to Article 33, a referendum whose content is identical to that of the one passed or vetoed within three years cannot be proposed and the Referendum Review Committee should ascertain whether a new referendum is "identical" to an old one.

mintang, eight by the Democratic Progressive Party, two by the People First Party, and one each by the Taiwan Solidarity Union and Non-Partisan Solidarity Alliance.

The two referendums initiated by President Chen in 2004 were not required to be reviewed or identified. As a result, the Referendum Review Committee was not established until after the two new referendums had been initiated.

The Central Election Commission was founded under the Executive Yuan in 1982 to hold and supervise elections, national as well as local. The commission has jurisdiction over the conduct of referendums as well, if they are called alongside a national election. The Executive Yuan, in accordance with Article 13 of the By-laws of the Referendum Act, formed the Referendum Review Committee under the Central Election Commission on April 16, 2006.

The Referendum Review Committee elected Kao Yung-kuang chairperson on October 13. Kao is one of the nine members recommended by the Kuomintang. The opposition alliance of the Kuomintang and the People First Party has 11 members on the 21-member committee, whose quorum of a meeting is 11. A referendum initiated may be accepted or rejected by the committee by a major vote of members present and voting. As a consequence, the Kuomintang and its ally dominate the committee.

The ruling party has an ally in the Taiwan Solidarity Union. Together they have nine members on the committee. They are outnumbered by the members recommended by the Kuomintang and its ally.

One result is that the opposition alliance handily outvotes the ruling party. For instance, Kao was elected as chairperson by 12 votes. He won one additional vote of the Non-Partisan Solidarity Alliance. Kao's competitor, Lo Chih-cheng of the ruling party, received only seven. Two of Lo's colleagues were absent from the first meeting of the committee.

The committee met to review the two referendum proposals on November 24. Twelve members voted down the anti-Kuomintang proposal, while the other one against government corruption was accepted by 17 votes.

Dispute arose. The Executive Yuan received the Kuomintang assets referendum proposal on September 4, whereas the committee was inaugurated on October 13. But according to Article 14 of the Referendum Act, "the competent authority (the Executive Yuan) should submit the proposal of a referendum to the Review Committee for identification, and the Committee should inform the said authority of the result thereof within 30 days." It was impossible for the committee to identify and inform the Executive Yuan within 30 days. The deadline had to be met on October 4, a week before the committee was inaugurated.

Yu Shyi-kun, chairman of the Democratic Progressive Party, appealed to the Executive Yuan on November 6, fully 18 days before the committee met to review the Kuomintang assets referendum proposal, to identify and accept it. Eleven days later on November 17, the Cabinet approved the proposal. The approval was given a week before the committee meeting.

The ruling party made an end run to sabotage the committee, where it could not possibly get its proposal accepted. The Executive Yuan went along in violation of the Referendum Act.

4. Referendums on Taiwan's UN Membership

In 1991, the Legislative Yuan passed a resolution urging the government to take action to have the Republic of China to rejoin the United Nations. The government took action in 1993. The effort has since continued.

For practical reasons, Taiwan applied for UN membership under different names such as "the Republic of China (Taiwan)" and "the Republic of China on Taiwan" until 2006. In July 2007, applications were

made under the name of Taiwan for the first time. Because of China's opposition, Taiwan has been denied UN membership.

Undoubtedly, the people of Taiwan want their homeland to accede to the United Nations. It is a national consensus. It needs no referendum.

That is why people suspect that President Chen Shui-bian is resorting to his wont campaign gimmickry again when he declared in February 2007 the ruling party would initiate a referendum on Taiwan's admission to the United Nations under the name Taiwan. Moreover, in May, he announced that the referendum should be held together with the legislative or presidential elections. (Liberty Times, 23 May 2007: <http://www.libertytimes.com.tw/2007/new/may/23/today-p8.htm>)

By that announcement, President Chen confirmed the suspicion that the referendum is being called to help the ruling party win either of the elections. In June, the party formally proposed the referendum. The electorate will be asked to answer the question: "Whereas the People's Republic of China joined the United Nations in place of the Republic of China and made Taiwan an orphan in the international community in 1971, do you agree that Taiwan should join that world body under the name Taiwan in order to strongly express the will of the people of Taiwan, enhance its international status, and promote its participation in international activities?"

Most people, especially the elite in the ruling party, thought the opposition Kuomintang would oppose the referendum. Actually, the ruling party wanted to blame the opposition for "not loving Taiwan" and "siding with the People's Republic of China" if public objection was raised. Originated in China, the Kuomintang is labeled by President Chen and his supporters as an alien party unfit to rule Taiwan. Come election time, the ruling party never fails to start name-calling to canvass votes at the expense of the Kuomintang.

Surprisingly, the Kuomintang did not oppose the

referendum. Instead, the opposition party decided to propose its own referendum on UN membership. On June 28, the Kuomintang announced its "return to the UN" referendum. (Taipei Times, 17 September 2007: (<http://www.taipetimes.com/News/taiwan/archives/2007/09/17/2003379144>);

The question posed is: "Do you agree this country should apply for a return to the UN and other international organizations with a practical and flexible strategy; i.e., to use the name ROC, or Taiwan, or any other that is conducive both to the success of the mission and to maintaining dignity?"

Although the two parties proposed the all but identical referendums, they have refused to collaborate with each other. Instead, they have acted separately to promote their respective referendums. On September 15, the ruling and opposition parties held rallies in Kaohsiung and Taichung, respectively. Obviously, either of the parties called the rally to iterate its strong determination to win UN membership on the one hand and as a show of force on the other.

The UN bids triggered a new clash between the Referendum Review Committee and the ruling party. The Executive Yuan received the proposal for joining the United Nations under the name Taiwan on May 21 and submitted it to the committee on June 1. On June 29, the committee vetoed the referendum proposal. All eight committee members recommended by the ruling party resigned en masse at once.

The veto was overridden. The ruling party appealed to the Executive Yuan for re-identification of the proposal, which was then promptly ratified.

The Kuomintang submitted its proposal to the committee on August 9. After holding a closed-door meeting and a public hearing, the committee put the identification of the Kuomintang referendum to a vote on August 28.

No members representing the ruling party sat on the committee. The referendum was identified by a vote

of eight for and four against, however.

5. American Response

The two referendums on Taiwan's admission to the United Nations have exasperated the United States and the People's Republic of China. The United States considers the status quo between Taiwan and China most conducive to its national interest. Washington is opposed to any move to unilaterally alter that status quo, and the referendums, particularly the one on accession under the name Taiwan, are regarded as a move to change the status quo as the United States defines it. So the United States is strongly opposed to the referendums.

Actually, Washington made its opposition clear as early as 2003, when President Shui-bian introduced his defensive referendums. On December 10, in a meeting at the White House with Chinese Premier Wen Jiabao, President George W. Bush said the U.S. government "opposes any unilateral decision by either side of the Taiwan Straits to change the status quo, and the comments and actions made by the leader of Taiwan indicate that he may be willing to make decisions unilaterally to change the status quo, which we oppose." (China Daily, 10 December 2003: http://www.chinadaily.com.cn/en/doc/2003-12/10/content_288832.htm):

In fact, Bush was dissatisfied with Chen's defensive referenda. The Bush administration considered Chen to have gone back on his pledge of "Four Noes" (no declaration of Taiwan Independence, no change of the official name of the country, no inclusion of the doctrine of "special state-to-state relationship" in the Constitution, and no promotion of a referendum on unification or independence) made on his inauguration in 2000. Washington then regarded Chen as a "trouble maker." It was even rumored that President Bush privately called Chen "that SOB" several times. (Epoch-times, 25 December 2004: <http://tw.epochtimes.com/bt/4/12/25/n758960.htm>) When the Democratic Progressive Party called for the referendum on accession to the United Nations under the name Taiwan in 2007, the

United States did not respond as firmly and harshly as it did in 2003. Just like most people in Taiwan, the Americans believe the new referendum was nothing but a campaign gimmick.

The Kuomintang's "returning to the United Nations" referendum has caused much concern in the United States. If there were only one referendum, that proposed by the ruling party, the result might be the same as in 2004; i.e., the referendum would be vetoed by the people. If both parties supported the UN bid, the referendums might be passed, jeopardizing the status quo between Taiwan and China and the national interest of the United States.

Therefore, after the Kuomintang had initiated its referendum, the U.S. administration decided to speak out more clearly about its position. In an exclusive interview with the Hong Kong-based Phoenix TV on August 27, U.S. Deputy Secretary of State John Negroponte announced that the bid to enter the United Nations under the name "Taiwan" would be a move to change the status quo across the Taiwan Strait. He warned that he sees the referendums as a move toward independence which is unwelcome to the United States. (Taipei Times, 29 August 2007: <http://www.taipeitimes.com/News/front/archives/2007/08/29/2003376266>).

Negroponte also called the referendums "a mistake" which runs counter to Washington's policy. Furthermore, he reminded President Chen that he has to keep his pledge. (Taipei Times, 29 August 2007: <http://www.taipeitimes.com/News/front/archives/2007/08/29/2003376266>):

Negroponte said: "I would recall that in the past President Chen has made commitments to the American president, to the international community and to the people of Taiwan not to take any kind of steps that would represent a unilateral alteration of the status quo, such as a change in the official name of Taiwan."

Raymond Burghardt, chairman of the American Institute in Taiwan, came to Taipei in early December

to meet with President Chen. Burghardt told a news meeting in Taipei on December 10 the U.S. government would not change its long-held "one-China" policy even if the referendum initiated by the ruling party were passed. (Taiwan News Online, 12 December 2007: http://www.taiwannews.com.tw/etn/news_content.php?id=571384&lang=eng_news&cate_img=logo_taiwan&cate_rss=TAIWAN_eng):

Burghardt said: "President Chen Shui-bian once told me that if the referendum passes, the U.S. government will realize its "One China" policy was wrong, but obviously, it's not going to happen...If the referendum passes, it will only add tension to cross-strait relations and create more anxiety for Beijing, which had already made threats several times before regarding the referendum."

Besides labeling the referendum as "unnecessarily threatening the stability of the Taiwan Straits," Burghardt said the referendum isn't fair to Taiwan's next president, as it will make it harder for Chen's successor to develop a better relationship with China. Burghardt added it was important that presidential candidates, Frank Hsieh of the ruling party and Ma Ying-jeou of the Kuomintang, should not be hindered by the outcome of the referendums. "The new president, whether Hsieh or Ma ... he deserves to be his own man...He shouldn't be boxed in by statements made now," the AIT chairman said. (Taiwan News Online, 12 December 2007: http://www.taiwannews.com.tw/etn/news_content.php?id=571384&lang=eng_news&cate_img=logo_taiwan&cate_rss=TAIWAN_eng).

Apparently, the U.S. administration does not trust Chen. His campaign for the referendum is considered a gimmick. On the other hand, Uncle Sam is now counting more on the future president of Taiwan, be he Ma or Hsieh.

6. Chinese Response

China strongly opposed President Chen Shui-bian's defensive referendums in 2003. Beijing

made many threats. For instance, in a meeting with President George W. Bush at the White House on December 10, Chinese Premier Wen Jiabao stressed that the so-called defensive referendum proposed by the Taiwan authorities aims at separating Taiwan from China, which is totally intolerable. (China Daily, 10 December 2003: http://www.chinadaily.com.cn/en/doc/2003-12/10/content_288832.htm):

Nevertheless, it is worth noting that when facing the two referendums on Taiwan's admission to the United Nations in 2007, the Chinese government is refraining from criticizing and threatening Taiwan as crudely and harshly as in 2004. President George W. Bush and Chinese President Hu Jintao met in Sydney on September 6 on the sideline of the Asia Pacific Economic Cooperation informal summit talks. Hu told Bush that the next two years will be a time of "high danger" for Taiwan because of the referendum issue and that Taipei should receive "stronger warnings" (International Herald Tribune, 14 September 2007: <http://www.iht.com/articles/2007/09/14/news/14oxan-Referendum-tensions.php>)

China refrained even from criticizing the ruling party's referendum on Taiwan's admission to the United Nations under the name Taiwan.

At the 17th Congress of the Chinese Communist Party, held between October 15 and 17, Hu Jintao, who doubles as its general secretary, did not directly criticize Taiwan's two referendums. Furthermore, leaders of the Chinese People's Liberation Army shunned the press queries about the question of Taiwan's UN bid during the party congress. (ETToday.com, 15 October 2007: <http://www.ettoday.com/2007/10/15/10844-2172406.htm>).

It might be possible, as Raymond Burghardt said, that Beijing had yet to decide how to respond to Taiwan's UN-related referendums. (China Times, 17 December 2007: <http://news.chinatimes.com/2007Cti/2007Cti-News/2007Cti-News-Content/0,4521,110501+112007121700075,00.html>).

However, one can reasonably conclude that the People's Republic of China has realized both the ruling and opposition parties are promoting their respective referendums only for election purposes. Since China enjoys the veto power in the UN Security Council, it is impossible for Taiwan to join this international body even if the referendums were passed. It is not worth a strong response on the part of Beijing to what it believes a "non-issue." A better option open to the Chinese is just "to wait and see" if the Democratic Progressive Party takes any further action toward *de jure* independence of Taiwan.

7. Conclusion

James Huang, minister of foreign affairs, stated on December 10 Taiwan's referendum on admission to the United Nations is an internal affair. "Holding a referendum is a domestic affair, a core value of democracy and the most democratic and peaceful way to express opinions," he said. He added the referendum is widely supported by the people and he wished the U.S. government would understand their aspiration. Later, the administration further emphasized that the referendum is not going to change the status quo across the Taiwan Strait but will just make it known to the world that the people of Taiwan desperately want their homeland to join the United Nations. (Taiwan News Online, 12 December 2007; <http://www.taiwannews.com.tw/etn/news/content.php?id=571384&lang=eng> news&cate=jmg=logo Taiwan&cate=TAIWAN eng)

What Huang said was platitudes. Actually, President Chen Shui-bian and his government are no longer interested in the UN-membership referendum. The reason is simple. The referendum has not worked wonders for the Democratic Progressive Party because the Kuomintang is promoting another one on Taiwan's admission to the United Nations under the name of the Republic of China. The ruling party is unable to blame the Kuomintang for "not loving Taiwan" and "siding with the People's Republic of China" any more. That is why the government is now more interested in demonizing Chang Kai-shek as the dictator, chief culprit of the

bloody February 28 Incident of 1947, and butcher in the reign of white terror that followed. The Chiang Kai-shek Memorial Hall was renamed the Taiwan Democracy Hall to Chen's hardcore supporters and blame the Kuomintang as an undemocratic political party.

The Referendum Act was promulgated in 2003. Taiwan held its first referendums in 2004. They were invalid. Nothing changed. Even if they were adopted, the two new referendums scheduled for 2008 will change nothing, either. Like their predecessors, they are a tool for two major parties to wield for their political gains. One of the political advisors to Frank Hsieh, the ruling party's standard bearer, summed up the referendum issue well. He said:

"For the United States and China, the worst situation might be both these two referenda were passed by Taiwanese people. But even so, nothing is going to be changed. The result might be that our government just keeps on applying for UN membership and can't achieve this goal, just like what happened before referendum had been institutionalized."

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