



Policy Brief Series

TAIWAN RELATIONS ACT: TIME FOR A CHANGE?

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THE TAIWAN RELATIONS ACT: A MID-LIFE CRISIS AT 35?

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Policy Recommendations

- Lawmakers should resist all efforts to revise, repeal or “bolster” the TRA and should not adopt new legislation seeking to “micromanage” relations with Taipei.
- The U.S. Congress should examine the feasibility of establishing a commission to study issues related to Taiwan.
- Using quiet diplomacy, the PRC should be reminded that President Reagan pledged that U.S. arms sales to Taiwan would be “conditioned entirely on the threat posed by the PRC.”
- The United States should continue to emphasize that it supports the ongoing rapprochement between the Chinese mainland and Taiwan.

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April 10, 2014, marks the 35th anniversary of the Taiwan Relations Act, the U.S. legislation providing the legal underpinning for American ties with Taiwan. The Wilson Center’s Asia Program is pleased to present this series of four policy briefs, each of which offers recommendations designed to ensure that the TRA remains relevant to the policy challenges of the 21st century.

Policy Recommendations (continued)

- Washington should continue to remind both sides that it opposes the use of force to settle the Taiwan issue, that a resolution of the Taiwan issue is a matter for the two sides to decide themselves, and that the United States does not support independence for Taiwan.
- Members of Congress should resist the temptation to turn Taiwan into a “political football” for partisan political purposes.

The Taiwan Relations Act (TRA) has guided “unofficial” relations between the United States and the Republic of China (ROC or Taiwan) for 35 years. This policy brief outlines the history and terms of this legislation and shows how it has facilitated the maintenance of close ties between Washington and Taipei. It also discusses several trends that have contributed to calls for a change in U.S. policy. In conclusion, the paper suggests that while some modest adjustments in policy may be warranted, lawmakers should resist all efforts to revise, repeal, or “bolster” the TRA.

BACKGROUND

During the 1970s, Taiwan experienced a series of disappointments. In 1971, Taipei was compelled to withdraw from the United Nations. Following this setback, dozens of governments cut diplomatic ties with Taiwan. Perhaps the most crushing blow, however, came in 1979, when the United States severed formal relations with Taipei in favor of Beijing.

On December 15, 1978, President Jimmy Carter announced that he had agreed to the People’s Republic of China’s (PRC) three demands for the establishment of diplomatic relations—the termination of formal diplomatic relations with the ROC, the abrogation of the 1954 U.S.-ROC Mutual Defense Treaty, and removal of all U.S. troops from Taiwan. The announcement came as a surprise. It represented the first (and only) time that the United States broke diplomatic

relations with a friendly government and alliance partner. Public opinion polls showed that a solid majority of Americans did not favor a United States withdrawal of recognition of the government in Taiwan and opposed the termination of the Mutual Defense Treaty.

On January 29, 1979, the Carter administration sent a legislative proposal—the Taiwan Enabling Act (TEA)—to Congress. The administration claimed it would provide for continued “unofficial” relations with Taipei. But Congress disagreed. As Senator Frank Church (D-Idaho) explained, the law was “woefully inadequate to the task, ambiguous in language and uncertain in tone.” Rejecting TEA as too weak, the U.S. Congress passed the TRA by an overwhelming majority, and the Act was subsequently signed into law by the president on April 10, 1979.

The TRA is not the only document that guides U.S. policy toward Taiwan. U.S. officials contend that the TRA, the three U.S.-PRC Communiqués, and President Ronald Reagan’s so-called Six Assurances form the foundation of America’s Taiwan policy. In some respects, these documents appear contradictory. When one adds official U.S. statements, proclamations, and secret assurances to the mix, American policy appears even more confusing. However, most legal authorities agree that the TRA—which carries the force of law—trumps other expressions of policy. The discussion below examines the terms and provisions of the TRA.

Economic and Political Relations

The United States no longer recognizes Taiwan's government. However, Section 4 of the TRA proclaims that "whenever the laws of the United States refer or relate to foreign countries, nations, states, governments, or similar entities, such terms shall include and such laws shall apply with respect to Taiwan." This provision effectively wiped out most of the legal effects of de-recognition and promoted the growth in economic, political, and cultural linkages between the United States and Taiwan.

In addition to this provision, the TRA provides for the continuation of "unofficial" diplomatic ties between the two societies. Washington maintains an "unofficial" embassy in Taipei (the American Institute in Taiwan or AIT), while Taipei operates an "unofficial" embassy in Washington, D.C. (the Taiwan Economic and Cultural Representative Office or TECRO). Both sides also operate "unofficial" consulate offices. These entities manage travel documents, facilitate communication with local authorities, and represent their respective governments when negotiating commercial and other agreements.

Security Ties

Some describe the TRA as a "tacit" alliance. According to Section 2 of the law, Washington will "consider any attempt to resolve the Taiwan issue by other than peaceful means, including boycotts or embargoes, a threat to the peace and security of the Western Pacific area and of grave concern to the United States." In terms of arms sales, Section 3 states that it is U.S. policy to provide Taiwan with such weapons as may be necessary for its security and an adequate defensive capability, and that the quality and quantity of these weapons will be determined by the president and Congress after consultation with U.S. military authorities. Moreover, according to Section 3 (b) of the law, the United

States will "maintain the capacity . . . to resist any resort to force or other forms of coercion that would jeopardize the security, or the social or economic system, of the people on Taiwan."

The TRA does not commit the United States to Taiwan's defense. After signing the law, President Carter opined that the law provides a president only with "the option of going to war and protecting Taiwan." This stance eventually came to be described as "strategic ambiguity."

International Organizations

As noted above, Taiwan was forced to withdraw from the UN in 1971. It was expelled from all UN-affiliated organizations, such as the International Monetary Fund and the World Bank, in the 1980s. Section 4(d) of the TRA addresses this issue. The law states that "nothing in this Act may be construed as a basis for supporting the exclusion or expulsion of Taiwan from continued membership in any international financial institution or any international organization."

Congressional Oversight

Most often Congress plays a minor role in foreign policy compared to the president. However, Section 3 of the TRA states that Congress will play a role in arms sales to Taiwan. Furthermore, the law requires that the president inform Congress of "any threat to the security or the social or economic system" of Taiwan and that "the president and the Congress shall determine, in accordance with constitutional processes, appropriate action."

Human Rights

When the United States severed diplomatic relations with Taiwan in 1979, the ROC was a one-party dictatorship. Washington's determination to promote human rights during the post-normalization period was reflected in Section 2 (3) of the TRA, which proclaimed that the "preservation and enhancement of the

human rights of all the people on Taiwan are hereby reaffirmed as objectives of the United States.”

Analysis

The TRA has stood the test of time. It has not tied the hands of decision-makers. In fact, the United States and Taiwan have moved steadily closer during the post-normalization period. This movement is not unique to any particular U.S. administration—Republican or Democratic—and the trend continues to this day. As Ma Ying-jeou, Taiwan’s president, observed, “our relations with the United States are closer now than prior to the severance of our diplomatic ties in 1979.”

Political linkages have expanded steadily. Taiwan’s leaders are now permitted to make “transit stopovers” in the United States, and Taipei has upgraded the name of its representative offices in the United States. Furthermore, high level officials from Taiwan are now able to visit the United States, while U.S. cabinet-level officials may travel to Taiwan. Perhaps more important, the United States has helped Taiwan return to the global community. For example, the United States supported Taiwan’s membership in the Asian Development Bank and the Asia Pacific Economic Cooperation forum and helped engineer its participation as an “observer” in the World Health Organization. It is now pushing for Taiwan’s “unofficial” participation in other specialized agencies of the UN. And in September 2012, the United States announced that visitors from Taiwan would enjoy visa free status under the country’s Visa Waiver Program.

According to the World Trade Organization, Taiwan is the world’s 18th largest trader. Economic ties with the United States are robust. Taiwan is America’s 11th largest trading partner and 15th largest export destination for U.S. goods. In February 2013, the two sides agreed to resume stalled talks under the Trade and Investment Framework Agreement

after a six-year hiatus. Taipei hopes that the discussions will pave the way for membership in the Trans-Pacific Partnership, a “high-standard” multilateral free trade agreement.

American arms sales to Taiwan have increased since 1979. In fact, in 2011, Taiwan was the largest purchaser of U.S. defense articles and services in the world. But arms sales tell only part of the story.

Other forms of military cooperation have accelerated. Beginning in the 1990s, the United States and Taiwan began to hold regular meetings on national security issues. In recent years, a defense hotline has been established, an active duty defense attaché has been assigned to the AIT, Taiwan’s fighter pilots have received training in the United States, and American military teams have been dispatched to Taiwan to assess the island’s military capabilities and observe military exercises. The two sides also share intelligence. Perhaps most significant, however, was President Bill Clinton’s decision to dispatch two aircraft carrier battle groups to patrol the waters around Taiwan when cross-Strait tensions soared in 1996

From time to time, the U.S. Congress plays an active role in U.S. policy toward Taiwan. Both houses of Congress have established caucuses to focus on Taiwan-related issues. Arms sales are monitored closely. In some instances, congressional pressure has proved instrumental in changing administration policy. For example, in 1995, the Clinton administration yielded to congressional demands to grant Taiwan’s president a visa to visit the United States.

Finally, it is noteworthy that Taiwan’s human rights record—particularly its peaceful evolution into a multi-party democracy—has stiffened America’s resolve to support it. Many Americans at both the popular and elite level view Taiwan as a model for other countries to emulate—including the PRC.

CHALLENGES

There have been pressures to change U.S. policy toward Taiwan for decades. But calls for adjustments in U.S. policy are accelerating. Some of this may be traced to developments in the United States, Taiwan, and the Chinese mainland. The discussion below briefly outlines several of these trends.

The Rise of China

The PRC has changed a lot since 1979. When one considers that China is now the world's second largest economy, fastest growing economy, third largest military power, and the single largest foreign holder of U.S. government debt, it is clear that the country is important to America. The United States needs China's cooperation to cope with a wide range of pressing global problems including the worldwide economic tsunami, terrorism, proliferation of weapons of mass destruction, environmental degradation, health issues, dwindling energy supplies, and the continuing crises on the Korean peninsula, to name just a few. In other words, China matters—and it matters a lot more than it did in years past.

Chinese Military Build-up

Relations between Taipei and Beijing have improved enormously since 2008. However, the Chinese military build-up opposite Taiwan continues. In fact, the Pentagon claims that “preparation for a Taiwan conflict with the possibility of U.S. intervention has largely dominated China's military modernization program.” The PRC is developing and deploying new weapons systems ranging from cruise missiles to stealth warplanes. The likely cost of U.S. intervention in a Taiwan crisis is rising. As Admiral Sam Locklear, Chief of the U.S. Pacific Command, observed, the “historic dominance” that the United States enjoyed in the Western Pacific “is diminishing.”

Improvements in Cross-Strait Relations

In 2008, Taiwan returned to the “1992 consensus,” a loose interpretation of the so-called “one China principle.” Cross-Strait relations are now at their best since 1949. Beijing and Taipei have signed 19 agreements—including the landmark Economic Cooperation Framework Agreement. The two sides also opened up direct flights, and millions of PRC tourists have visited Taiwan. There is even talk of a peace agreement.

Washington applauds the improved relations between Beijing and Taipei. But some elements within the U.S. government might have reservations about aspects of the rapprochement. For example, there are claims that Pentagon officials are concerned about sensitive U.S. technologies transferred to Taiwan falling into PRC hands. Others worry about PRC-Taiwan cooperation in the East China Sea and/or the South China Sea, and how that might complicate American policy. As one congressional study observed, “the changing dynamic between Taiwan and the PRC poses increasingly difficult, competing policy challenges for the United States.”

Domestic Trends in Taiwan

Some internal developments in Taiwan hold the potential to complicate U.S. policy. To be sure, a solid majority of the population supports President Ma's policy of “no unification, no independence, and no use of force.” However, most people on the island now identify themselves exclusively as “Taiwanese.” There remains a possibility that politicians embracing a separatist agenda might return to power and seek to entrap the United States in a cross-Strait crisis in an effort to achieve their dreams of de jure independence from China.

The fact that defense spending is unpopular in Taiwan further complicates matters. Taiwan's military budget as a percentage of Gross Domestic Product (GDP) has dropped from 3.8

percent in 1994 to 2.1 percent in 2013, and from 24.3 percent of total government spending to 16.2 percent in the same period. As one U.S. official complained, “the reality is, it is Taiwan that is obligated to have a sufficient self-defense . . . we cannot help defend you, if you cannot defend yourself.”

Changes in Congress

The TRA was signed 35 years ago. Today, Taiwan does not capture the attention of most lawmakers. Some attribute this phenomenon to the end of the Cold War and the accompanying demise of “anti-communist” sentiment within Congress. Others point to the fracturing of the Taiwan lobby and the highly partisan bickering among those who claim to represent the island’s interests. Still others point to generational change. Taiwan’s strongest congressional supporters have retired or died. Irrespective of the causes, it is clear that Taiwan does not enjoy the same level of interest among lawmakers that it enjoyed in the past.

Summary

The discussion above outlines only several developments that have energized those calling for changes in U.S. policy toward Taiwan. A more complete examination would explore other trends as well. For example, analysts contend that the highly charged partisan atmosphere in Washington has led some lawmakers to champion irresponsible changes in policy. They use Taiwan as a means to attack the president as an “appeaser” who “kowtows” to China.

CONCLUSIONS

Some call for America to reduce its support for Taiwan. For example, in 2009, Admiral Bill Owens (ret.), former Vice Chairman of the U.S. Joint Chiefs of Staff, described the TRA as “outdated legislation” in need of “thoughtful review” in an op-ed he penned for the *Financial Times*. In 2011, *Foreign Affairs*, the most widely

respected foreign policy publication in America, published an article arguing that “the United States should consider backing away from its commitment to Taiwan.” That same year, the University of Virginia’s Miller Center for Public Affairs published a report suggesting that the TRA “needs to be re-thought by all sides.” The Cato Institute, a libertarian think tank, also published a study calling on the United States to rescind “its risky commitment to defend the island.”

Proposals calling for an increase in U.S. support for Taiwan are more plentiful. Some lawmakers are uncomfortable with “strategic ambiguity” and want to draft new legislation stating plainly that the United States will defend Taiwan. Others want to pass legislation (the Taiwan Policy Act) mandating additional arms sales to Taiwan. Still others seek to pass legislation that scraps the longstanding “one China policy” and reestablishes diplomatic relations with Taipei.

There appears to be no shortage of proposals to fundamentally change U.S. policy toward Taiwan. But the problem with all of these schemes is that they hold the potential to unintentionally complicate matters. If adopted, the consequences might even prove catastrophic. For example, scrapping the policy of strategic ambiguity and providing Taiwan with an iron-clad security guarantee could infuriate China, embolden Taiwan’s separatists, and entrap the United States in a cross-Strait conflict. On the other hand, rescinding the “risky” U.S. security commitment to Taiwan might tempt hotheads in Beijing to seek a military solution to the Taiwan issue and/or undermine American credibility in other regions of the world. All other plans to overhaul U.S. policy are similarly flawed.

Lawmakers should resist all efforts to revise, repeal or “bolster” the TRA. However, some modest adjustments in policy might be warranted. With respect to U.S. policy, the following points seem paramount:

- The U.S. Congress should not pass new legislation seeking to “micromanage” relations between Washington and Taipei. The TRA provides Congress with sufficient authority to monitor developments related to Taiwan. The problem with oversight is not the TRA. Rather, the problem is that U.S. lawmakers often shirk their responsibilities.
- The U.S. Congress should study the feasibility of establishing a commission similar to the U.S.-China Economic and Security Review Commission created by congressional mandate. The commission would monitor and investigate national security and trade issues between the United States and Taiwan. This proposal was included in one of the original drafts of the TRA and is worthy of careful study.
- Using quiet diplomacy, the PRC should be reminded that President Reagan pledged that U.S. arms sales to Taiwan would be “conditioned entirely on the threat posed by the PRC.” In keeping with the president’s promise and the terms of the TRA, Chinese leaders must understand that there is a linkage between U.S. arms sales to Taiwan and China’s military deployments. For example, if the PRC removes (or dismantles) the more than 1,200 ballistic missiles deployed directly opposite Taiwan, U.S. policy will allow Washington to take this fact into account when determining arms sales packages to Taiwan.
- The United States should continue to emphasize that it supports the ongoing rapprochement between the Chinese mainland and Taiwan. A peaceful resolution of the Taiwan issue will promote peace and stability in the Western Pacific, and might provide sufficient cause for lawmakers to revisit the relevance of the TRA.
- Washington should continue to remind both sides that it opposes the use of force to settle the Taiwan issue, that a resolution of the Taiwan

issue is a matter for the two sides to decide themselves, and that the United States does not support independence for Taiwan.

- Members of Congress should resist the temptation to turn Taiwan into a “political football” for partisan political purposes. Such behavior does not serve the long-term interests of either the United States or Taiwan.

In sum, what many critics of U.S. policy fail to understand is that it is in America’s interest to maintain a stable and constructive relationship with both Taipei and Beijing. Realizing this objective is not an easy task. There are numerous challenges. However, the TRA has helped create an environment that enables the two sides of the Taiwan Strait to peacefully resolve their differences, and it is likely that the law will continue to contribute to peace and stability in future years.

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