



Policy Brief Series

TAIWAN RELATIONS ACT: TIME FOR A CHANGE?

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THE TAIWAN RELATIONS ACT: STILL ESSENTIAL IN CHANGING TIMES

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Policy Recommendations

- Continue to fund AIT as the means through which we have a differentiated but stable relationship with both the PRC and Taiwan.
- Taiwan should expand its mutually beneficial relations with the PRC, and the United States should be open to changes that the people on Taiwan support.
- Improve the depth and frequency of U.S. policy dialogues with Taiwan leaders of both major parties.
- Support Taiwan's participation in the Trans-Pacific Partnership.
- Taiwan should be realistic in its foreign policy to protect its essential commercial, security, and functional interests.

Recommendations continued on next page

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)

- Taiwan should focus its defensive efforts on hardening, redundancy, and mobility rather than on symbolic big-ticket systems. The United States must be willing to provide those capabilities Taiwan does need. In addition, the United States must integrate Taiwan into its security planning for China's maritime periphery.
- The United States should recognize that Taiwan is no longer a peripheral issue in U.S.-China relations, precisely because China's periphery has become the most important issue threatening regional stability. Abandoning Taiwan will not encourage China to moderate its territorial ambitions elsewhere in the region.

CONGRATULATIONS, BUT . . .

After 35 years, the Taiwan Relations Act (TRA) stands as one of the most durable and successful laws ever established to guide a relationship with any foreign power. Yet its success, and the success of the broader U.S.-China relationship of which it is a part, faces challenges not anticipated even a year or two ago. Taiwan is no longer an isolated friction in the U.S.-China relationship, but an integral element in China's broader military assertiveness along its eastern maritime border. This convergence of issues will force the United States to fundamentally rethink how we manage the Taiwan issue.

IN THE BEGINNING

When the TRA was debated and enacted 35 years ago, everything about our relationships with the People's Republic of China and the Republic of China on Taiwan was uncertain, even chaotic. For the first time since 1950, U.S. support for Taiwan seemed unreliable, and some wondered if Taiwan might even shortly collapse into the PRC. The dramatic images of the American flag being lowered at the U.S. embassy in downtown Taipei on January 1, 1979, and the practical absence of a functioning U.S. presence on Taiwan were stark reminders that Taiwan's future was in doubt.

The TRA originated as the Carter administration's effort to create a non-governmental representation between the U.S. government and the government on Taiwan after "de-recognition." It provided the mechanism through which U.S. policy statements in the 1972 Shanghai Communiqué and the December 1978 Normalization Communiqué were applied to our relationship with Taiwan. With the presentation of the Six Assurances to Taiwan in July 1982 and the signing of the August 1982 Communiqué on Arms Sales, the TRA became the structure through which those contradictory commitments were executed as well. The TRA can only be understood as one chapter in that series of documents.

It was also an outcome of a debate among a number of interest groups—the Carter administration, the U.S. Congress, the PRC government, and the "authorities on Taiwan." Less explicitly than the communiqués, but still clearly, it was the negotiated outcome among a number of players that met objectives important to each.

- The Carter administration and State Department sought to establish an "instrumentality"—the American Institute on Taiwan (AIT)—to continue relations with "the people on Taiwan," a thinly disguised veil for the Republic of China government on

Taiwan. They proposed a corporation under the direction of the Department of State that would enable functional relations—commercial, consular, and defense cooperation—to continue without any suggestion that AIT was simply an embassy under a different name. The TRA established a framework that the PRC leadership would not find threatening to its interests or cause for downgrading its relationship with the United States.

- The Congress seized the introduction of the TRA as its first opportunity to exert control over the rapidly growing relationship between the United States and the PRC. In the TRA, Congress established that Taiwan's security was a U.S. national interest and that the United States would provide arms to Taiwan and take other necessary steps to ensure that security. The Congress also made funding for AIT a separate line in the annual budget so that no cuts could be made without direct congressional concurrence. The net result was to warn Beijing that the United States would protect Taiwan against any coercion in pursuit of reunification.
- The PRC had used the Shanghai and Normalization communiqués to showcase its claim to be the legitimate ruler of all China, necessarily including Taiwan. It argued that no domestic law, such as the Taiwan Relations Act, could infringe on that claim. While Beijing played no direct role in negotiating the TRA, its pressure ensured an arrangement between the United States and Taiwan that was clearly lower in status than the diplomatic relations recently established between China and the United States.
- Finally, the Republic of China government, or the "Taiwan Authorities" as they became known, had been frustrated by their

inability to slow or condition the growing relationship between Washington and Beijing. Taiwan won the explicit political commitment of the Congress to shield it from any administration efforts to neglect Taipei in pursuit of closer ties with Beijing.

The result may sound like a patchwork of compromises, and perhaps it was, but it provided the necessary environment for Taiwan to evolve into a modern democracy and economic success without overtly denying the PRC objective of reunification.

FUNCTIONING

The TRA created an unprecedented U.S. government structure—a corporation, funded by the Congress, and operating under the policy direction of the State Department—the only wholly owned subsidiary of the Department of State, and one that has worked for 35 years. In doing so, the TRA and AIT have advanced the priorities of each of the four parties to its creation.

Administration Priority

The TRA created AIT as an organization that operated like an embassy without any of the trappings of an embassy, that conducted a bilateral relationship that U.S. policy asserted was not a bilateral relationship.

To make clear that AIT was not an embassy, operations were moved to an abandoned U.S. military assistance compound away from downtown Taipei. AIT's Washington headquarters were moved across the Potomac to Rosslyn, Virginia. U.S. government personnel assigned to AIT were required to "resign," a *pro forma* exercise that occasionally threatened employees with lost pay or promotion opportunities. In 1979, these stark changes signaled Beijing and Taipei that Washington was changing, but they have outlived their usefulness. AIT is finally constructing a modern office complex in Taipei, and State Department

and other U.S. government employees transfer to Taipei as they would to any embassy or consulate overseas.

The TRA has enabled the United States and Taiwan to transact the business of two close, albeit unofficial, partners. The TRA kept in force myriad international and bilateral agreements to which the United States and Taiwan were party, and hundreds more have been signed by AIT since 1979. It has also enabled the United States to assist Taiwan in times of need. For example, when Taiwan applied to join the World Trade Organization, the United States used its diplomatic weight to ensure its entry by making that a condition of the PRC's entry. When SARS struck Taiwan in 2003, AIT persuaded the Centers for Disease Control in the United States to provide U.S. assistance after PRC pressure discouraged the World Health Organization (WHO), as a UN organization, from assisting Taiwan.

Congressional Priority

From the congressional perspective, Taiwan's security was the centerpiece of the TRA. Since 1979, and particularly since 1990, Taiwan has been one of the largest customers worldwide for U.S. equipment and training, which one can argue demonstrates the success of the TRA. While the United States has seldom agreed to sell Taiwan everything it wanted, the delivery of F-16s and Patriot air-defense missiles, starting in 1997, does suggest the scale of what the United States has been willing to provide. Perhaps the most dramatic demonstration of U.S. commitment to Taiwan's security was the decision in March 1996 to send two carrier battle groups to the waters near Taiwan in response to a PRC missile exercise intended to discourage Taiwan from electing a pro-independence president.

PRC Priority

The TRA led to the third U.S.-PRC communiqué, signed in 1982, which was supposed to curb

U.S. defense assistance to Taiwan. The United States committed not to provide any new equipment to Taiwan that exceeded—in quality or dollar value—the equipment provided prior to 1979, and to reduce over time the dollar value of arms transfers. This reduction was tracked by the State Department accounting record known as “the bucket,” which was redefined repeatedly to obscure the fact that U.S. security assistance to Taiwan was growing, not diminishing.

Despite these semantic disguises, Beijing has been able to use the 1982 communiqué to make U.S. security assistance to Taiwan into a bilateral issue between Washington and Beijing, demanding limits in return for cooperation on issues ranging from North Korea to human rights to national treatment for U.S. companies in China. However difficult to measure over time, the impact on Taiwan's defense capabilities of Chinese objections has become increasingly significant. Moreover, the PRC has strengthened its own military capacity to the point today where there is little Taiwan could do to withstand a direct PRC military threat.

From Beijing's perspective, one word outweighed arms sales and any other issue in its relationships with Taiwan and the United States—“sovereignty.” Consequently, the single most important accomplishment of the TRA was to enable the United States to maintain relations with Taiwan in a way acceptable to the PRC. That meant –

- Not precluding the possibility of future unification;
- Not treating the Republic of China as a country entitled to the diplomatic status of a country; and
- Denying Taiwan leaders the protocol treatment appropriate to a head of state.

The TRA and the balancing act on sovereignty it embodies stumbled twice: in June 1995, when Lee Teng-hui visited Cornell University to

participate in an alumni reunion and to give a speech on Taiwan's democratization; and eight years later, when Chen Shui-bian expanded an October 2003 transit stop in New York into a full-fledged visit to the United States. To China, both of these Taiwan presidents were accorded treatment on U.S. visits that came close to head-of-state treatment. The fact that Lee's flamboyant visit happened two years before the Clinton administration welcomed Chinese President Jiang Zemin on a state visit only added to Beijing's sense that Washington lacked proper respect for China's sovereignty.

Taiwanese Priority

The clearest possible evidence that the TRA has served Taiwan's interests is the continuing strength of Taiwan's economy and the central role Taiwan businesses have played in China's export-oriented economic boom. The TRA and U.S. policy have helped to create an environment in which Taipei and Beijing have been able since 2005 to make progress in social and economic relations—including the first direct flights between Taipei and Shanghai shortly after Ma Ying-jeou was elected president in 2008, and the recent meeting of the heads of Taiwan's Mainland Affairs Council and the mainland's Taiwan Affairs Office.

Finally, democratization on Taiwan, enabled since 1979 by the TRA, has forced the PRC to recognize that it can only win a change in the political cross-Strait relationship, absent war, when the preponderant majority of Taiwan citizens conclude that the change would serve their long-term interests. As polls by Taiwan's Mainland Affairs Council since 1994 have consistently shown, a clear majority of respondents favor "the status quo" either indefinitely or until some undefined future decision.

NO LONGER A SIDESHOW

However one understands the U.S. "pivot" or "rebalancing" to Asia, the reality is that U.S.

prosperity and security are wedded to stability in this region. The PRC is the economic power essential to that prosperity and the only military power able to challenge that security.

Over the past 35 years, Taiwan and cross-Strait relations have been seen by many in Washington as an irritant in U.S.-China relations, something to be contained lest they interfere with the development of a U.S.-China consensus on issues deemed to be more central to our strategic and economic priorities. Others have seen Taiwan as the "canary in the coal mine." It was expected that any PRC decision to take a more coercive approach toward Taiwan would presage a PRC threat to its other neighbors.

Recent developments must change our understanding of Taiwan and of Washington's central priorities in its relationship with Beijing. Events in the South China Sea and the East China Sea demonstrate, if anyone doubted, that growing PRC economic and military power will not be employed simply to achieve national unification, but to assert more broadly China's historical rights and redress what it sees as historic inequities along its maritime periphery. The very real benefits of stable economic partnerships with Taiwan, Japan, South Korea, and ASEAN nations may not be sufficient to curb these ambitions. No longer is China's insistence on reunification a threat to Taiwan alone.

RECOMMENDATIONS FOR UNCERTAIN TIMES

This leaves us on the 35th anniversary of the TRA considering how this very successful mechanism, and U.S. China policy generally, can adapt to these new challenges. I would suggest that the key is to integrate Taiwan more clearly into overall U.S. China policy. Taiwan is no longer a peripheral issue precisely because China's periphery is now the issue. With that in mind, here are a few recommendations about how to make that happen.

- Don't abandon what brought us this far.

Continue to fund AIT as the means through which we have a differentiated but stable relationship with both the PRC and Taiwan. The U.S.-Taiwan relationship must be unofficial, but it must not be second-rate.

- The United States must encourage Taiwan to expand its mutually beneficial relations with the PRC. We must insist to the PRC that we will not pressure Taiwan to make changes that are not in its interest. At the same time, we must be open to changes that the people on Taiwan support, provided that support comes without the threat or application of coercion.
- Improve the depth and frequency of U.S. policy dialogues with Taiwan leaders of both parties. We often say we do not take sides in foreign elections, that we do not pick winners and losers. Senior policy officials in Washington need to convey that convincingly to both the Nationalist and the Democratic Progressive parties in Taiwan.
- Encourage Taiwan to strengthen its regional economic linkages. Taiwan needs to negotiate with its regional partners to become part of the Trans-Pacific Partnership either as a formal member or as a functional participant. Taiwan will need to make some hard choices, including perhaps unilateral trade concessions, but the stakes for Taiwan require this. The United States will need to use its international weight to ensure Taiwan is accepted when it qualifies. U.S. actions in bringing Taiwan into APEC and then the World Trade Organization can provide useful models.
- Taiwan must be realistic in its foreign policy. It is never going to be accepted in organizations where statehood is a requirement, and it will need the acceptance of the PRC to participate in any international organization. Nonetheless, there are ways for Taiwan to protect its essential commercial, security, and functional interests, provided it is willing to abandon an interest in diplomacy for display.
- Defense poses another set of tough choices. Taiwan and the United States must take a cold look at how to deter, and if necessary respond to, PRC coercion. We must beware of the PRC's recent record of coercive incrementalism (a.k.a. "salami slicing") along its maritime periphery. Our military capabilities and Taiwan's must provide realistic options to respond effectively at each level of coercive action.
- Taiwan should not seek big-ticket military systems from the United States to confirm U.S. political support—in particular, submarines and advanced combat aircraft. Instead, it should be funding and building the much lower profile but more useful hardening, redundancy, and mobility for its essential defense and command-and-control capabilities. As Taiwan does that, the United States must be willing to provide the capabilities Taipei needs, including cruise missiles and air defense missiles. In addition, the United States must integrate Taiwan into its security planning for China's maritime periphery, avoid unnecessary provocations to the PRC, and resist the inevitable PRC push-back.
- The United States should not be discussing "abandonment," the ill-conceived notion that the PRC will reward the United States for halting arms sales to Taipei, and will show restraint in expanding its military capability to coerce Taiwan. Instead we must understand Taiwan as one of several areas along China's maritime periphery where the PRC is growing increasingly assertive, and develop a strategy that works with regional partners to restrain Beijing's efforts.

WHAT ABOUT THE FIFTIETH ANNIVERSARY?

As we assess the TRA after 35 years, we may wonder what it will look like after 50 years. As the PRC grows in strength and ambition, how will Taiwan fare? Will the United States be willing to insist on Taiwan's right to choose its own future, even as the PRC becomes a more important strategic and economic global partner? I am an optimist. I believe we can "kick the can down the road" so that Taiwan can continue to prosper as it charts its own course within the realities of the PRC's "one China." But it will be an ongoing messy struggle.

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This policy brief marks the second in a series of four on the Taiwan Relations Act. The first brief in the series, "The Taiwan Relations Act: A Mid-Life Crisis at 35?" by Dennis Hickey, can be accessed from the Asia Program webpage at <http://www.wilsoncenter.org/publication-series/taiwan-relations-act-time-for-change>.