

**Hearing on
The Taiwan Relations Act
House International Relations Committee
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Key Points

In passing the Taiwan Relations Act twenty-five years ago, Congress helped fortify a Taiwan that was reeling from the shock of de-recognition and the end of the mutual defense treaty. In the subsequent quarter decade, the TRA has grown in importance as an element of U.S. policy, and as a symbol of American resolve.

The TRA has been effective because it has always been reinforced by a strong and continuing political commitment by the Congress and the American public. It is law and political commitment combined that have helped keep Taiwan secure and free and will do so in the future.

The recent election in Taiwan offered a clear choice to Taiwan voters between the pan-Blue camp, which favors a more conciliatory policy towards China and the pan-Green camp, which emphasized Taiwan identity and reform of the political order. China views President Chen with deep suspicion and believes that his political agenda is tantamount to the permanent separation of Taiwan from China, and therefore a fundamental challenge to Chinese interests. That perception may well be incorrect. Ensuring that Beijing does not over-react will require careful management on all sides.

The TRA has been an admirably flexible and effective instrument of U.S. policy and mechanism for the conduct of U.S.-Taiwan relations. It will remain so if the U.S. political commitment to the island remains strong, and fosters a policy consensus between the Congress and the executive branch.

Because the U.S.-Taiwan relationship is a partnership – a partnership of democracies – the United States will best honor its TRA obligations if Washington and Taipei work together and maintain good communication.

Introduction

Twenty-five years ago this spring, the Congress passed the Taiwan Relations Act (TRA). Members acted because they believed that President Carter struck a bad bargain in establishing relations with the People's Republic of China. They felt that by giving into Chinese demands that he terminate diplomatic relations with Taiwan and end the mutual defense treaty, Carter had left the island profoundly vulnerable. They also were angry that the administration had pursued its China initiative without proper consultation with the Congress. They therefore used the TRA to shore up Taiwan's position and demonstrate their desire to play their proper role in the making of foreign policy.

A lot has changed in a quarter-century. China was relatively weak militarily at the time that Congress worked to fortify Taiwan through the TRA. Now it is steadily modernizing its armed forces and acquiring the ability to project power on its periphery. Several hundred PRC missiles are just one way that the Chinese threaten Taiwan's security.

Twenty-five years ago, Taiwan and China had no economic interaction whatsoever. But as labor costs on Taiwan escalated and China realized that it had to join the global economy to create prosperity and stability at home, Taiwan companies found the mainland to be a good place to re-locate their production facilities. China has received almost \$100 billion in Taiwan investment and has replaced the United States as the island's leading trading partner.

In 1979, Taiwan had an authoritarian system where it was a crime, for example, to advocate the total independence of Taiwan from China. Now Taiwan is a full, and sometimes rambunctious, democracy. The political spectrum is divided among those who favor some accommodation with China, some who are cautious, and others who want outright independence. For Beijing, this democracy creates a fear that Taiwan will slip away and turn its dream of unification into a nightmare.

Does the Taiwan Relations Act have any relevance in 2004, twenty-five years after it was written? I think it does. Although circumstances have changed, the law still reflects a strong political and legal commitment to Taiwan. Because China's military power is growing, the U.S. security role is far more important today than it was in 1979. Because Taiwan is a democracy, Washington's task of balancing political values and security interests is more complex. And because Taiwan is more complicated, its own actions can shape how America fulfills its TRA commitment. But the TRA still provides sound policy direction to the executive branch.

The Taiwan Election

The recent presidential election on Taiwan provides a useful context for assessing U.S. interests and the current relevance of the TRA.

The election confirmed that there is a basic parity within the Taiwan electorate. On one side are those who favor a conciliatory policy towards China. These people vote for the pan-Blue coalition made up of the Nationalist Party (Kuomintang, KMT); the People's First Party, and the New Party. The other side is made up of those who are more skeptical about China's intentions and those who favor total and permanent separation. These people favored the pan-Green coalition composed of the Democratic Progressive Party and the Taiwan Solidarity Union. It is important to emphasize, however, that all political forces agree that Taiwan or the Republic of China is a sovereign state, and that China needs to accept that reality.

In winning re-election, President Chen increased his share of the vote from around 40 percent in 2000 to 50 percent this time, a remarkable achievement. This reflects his political skill and that of his party, the continuing growth of Taiwanese identity, and the fact that supporters of former President Lee Teng-hui, who cast their votes for Blue candidates in 2000, cast them for President Chen in 2004.

President Chen exercised his authority under Taiwan's referendum law to call for two so-called defensive referenda, one on missile defense and one on the conduct of cross-Strait relations. These were held on election day, but the results were invalid because less than 50 percent of eligible voters cast ballots. In my view, this does not necessarily mean that the Taiwan public in principle rejected referenda as a mechanism for registering the public will. Rather, most pan-Blue voters declined to vote in the referenda because their leaders judged that President Chen had exceeded his authority in calling them.

As far as I can tell from a distance, this was a clean election. Voters had a clear choice between policy alternatives. Taiwan has an excellent system for casting and counting ballots. No electoral system is perfect, of course. But if there is a recount, I am confident that it would accurately reflect the people's choice.

I do believe that the election and its aftermath have created stresses on Taiwan's institutions. The courts and the election commission are facing unprecedented demands concerning a recount. The police have had to cope with both demonstrations and the need to investigate the shooting of President Chen and Vice President Lu on the day before the election. It remains to be seen how the legislatures, which the pan-Blue barely controls, can perform effectively in a climate of parity and some polarization. And the pan-Blue coalition is facing its own challenge. It was less effective, in my view, in representing its constituency than President Chen was in mobilizing his. It must re-engineer itself if it is going to do a better job of reflecting the interests of the half of the population that supports it.

These stresses on institutions are certainly common in consolidating democracies. I am confident that Taiwan's institutions can cope and improve. But there is work to be done. The Taiwan people have too much at stake. They deserve strong and effective political order.

That Taiwan's democratic institutions are not fully consolidated is one of the reasons that President Chen has advocated constitutional reform and the use of referenda to register the public will. I believe that he will continue to pursue this agenda with determination. But he does face a major obstacle. He wishes to have the draft of a new constitution ratified through a referendum, but the current referendum law does not give him that authority. So he needs to amend that legislation. Hence, the legislative elections at the end of the year are pivotal. If the pan-Blue loses its majority, then it will be easier for President Chen to change the referendum law to allow him to call a referendum to approve a new constitution. If, on the other hand, the pan-Blue is able to retain control and maintains firm opposition, it will be able to block him from carrying out his initiatives.

President Chen's proposal for constitutional revision raises a couple of questions. First of all, will the Taiwan public regard the process that he has laid out to be legitimate, since the current constitution lays out a different one? Second, will China see a new constitution approved by a referendum as a provocative challenge so serious that it demands a strong, even forceful response? Specifically, will China interpret constitutional revision as closing the door forever and completely on unification, which is its fundamental objective? There is, I am afraid, the possibility that China will misinterpret President Chen's intentions and miscalculate in fashioning its response.

The Cross-Straits Paradox

The electoral conflict between the pan-Green and pan-Blue reflects the larger paradox of cross-strait relations. Economically and socially, Taiwan is being pulled into China's orbit. The island's companies have little choice but to take advantage of the incentives that the mainland has to offer if they are to survive. Globalization dictates that if Taiwan companies—even high-tech companies—are to remain competitive, they must locate some of their activities in the PRC. As former Premier Vincent Siew has asserted, cross-strait relations are critical to Taiwan's medium- and long-term development. "Taiwan," Siew said, "cannot afford to ignore the immense mainland market."

At the same time, Beijing and Taipei have been at loggerheads over the terms and conditions under which a political reconciliation might take place. The PRC has insisted on its formula of one-country, two systems. First Lee Teng-hui and now Chen Shui-bian have rejected that formula and insisted that Beijing treat their government as an equal, sovereign entity with rights of participation in the international system, and that it renounce the use of force.

To make matters much worse, Beijing has reacted to Lee's and Chen's resistance by building up its military forces to have the ability to counter any move by Taiwan that it would interpret as an irreversible separation, such as (but not confined to) a declaration of independence. According to the estimate of a private, expert panel, "the PLA currently has the ability to undertake intensive, short-duration air, missile, and naval attacks on Taiwan, as well as more prolonged air and naval attacks." Increasingly, it can inflict costs on U.S. forces that might intervene to defend Taiwan. And within a few years, its

capabilities will have improved significantly. In one assessment, China can attain in the 2007-2010 time frame three significant power-projection capabilities that are relevant to a Taiwan scenario:

- 1 Attack a wide range of civilian and military targets with as many as 1,000 ballistic missiles and with several hundred medium-range bombers armed with conventional ordinance and cruise missiles;
- 2 Transport one to two divisions by sea and air transport as far as Taiwan;
- 3 Conduct limited air and sea denial operations up to 250 miles from China's continental coastline (that is, keep U.S. forces away from Taiwan).

Which trend will win out? Will growing economic interdependence foster a political accommodation? Or will the PRC's military buildup and a stronger Taiwan identity produce a conflict that may draw in the United States? I do not know the answer to those questions, but I know they are the questions that must be addressed.

It is worth noting that not everyone in Taiwan regards the growing interaction with the mainland to be an unalloyed blessing. The island's growing economic dependence in particular fosters fears about growing PRC leverage in three possible forms. The first is the "hostage effect," the possibility that Beijing might impose economic sanctions on Taiwan to achieve political purposes, or that a significant downturn in an unstable China would automatically hurt Taiwan. The second is the "hollowing out" effect, whereby the economy on the island becomes progressively weaker because manufacturing migrates to the mainland, and simultaneously, China becomes more technologically proficient and economically competitive because of Taiwan help. The third is the "fifth column" effect, in which Taiwan businessmen with a presence in China might promote their interests in ways that are biased in favor of Beijing, or Chinese agents and saboteurs might take advantage of economic and social interaction in order to infiltrate Taiwan. Even if PRC leverage is in fact less than some Taiwan people fear it (as is probably the case), the fact of the fear has become a political reality on the island.

By and large, people on Taiwan understand the importance of China economically to Taiwan's prosperity. Economic interdependence certainly creates an aversion among the Taiwan electorate to a needless provocation that would change the fundamental status quo of cross-Strait relations. The problem, of course, is that there is an intense debate over what aspect of the status quo is fundamental and therefore what should not be changed. Provocation is often in the eye of the party that feels provoked. For example, many in Taiwan believe that it is China undermining what is fundamental about Taiwan through a strategy of economic and political attrition.

I was asked to comment on the political role of the Taiwan business community. This is an interesting issue, both in general and in the recent election in particular. Taiwan businessmen who operate in mainland China are at the center of this paradoxical situation of economic interdependence, political stalemate, and militarization. But I am struck by how limited their role was in the March election. Taiwan companies no doubt

were a source of campaign contributions for both camps. Taiwan businessmen living and working on the mainland returned in larger numbers to vote, and on balance cast more votes for the pan-Blue than for the pan-Green. A few prominent businessmen made clear their political preferences. Yet the business community as a whole did not seek to steer the electorate in one direction or the other.

Taiwan companies of course depend on peace. The international economic system depends on peace in the Taiwan Strait because Taiwan firms are the middle links in global supply chains. The turmoil created in the IT sector after the September 1999 earthquake on Taiwan provides some indication of how global markets would be shaken by a war. Could Taiwan businessmen who operate in China play a significant, restraining role in a time of growing tension and potential conflict? It is difficult to know. My guess, however, is that they have more influence with their own government than they do with Beijing. Whether they would do so is another question, but I cannot rule it out.

U.S. Policy and the Taiwan Relations Act

In this situation of economic interdependence, political stalemate, and militarization, a context far different than that twenty-five years ago, how does the United States protect its equities? Is the TRA still relevant?

The United States has a variety of interests concerning Taiwan. Our economic ties with the island are rich and mutually beneficial. The United States supported Taiwan's democratization and has insisted that any arrangement between Beijing and Taipei be acceptable to the Taiwan people. And as I have suggested, a further consolidation of Taiwan's democracy would better ensure that political institutions clearly reflect the people's will.

The United States, I believe, has an interest in Taiwan's participating more fully in international organizations, including those that are confined to states. That in no way violates our one-China policy. We support the PRC as the sole representative of the state called China in those organizations where China is already or might be a member. What Taiwan seeks is participation, which is broader than membership. Taiwan would certainly have a lot to contribute to the work of these institutions. With goodwill and creativity all round, it would be easy to craft a role for Taiwan that was less than membership, such as observership in the World Health Assembly. The practical problem, however, is that goodwill is lacking on China's part. For a variety of reasons, Beijing wants to keep Taiwan out of international organizations as much as possible. It can – and does – exert a lot of influence over the other members of those organizations where the PRC is already present. As long as other countries dance to China's tune, there is little more that the United States can do about PRC dominance. In the process, of course, China alienates the very constituency to which it is supposedly trying to appeal, the Taiwan public.

The United States' abiding interest is that the Taiwan Strait issue be resolved peacefully and without intimidation. It was this interest that the TRA clarified and

reinforced. At stake are both the security of the people of Taiwan and their democracy but also American credibility.

The United States also has an interest in a good, mutually beneficial relationship with China. The most important dimension of that relationship is the emerging cooperation between the two countries on key foreign policy issues, such as counter-terrorism, South Asia, and Korea.

These various interests are not always mutually consistent. Balancing them requires sound principles and skillful execution. In the current situation, I believe that the proper role for the United States is to work with both Taiwan and China in order to ensure that conflict does not occur through misperception and miscalculation, which is the most likely way it will occur.

Although circumstances have changed in the last quarter decade, I do not believe that revision of the TRA is necessary. The Act has proved to be a remarkably flexible and effective policy instrument. It mandates a policy direction that remains as sound today as it was in 1979. Grounding U.S. policy on the principles of peace, stability, and the free choice of the people of Taiwan will never go out of fashion.

Some will argue that a new context requires that the TRA's policy language be more specific and more binding, in order to ensure Taiwan's security against a China that might use force to achieve its political objectives. I would argue that what has made the TRA successful up until now – and what will make it successful in the future – is the sustained political commitment behind the text, by the Congress and the American public. More than anything else, it is that political commitment that will guarantee that the policy direction of the TRA remains relevant as new conditions emerge.

One way for the Congress to manifest that commitment is to conduct regular, public oversight of Taiwan policy. Based on my own experience at AIT, when the executive branch knows that the legislature is paying attention – through today's hearing, for example – it becomes a powerful check against bad ideas.

More important in my mind, the Congress must conduct a continuing dialogue with senior officials of the executive branch on how to operationalize U.S. interests at any point in time, and on the steps that are necessary to promote those interests. Inter-branch consensus is the best guarantee of sound policy.

The biggest danger I see in an effort to revise the TRA would be that the executive branch would regard a congressional effort to make the policy prescriptions of the TRA more specific and more binding as a challenge to its constitutional power to conduct foreign policy. It would oppose the effort not because the policy ideas were necessarily bad but because it saw its power being stripped. An open conflict over Taiwan policy in the United States would foster profound concern on Taiwan, because it would be read as a weakening of the American political commitment. It would also be welcomed by China.

If good coordination between Congress and the executive branch is the best way to solidify the American commitment to Taiwan's security, good communication between Washington and Taipei will help us better fulfill that commitment. This partnership of democracies and the welfare of the island's twenty-three million people are too important to be hurt by missed signals or divergent assumptions. The institutional mechanism that the TRA established – the American Institute in Taiwan– has generally worked well, in tandem with its Taiwan counterpart, to foster good communication. Yet the experience of the last eighteen months, which culminated in President Bush's statement on December 9, 2003, indicates the need for improvement. And I think it is proper for Members of Congress to be part of the communications between Washington and Taipei.

I was asked to comment on the U.S.-Taiwan security relationship. Taiwan understands in a general way that China's military power is growing and that Taiwan needs to catch up (although some discount the threat because of the mutual interests that come with extensive cross-Strait economic interaction). There is less comprehension of the specifics of the island's defense posture. The fact is that if Taiwan were attacked, and even if the United States made a decision to intervene, the island's armed forces would have to hold on for a few weeks before an American rescue occurred. Thus, Taiwan needs sophisticated military equipment both to deter a PRC attack and to provide strategic endurance should deterrence fails.

The United States has agreed to provide much of what Taiwan needs, but Taiwan's political system has been slow to mobilize and allocate the resources for those weapons systems. I see some sign that a corner has been turned, that priorities are being set, and a funding mechanism will be created. Yet a divided polity may still obstruct decisions that are in the best interests of Taiwan.

Institutional reform (in the areas of command and control, doctrine, personnel, training, logistics, and so on) must accompany procurement advances. Software must improve with hardware. Here too, the progress has been slow, primarily because the challenges are daunting. Yet continuing effort will be required to ensure that, within the limits of Taiwan's resources and the parameters of its democratic system, the armed forces will be strong.

To sum up, in passing the Taiwan Relations Act twenty-five years ago, Congress helped fortify a Taiwan that was reeling from the shock of de-recognition and the end of the mutual defense treaty. In the subsequent quarter decade, the TRA has grown in importance as the framework for U.S. policy, and as a symbol of American resolve. The TRA has been effective because it has always been reinforced by a strong and continuing political commitment by the Congress and the American public. It is the law and this political commitment combined that have helped keep Taiwan secure and free. By sustaining that commitment, by ensuring good communication with our democratic partner, Taiwan, and by minimizing the risks of misperception and miscalculation across the Taiwan Strait, the United States can ensure peace and stability in the future.