

A Perspective on Taiwan

Introduction

Even though the normalization of relations with the People's Republic of China (PRC) has been completed there are still many problems to be resolved. This paper will briefly reexamine the process by which normalization occurred, and then focus on some of the difficult issues which may arise in the future. Since the other articles deal with the PRC, this one will focus on matters relating to Taiwan. The approach adopted will not be that of an expert on Taiwan affairs, but rather of a lawyer trying to share some concerns about certain potentially disquieting developments on Taiwan.

I. United States Policy Since 1972

As Mr. Jenkins' article ably documents, the policy question during the past several years has not been *whether* the United States should normalize relations with China. That issue was settled when Mr. Kissinger and President Nixon went to China in 1971 and 1972, respectively. Since that time American policy has been quite consistent: normalization was begun by a conservative Republican president, affirmed by a moderate Republican president, and completed by a Democratic president. Thus, when President Carter made his announcement December 15, 1978, one might have been surprised by the timing, but certainly not by the fact that normalization had finally come.

The point that this should have come as no surprise is stressed because opponents of normalization in the United States as well as spokesmen for the government on Taiwan would have to have been politically naive to believe that the December 15, 1978, actions marked a shift in American policy resulting in the betrayal of Taiwan. If there was a betrayal of Taiwan, which many would dispute, it occurred in 1971. If these people were surprised by normalization, then the surprise was a result of their own blind refusal to face realities; Taiwan had eight years' notice that normalization would occur.

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Thus, the question facing the United States after 1972 was not whether to normalize, but rather *when* and *on what terms*. There was not even much disagreement over the general outline of the terms. The United States had to move ahead on normalization of relations with China while, at the same time, preserving Taiwan's security; that is, to normalize without "abandoning" Taiwan.¹

This result has been essentially achieved. One might have some quarrel with the Administration about the adequacy of its consultation with Congress,² the manner in which the negotiations were carried out, or by the precise timing of the announcement. Congress also may have pushed the President further on the security issue than he would have liked to go. In any event, the end result was that normalization was carried out without jeopardizing Taiwan's security or economic well-being.

The Taiwan Relations Act enables all commercial and cultural ties to continue as before.³ The substance of United States-Taiwan security relations will also remain the same even after the termination of the Mutual Defense Treaty⁴ at the end of 1979. That is, the United States will continue the sale of defensive arms to Taiwan, and will also strongly object to the use of force in the Taiwan area. These are essentially the same actions which could have been expected under the Mutual Defense Treaty.

II. The United States and Taiwan

For the past thirty years the United States has viewed Taiwan as a passive party, doing essentially what we told it to do. Sometimes we had to tighten the reins and at other times we had to offer incentives, but control and initiative were in our hands. This perception of Taiwan, however once correct, is no longer so.

There appears to be a dynamic internal political movement developing in Taiwan which may lead to changes on that island. Informed and reasonable people differ, often sharply, on how change will occur and what the ultimate outcome will or should be,⁵ but there is little disagreement over the fact that, in the next several years, the process of change in Taiwan will be active and

¹See generally Li & Lewis, *Resolving the China Dilemma: Advancing Normalization, Preserving Security*, 2 INT'L SECURITY 11 (1977).

²See, e.g., *Goldwater v. Carter*, 100 S.Ct. 533 (1979).

³For a detailed discussion of the legal aspects of United States relations with Taiwan after derecognition, see Li, *De-recognizing Taiwan: The Legal Problems* (1977); Li, *The Law of Nonrecognition: The Case of Taiwan*, 1 NW. J. INT'L L. & BUS. 134 (1979); V. H. Li, *The Future of Taiwan: A Dialogue* (to be published by M. E. Sharpe, Inc.).

⁴Mutual Defense Treaty, Dec. 2, 1954, United States–Republic of China, 6 U.S.T. 433, T.I.A.S. No. 3178.

⁵See *The Future of Taiwan*, *supra* note 3, chs. II–VI.

possibly even contentious. Moreover, this process is something over which neither the United States nor the PRC has much control. And, if changes do occur, neither the United States nor the PRC is prepared to respond.

Indeed, a strong argument can be made that the major source of potential friction between the United States and the PRC in the 1980s will be the Taiwan question. For example, some persons in Taiwan want the island to become *de jure* or *de facto* independent. Without commenting on the desirability or likelihood of this development, let me pose the hypothetical question: *if* Taiwan moves toward independence, what will be the American response? The answer to this question is not at all clear. The concept of self-determination has popular appeal, but any support for some form of independence will conflict with the PRC's fundamental "one-China" principle. The United States then may have to make an enormously difficult moral and political choice between support for self-determination and a possible rupture of relations with the PRC.

III. New Political Forces on Taiwan

An important factor in Taiwan's internal politics is that the leadership of the central government is getting very old. For example, the members of the Legislature (which is the equivalent of our Congress) and the National Assembly (which meets periodically to elect the president and vice-president) average well over seventy years of age. Obviously, they will soon be replaced by a new generation of leaders.

These two national bodies possess a second special characteristic besides elderly members. More than 90 percent of the members of the Legislature and 95 percent of the National Assembly were elected in 1947. These persons have not stood for reelection since that time; after all, a representative from Shanghai could hardly go back to his district and constituents after 1949.

Incidentally, this circumstance explains in part why it is so difficult for the Taiwan government to cease claiming to be the government of all China. Such an adjustment, while fully in accord with realities, would remove the basis of legitimacy for many officeholders in the central government.

The result is that the people on Taiwan, including both the Taiwanese (the term used to describe persons whose ancestors came from China to Taiwan over the past several hundred years) and the mainlanders (persons coming from China to Taiwan after 1945), vote for only a tiny fraction of these national bodies. In addition, some Taiwanese are dissatisfied because they constitute 85 percent of the population, yet hold only a small number of important government and party positions.

The passing of the old generation of leaders, the island's great economic and educational achievements, and growing international scrutiny have created a political atmosphere conducive to and demanding of change. It also may be that so much has changed for Taiwan in the international arena since 1971—expulsion from the United Nations, President Nixon's 1972 visit to the PRC, normalization of Sino-Japanese relations, the death of Chiang Kai-

shek, and normalization of Sino-United States relations—that domestic change is imperative to meet the challenge of international survival, however unwilling the present leadership is to admit to that need. In any event, there has been a growing call for a redistribution of political power to more accurately reflect the realities of the island.

The electoral process illustrates how the internal political dynamic is developing. Taiwan has a basically single party system, consisting of the Nationalist Party (KMT) and two other very small parties. In the past, running for public office was not an effective means by which persons outside the KMT might attain political power. Several opposition candidates did win occasionally, but the election process was basically dominated by the KMT.

An important change occurred, however, in the 1977 local elections for provincial, county, and municipal offices. A number of young Taiwanese politicians, frustrated by the slow pace of their advancement through the party or bureaucracy, decided to run for public office in opposition to the KMT. These candidates (often referred to as non-KMT party or opposition politicians) gained 38 percent of the popular vote, an astounding feat in an essentially single party state. There were also riots in Chungli and Kaohsiung over alleged election fraud perpetrated by the Nationalists.

Another election was scheduled to be held on December 23, 1978, for 38 seats (out of approximately 400) in the Legislature and 56 seats (out of approximately 1,200) in the National Assembly. The campaign was lively and aggressive on all sides, but was suspended after the normalization announcement. The effect of the suspension on internal political developments in Taiwan is still unclear.

What are some of the possibilities? Here, one can only speculate and provoke thought rather than predict the future. At one extreme, there may be a crackdown on the opposition by conservative elements within the KMT. Some such actions may already be taking place. For example, Yu Teng-fa, a seventy-six-year-old opposition leader from Kaohsiung, was sentenced by a military court in April 1979 to eight years imprisonment for copying a “subversive” article from *Asahi Shimbun* and failing to report the activities of an alleged PRC agent. Yu’s supporters claim that the trial was an effort to harass and intimidate opposition politicians. Of course, whether this assertion is in fact true or false cannot be readily determined by observers in the United States. Nevertheless, the point is that opponents of the government may use the Yu case as a rallying point of protest, and this in turn may lead to more restrictions being imposed by the government. If the crackdown expands in scope or virulence, the image of “Free China” will erode further, and with this erosion may come a loss of support from the American public and Congress.

Toward the other end of the spectrum of possibilities is a takeover of power, gradual or sudden, by Taiwanese political leaders. These persons clearly desire more control over their own destiny; some may even favor an independent state of Taiwan. At the same time, they are sophisticated politi-

cians who know that independence is opposed by the KMT, in part because its own legitimacy would be undercut, and by the PRC, because such action would violate the "One-China" principle. With the exception of the Taiwan Independence Movement, Taiwanese politicians have generally avoided the term independence, preferring merely that Taiwan be able to act in an independent manner without making a change in the juridical status of the island.

Neither of these two possibilities—a crackdown on the opposition or a move toward independence—must occur. There are other less drastic and more likely scenarios. Rather, the point is that developments are taking place on Taiwan which may substantially change its political situation. These changes would in turn greatly affect political relations between the United States and the PRC. At the least, one has to begin thinking about how to cope with possible future developments on Taiwan. Nonetheless, people both within and outside the government are not doing so. Once again, we may be caught unprepared and may be confronted with a situation we would just as soon have avoided.

IV. Moral Obligations

Finally, a comment on American moral obligations to Taiwan is in order. Over thirty years ago, in a world that was very different, the United States provided massive military and other assistance to Taiwan when such assistance was sorely needed. In subsequent years, the United States contributed greatly to the remarkable economic growth of that island.

At some point, however, the original American commitments to Taiwan for military protection and economic assistance will have been fulfilled. Taiwan is not the fifty-first state which must be defended and assisted under any circumstances and for all time. Nonetheless, in the course of helping to build a new society on Taiwan, the United States has incurred new obligations to give that society an opportunity to survive and grow.

Taiwan is going through a transition from being the Republic of China representing all of China to some new and still undefined status. What that new status should be must be decided by the people on Taiwan. They must consider the offers being tendered by the PRC. If they feel the offers to be unsatisfactory, they must seek better terms or search for new solutions. It is time for Taiwan to take its own problems in hand. If it wishes to continue the fiction of being all of China, then it has had ample notice that it must stand alone and face the consequences. If it wishes to reunify with the PRC or adopt some other status, then it must begin the process of change.

