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The Taiwan Status Quo “As We Define It”

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The Bush Administration has often said it opposes attempts by either side—China or Taiwan—to alter the status quo in the Taiwan Strait area. This admonition, given by White House or State Department spokespersons, is almost always directed at statements from, or actions taken by, the government in Taipei. Apparently, China’s yearly addition of 100 offensive missiles aimed at Taiwan, for a total now approaching 900, does not count as an alteration of the status quo. Although these administration spokespersons often add the words “as we define it” after “status quo,” they do not, in fact, define it.

So perhaps we should take up the task.

At the most obvious level, the status quo is an entity called China on one side of the Taiwan Strait and an entity called Taiwan on the other. The claims each makes certainly are part of the status quo and so deserve some consideration.

The Chinese government asserts something it calls “the sacred One China Principle” which, when it speaks to the people of Taiwan, goes like this: One China is the China that will be created by the necessary and inevitable unification of Taiwan with the mainland. But when China addresses an international audience, it goes like this: There is only one China in the world, and Taiwan is a province of that China whose only lawful representative is “the people’s government in Beijing.” This is the formula used to block Taiwan’s participation in the World Health Organization and other international bodies.

Back in the days of one-party authoritarian rule on Taiwan, Taipei claimed to be the seat of the legitimate government of all China, including not only Taiwan but Mongolia and Tibet as well. And the United States recognized it as such, more or less, up to January 1, 1979, when diplomatic recognition switched to Beijing. “More or less,” because after President Nixon’s visit to China in 1972 and the issuance of the Shanghai Communique, diplomatic niceties aside, America dealt with the government in Beijing as the government of China and the government in Taipei as the government of Taiwan. Despite the subsequent change in diplomatic relations, it still does. And we recognized Mongolia many years ago.

In 1991, a dozen years after the U.S. switched diplomatic recognition to Beijing, the Taipei government stopped claiming to be the legitimate government of China and asked to be recognized only as the government of the territory it obviously controls, Taiwan and associated islands. But the government still calls itself, formally, “The Republic of China” (ROC for short), its name under a constitution written for all of China, adopted in Nanjing in 1947, and brought to Taiwan by Chiang Kai-shek in 1949. That constitution has been amended

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many times, for example to eliminate the seats of those who claimed to represent mainland districts not under ROC control since 1949, but it remains in force.

The U.S. regarded neither the amendments nor dropping the claim to be the legitimate government of all of China to be changes in the status quo—or at least not changes that merited some statement of displeasure. After all, it would be a bit difficult to insist that the ROC should maintain its claim to legally govern all of China when the U.S. recognizes another in that role. But were the Taipei government to call the mainland-issued 1947 constitution null and void, drop the name Republic of China, and call itself something simple and descriptive like “Taiwan,” the U.S. would likely denounce these actions as a most grievous unilateral change in the status quo. China would regard it as intensely provocative.

Taiwan’s two most recent presidents have frequently asserted that Taiwan is a state separate from China, sovereign and independent. But so long as this claim is not placed within a legal framework, Washington and Beijing have decided that, however galling, they can live with it.

So that’s not a change in the status quo either. Indeed, statements about Taiwan being an independent, sovereign entity have been made so often over the last 10 years that one may even say they too form part of the status quo, along with Washington’s admonition that “you’d better not pass any legislation that says so” and Beijing’s threat that “if you do we will have to attack you.” In 2005, China enshrined that threat in a piece of legislation known as “The Anti-Secession Law.” But since everyone knows China does not decide its policies on the basis of law, this too was not considered a change in the status quo.

So what is the status quo? For that matter, what is Taiwan’s status? The U.S. says it follows a “One China Policy.” Does that mean it regards Taiwan as a Chinese province?

Actually, no. In fact, the U.S. makes no formal statement at all about Taiwan’s status. In the communiqué establishing diplomatic relations with the People’s Republic of China, the U.S. “acknowl-

edged” the *Chinese* position that there is but one China of which Taiwan is a part. That word, “acknowledged,” is diplomatic jargon meaning “we understand that is your claim.” Washington has never said it regards Taiwan as a PRC province. Nor, when various Taiwan spokesmen assert that the island republic is a separate, independent sovereignty, has the U.S. contradicted that claim. It is true that both the Clinton and George W. Bush administrations have said they would not support Taiwan’s membership in international organizations that admit only states. But in this, they appear not to have read American law carefully enough.

Is there American law on the subject? Yes, there is the Taiwan Relations Act (TRA), and quoting it may help clarify matters.

To begin with the matter of membership in international organizations, TRA, in Section 4(d), states that the withdrawal of diplomatic recognition from Taiwan provides no basis for opposing its membership in the international financial institutions (e.g., the World Bank and IMF) *or any other international organization*. As far as American law is concerned, Taiwan’s competence for such membership is unquestioned.

So is Taiwan a state? In American law it certainly is. The TRA states,

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.

Moreover, the TRA authorizes the President to sell arms and enriched uranium fuel to Taiwan, sales which, under American law, can be made only to friendly states and governments. Taiwan is not a part of China for purposes of American immigration law. And the U.S. negotiates executive agreements, essentially treaties, with its government.

So World Health Organization membership for Taiwan is completely in keeping with the “status quo as we define it,” as are agreements currently under discussion between the U.S. and Taiwan on investment, taxation, and government procurement. By the same token, a U.S.–Taiwan Free Trade Agreement, when the U.S. finally makes the politi-

cal decision to move it forward, will be fully consistent with the American one China policy.

Participation in the International Civil Aviation Organization, International Maritime Organization, and other international institutions for which statehood may or may not be a requirement are also all perfectly in keeping with the U.S. policy.

So just what is the status quo?

In fact, the status quo is that, for all purposes other than the exchange of formal embassies and ambassadors, American law treats Taiwan as a state separate from the People's Republic of China.

And beyond the implications this holds for questions of bilateral agreements and international organizations, the TRA says that, should the PRC attempt to alter Taiwan's status "by other than

peaceful means, including by boycotts or embargoes," the U.S. would treat this as "a threat to the peace and security of the Western Pacific area and of grave concern to the United States."

Clearly, there is nothing to be gained and much to be lost by needlessly provoking China by some form of words or pushing it into a situation in which it feels obliged to strike out militarily. But it would be useful for the U.S. government, as it seeks to maintain the status quo "as we define it," to review just how it is defined already in the Taiwan Relations Act.

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