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Discussion Paper
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Reassessing the Taiwan Relations Act as an International Regime

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In recent months a growing number of articles from US-based academics and political commentators have proposed that the US should reduce its commitment to the defence of Taiwan. The logic running through these publications is that Washington's current Taiwan policy is an obstacle to good relations with a rising and increasingly assertive China. ¹Given that the basic elements of Washington's current Taiwan policy were put in place in the very different world of the 1970s, a reassessment may well be overdue.

Arguments in favour of maintaining the current US policy can be made on the normative grounds that the United States has a moral commitment to support a liberal-democratic state like Taiwan as part of its mission to "make the world safe for democracy". The point of the recent questioning of US policy, however, is that such arguments appear increasingly weak in the eyes of policy makers who see good relations with rising China as the best way to pursue the national interests of the United States.

The same can be said of the geostrategic argument that it is necessary to maintain the US commitment to Taiwan's security to ensure that the island does not come under Chinese control in a way that could threaten freedom of navigation in the Western Pacific for the United States and its allies in Japan and South Korea. While this made good sense in the Cold War, it is in principle possible to argue that a better way to ensure peace and stability is for the US to remove the obstacle of Taiwan from an improvement in its bilateral relations with the PRC. Or, as the geopolitical expert Zhang Wenmu explains, Taiwan does not sit on any vital sea lanes for the US to the Indian Ocean and Middle East, so there is no longer any reason for it to take an interest in Taiwan's security. Better ways of ensuring stability in the region might be avoiding a security dilemma through the forging of a Sino-US condominium, or pursuing stability through an agreement on dividing the Pacific into spheres of influence.²

The above arguments for a change in US policy are likely to grow stronger as China continues its rise to great power status. While moral appeals for solidarity among democracies may be important, a stronger argument for maintaining the status needs to be made on the Realist premises that states are selfish actors pursuing their interests in an anarchical international system. This will have to show that the US commitment is not just a benefit to Taiwan, but is also the optimal choice for both the US itself and even the PRC.

¹ Charles Glaser, "Will China's rise lead to war? Why realism does not mean pessimism", *Foreign Affairs*, March/April 2011; Joseph W. Prueher et al, "A way ahead with China", Miller Center of Public Affairs, University of Virginia; Robert Sutter, "Taiwan's Future: Narrowing Straits", Ted Galen Carpenter, "The ticking Taiwan time bomb" (Cato Institute); Chas W. Freeman, "Beijing, Washington, and the Shifting Balance of Prestige", China Maritime Studies Institute; John Copper, "Could US policy abandon Taiwan?" *Taipei Times*, 11 May 2011.

² Zhang Wenmu, *Lun Zhongguo hai quan*, 张文木 论中国海权 Beijing: Haiyang chubanshe, 2008, p. 115.

It will be proposed below that such an argument can be made by treating the current US commitment as an element of an international regime that has taken on its special characteristics because it has been developed to deal with what the theorist Arthur Stein calls a “dilemma of common aversion”.³ The TIR is remarkable for having endured through the major transformation of the international system that came with the end of the Cold War. It has also remained intact despite radical change in the domestic politics of two of the states concerned, namely the “Reform and Opening” that started in the late 1970s in the PRC and the democratisation that began in Taiwan in 1986, and also through several changes of administration in Washington

The Taiwan International Regime (TIR)

John Ruggie gives a simple definition of an international regime as: “A set of mutual expectations, rules and regulations, plans, organisational energies and financial commitments which have been accepted by a group of states” (Ruggie: 170). Stein explains this further by pointing out that an international regime comes into existence whenever actors eschew independent decision making. Building on this, he explains how regimes come into existence in an anarchical international system, where the absence of any government above states means that actors have to create the rules through their interactions with each other. They are motivated to do move towards joint decision making by the realisation that independent self-interested behaviour may result in undesirable or suboptimal outcomes.⁴

The various treaties, laws and conventions that have developed to allow the coordination of policy by the US, the PRC and the ROC on Taiwan constitute such a regime.

In this sense, a starting point for defining the what can be called the Taiwan International Regime (TIR) must therefore be the relevant treaties and laws that have been entered into by the interested parties. At a minimum, these include:

- The 1972 “Shanghai Communiqué”
- The 1979 “Normalization Communiqué”
- The “1982 Communiqué”
- The Taiwan Relations Act passed by the US Congress in 1979
- The Anti-Secession Law passed by the National People’s Congress of the PRC in 2005

³ Arthur A. Stein, “Coordination and Collaboration: Regimes in an Anarchic World”, *International Organization*, 36/2 (Spring 1982), pp. 299-324.

⁴ Arthur A. Stein, “Coordination and Collaboration: Regimes in an Anarchic World”, *International Organization*, 36/2 (Spring 1982), p. 304.

Expectations and commitments

These various treaties and laws establish the following expectations and commitments:

1: The “Shanghai Communiqué” establishes the fundamental principle that the US “acknowledges that all Chinese on either part of the Taiwan Strait maintain there is but one China and that Taiwan is part of China. The US government does not challenge that position. It reaffirms its interest in a peaceful settlement of the Taiwan question by the Chinese themselves”.

It is important to note here that the term “acknowledges” was deliberately used instead of the term “recognizes” to achieve a degree of ambiguity short of US acceptance of Beijing’s claim to Taiwan.

2: The Three Communiqués establish that the US “reaffirms its interest in a peaceful settlement of the Taiwan question”, and this expectation is repeated in the 1979 and 1982 joint communiqués. The TRA (section 2b) further establishes that US policy is “to make clear that the US decision to establish diplomatic relations with the PRC rests upon the expectation that the future of Taiwan will be determined by peaceful means”.

3: The Three Communiqués establish that the Taiwan question should be resolved by Taipei and Beijing, and that the US has no interest in acting as a mediator in negotiating or resolving any cross-strait issues.

4: The TRA provides Washington with the option to defend Taiwan and allows for US sales of defensive weapons to Taiwan. It is important to note that this is not the same as a binding commitment on the President to defend Taiwan under any circumstances. It should be understood instead as a form of “strategic deterrence” that gives the US a legal basis for helping in the defense of Taiwan if that is deemed necessary or prudent.

Taken together, the Three Communiqués and the TRA can be said to embody the policy of “strategic ambiguity” for ensuring Taiwan’s security. This has remained in place since the early 1970s and can be seen in operation on several occasions. In the 1995-6 Taiwan Strait missile crisis, it was used to deter PRC military action. During the Chen Shui-bian administration it was used in a different way, when statements were made that clarified US support could not be counted on if Taipei undertook provocative acts that threatened to unilaterally change the status quo.

The Anti-Secession Law

It is interesting to explore whether the passing of the PRC’s Anti-Secession Law in 2005 might also be seen as an attempt to shape the TIR. Given that this legislation was enacted when Beijing was concerned that the Chen administration was going to undertake radical actions to move towards achieving greater diplomatic

recognition, the provision of the right to use force to prevent “Taiwan independence forces” accomplishing the separation of Taiwan from China can be seen as an attempt to reinforce the TIR. This is because the threat to use force is not new in itself, but is merely being given the status of binding domestic law, adding to its deterrent effect. It is therefore an attempt to emphasise and clarify one of the expectations that shape the TIR.

The TIR as the product of a dilemma of common aversion

If international regimes come into existence because states face certain common dilemmas, they can be categorised into two types. The most simple is a regime build on a “dilemma of common interests”, in which the actors eschew a degree of independent decision making because they share a common interest. The pooling of sovereignty by the member states of the European Union in pursuit of a single market and social model. The other type is a regime established on a “dilemma of common aversion”, which is what happens when the actors do not prefer the same outcome but agree that there is at least one outcome that all want to avoid (Stein 309).

The TIR is clearly not established on a dilemma of common interests because the parties have no shared preference for any one outcome. The parties do, however, share a common preference to avoid one particular outcome, namely war, which is a threat imposed by the two preponderant powers of the US and the PRC through the TRA and the Anti-Secession Law. It is therefore a regime created to address a dilemma of common aversion.

The preferences of the three actors can thus be expresses in the form of the following matrix, in which 1 is the least preferred outcome and 3 is the most preferred:

	Greater Recognition For Taiwan	Unification with China	Ambiguous
Taiwan	3	1	2
PRC	1	3	2
US	2	1	3
Score	6	5	7

It should be noted that the highest total score is for ambiguity, which explains why this is in fact the optimal equilibrium that has been maintained by the TIR to date.

It should also be noted that this equilibrium depends on the US maintaining its preference for ambiguity. This can be demonstrated by looking at the TIR as shaped by the dynamics of what rational choice theorists call the game of “chicken”, as in the following matrix:

PRC	USA		
		Peace	Force
	Peace	0,0	-1,1
	Force	1,-1	-2,-2

(This assumes that both the PRC and the USA prefer peace, but that both see the maintenance of a credible deterrent in the use of force as a more optimal strategy than giving up the right to use force).

To test out the arguments in favour of a change in US policy, it is necessary to explore how equilibrium is best maintained and what factors lead to international regime change.

Equilibrium and change

In a regime designed to pursue a common interest, equilibrium can be maintained through collaboration. In a regime designed to address a dilemma of common aversion this is not possible, so equilibrium has to be maintained through coordination. Again, this is a fair description of the TIR to date, where the US policy is to avoid playing the role of intermediary, and official communication between Taipei and Beijing is minimal. Even if we grant that communication between the two sides of the Taiwan Strait has improved, especially under the Ma administration in Taipei, the lack of any movement towards the discussion of political issues shows how on matters of security regime, equilibrium is still maintained through coordination rather than collaboration.

If this situation was to change, it would represent the formation of a different regime, based on common interest rather than common aversion. According to Stein, such change would depend in part on a transformation of structural factors in the international system, including the distribution of power and factors like the nature of knowledge and technology. These are important because they shape the preferences of the actors concerned.

If these international structural factors were the only ones that mattered, then the argument for a change to the TIR would be very strong, given China's growing relative power and access to knowledge and technology. However, Stein also points out that internal national characteristics also shape actor preferences. This is not to say that there is a direct causal effect of the interests of any particular national attribute on the preferences of the state for any particular strategy. Instead, in Stein's words, "Internal characteristics may determine a single actor's preferences but, in order to ascertain outcomes, it is also necessary to know the interests of other actors and to have a sense of the likely pattern of strategic interaction" (Stein 321).

An illustration of this could be the fact that China's large and increasing population determined its growing demand for access to overseas natural resources; but the size of the population does not on its own determine the strategy adopted, because Beijing can still choose between strategies of exchange or plunder to meet this demand. Similarly, in the case of the TIR, China's decision makers have to face the internal factor of a strong nationalism that demands unification with Taiwan. So far, however, Beijing has managed this by staying maintaining the strategy of "peaceful unification" under "one country, two systems", and more recently accepting the "92 Consensus" as a way to consolidate the status quo.

How such internal factors impact on regime equilibrium thus depends very much on what policy makers in Beijing, Taipei and Washington know about each other's interests and how they understand the likely pattern of strategic interaction that results from those interests. While the structure of the international system has undergone radical transformations since the end of the Cold War, understanding how this impacts on the TIR thus requires looking also at how the institutions created to assure international coordination or collaboration can shift decision criteria and lead nations to consider others' interests in addition to their own when they make decisions in the new context. It is in this way that actors can continue to coordinate behaviour at the international level, ultimately leading to some kind of institutionalisation under which actors restrain themselves out of recognition of the importance of joint maximization.

Democratization and the TIR

One of the most ingenious aspects of the TIR is that a number of ad hoc institutions have been created to coordinate activities between the three interested parties, such as the AIT, MAC, SEF, and ARATS. The creation of these institutions has been important for maintaining equilibrium because the TIR was established by the PRC and the US in the 1970s, when it was assumed that regime equilibrium could be maintained by coordinating with the KMT dictatorship in Taipei, with the hope in Beijing that this would lead to regime change in the form of unification.

The way in which the coordinating institutions are used to maintain equilibrium, however, has to take account of changing domestic factors, as explained above. From this perspective, the biggest challenge has come from Taiwan, which is the only of the three parties to have undergone a major structural change to its domestic political system in the shape of democratisation.⁵ This

⁵ Although the PRC has undergone economic "reform and opening" and the US has seen several changes of administration since the 1970s, these are not changes of political system.

means that the coordinating institutions in Taiwan now have to respond to the demands of elected institutions, especially the President.

Looking at this situation from the perspective of regime theory, it could be said that the institutions created in Taiwan to assure international coordination have to face the task of shifting the decision criteria used in Washington and Beijing by forcing them to understand how Taiwan's interests are perceived under democratisation. One of the main problems with the arguments of all those who advocate a change in US Taiwan policy is that they overlook this impact of Taiwan's democratization and concern themselves only with seeing change that is determined by shifts in the international structure of power, resulting in a distorted picture of how equilibrium in the TIR is maintained. Several historical examples can be used to illustrate this point.

Example 1: The '92 Consensus and the "State to state" claim

One example is President Lee Teng-hui's July 1999 announcement that the two sides of the Taiwan Strait exist in a "special state-to-state" relationship. This is an interesting case to look at in 2011, because it represents the previous failure of what is now called the "1992 Consensus" by the Ma Ying-jeou administration in Taipei as well as by Beijing. Just as in the early 1990s, the current cross-Strait relationship uses the formula reached at Hong Kong in 1992 to allow negotiations on the practical issues that arise from transactions across the Taiwan Strait to be held on a regular basis, with the real prospect that the coordination of actions between Taipei and Beijing could lead to some kind of collaboration. In the late 1990s, however, this formula had to be suspended when Lee Teng-hui made his "state-to-state" announcement.

In the insider's account given by Su Chi, who was then director of the MAC, Taipei moved away from the '92 Consensus due to growing concerns over a crisis in Taiwan's international situation. This became intense when the PRC began deploying its forces away from the north and opposite Taiwan after the decline of the threat from the Soviet Union, and when the transfer of Hong Kong and Macao to the PRC meant that Taiwan was the new focus of Beijing's unification strategy. The Third Generation leadership under Jiang Zemin had reached a consensus that policy should move from opposing Taiwan independence towards facilitating unification by coordinating the threat to use force with political negotiations which would take off when Wang Daohan visited Taiwan. Beijing had already managed to win over Russia, France, the UK and Japan to become 'strategic partners'.

The key to Lee Teng-hui's change of strategy, however, was the transformation of the Clinton administration after the two Clinton-Jiang summits tried to repair the damage done to Sino-US relations after the 1995-6 Taiwan Strait crisis. At the same time Taiwan's domestic politics had changed as Lee Teng-hui was

concentrating power in his own hands through constitutional reforms. In mainland policy this was also true, as he gathered his cross-party secret advisory group which came up with the two state theory. As Su points out, it was in August 1998, the month after Clinton announced his ‘Three Nos’ policy in Beijing that Lee Teng-hui formed the secret group to advise on strengthening the sovereign status of the ROC (Su 78).⁶

Several insights can be gained from the “state-to-state” crisis. First, that concern that the equilibrium of the TIR was threatened by a change in US policy and change in the international distribution of power resulted in a change of strategy by Taipei. This involved using the “state to state” announcement to send a message to Washington that Taiwan was not willing to see a transformation of the TIR that was not in Taiwan’s favour. Taipei would even go so far as to threaten the US interest in stability by withdrawing from the collaboration and coordination needed for maintaining the TIR if necessary.

The US response shows how the strategic ambiguity built into the TIR could also be used to restore equilibrium. Through intensive diplomatic activity, the government in Taipei was reminded that the TRA does not necessarily bind the US President to the defense of Taiwan if it is the one upsetting the status quo. Washington could also refer to its established policy to restrain an anxious and increasingly bellicose Beijing by reasserting its demand for a peaceful resolution of the dispute.

Finally, it is important to note that spokespersons for the government in Taipei and contenders for the 2000 presidential election, all signalled a retreat from the “state-to-state” announcement. In this respect, democratisation can be seen to be playing a complex role. On the one hand, Lee Teng-hui’s change of strategy was consistent with the practice of popular sovereignty (*zhuquan zai min*) by the population of Taiwan through the ballot box; on the other hand, the 2000 election had the effect of previous elections in Taiwan of constraining political actors away from taking extreme positions, and providing incentives instead for them to maintain the TIR.

Example 2: Chen Shui-bian and “one country on each side”

What is often overlooked by detractors from the DPP administration is that it attempted to rebuild the equilibrium of the TIR in its first years in power after the 2000 election. This is clear from the platform of Chen Shui-bian, who tried to allay fears among Taiwan’s electorate, in Washington and in Beijing that the DPP would threaten the “status quo” by campaigning on the promise not to use Lee Teng-hui’s “state-to-state” formula. Instead, he effectively promised to strengthen

⁶ Su Chi (Su Qi), *Weixian bianyuan* (蘇起 危險邊緣), (Su Qi, *The Verge of Crisis*) Taipei: Tianxia wen hua, 2003, p. 78.

the TIR by negotiating with the PRC, floated the possibility of a return to the “’92 Consensus” and even suggested some kind of federal arrangement with China. The new George W. Bush administration in Washington responded favourably, agreeing to continue supplying Taiwan with arms and inaugurating the annual review of its defence needs.

According to the account of the insider in the Chen administration, Liu Shi-chung, this equilibrium was again upset by a combination of domestic politics in Taiwan with negative messages from the PRC and the US. These negative messages included Beijing’s demand that Chen Shui-bian had to make a clear commitment to the “one China principle” and its strategy of undermining the Chen administration inside Taiwan by collaborating with the KMT, and isolating Taiwan internationally. Concern over this pressure in the Chen administration was intensified, when Washington became preoccupied with events in the Middle East after the 9/11 attacks.⁷ The turning point was reached, however, when the PRC began to increase international pressure on Taiwan by persuading Nauru to switch recognition in August 2002. This was seen as a direct threat to Chen Shui-bian because it came just a week after he was appointed chairman of the DPP.

What followed was a series of actions that again showed how Taipei was prepared to depart from the collaboration with Washington and coordination with Beijing that is necessary to maintain the TIR. This centred on Chen’s announcement that the relationship between the two sides of the Taiwan Strait is that of “one country on each side” (一邊一國). This was part of the beginning of a campaign to mobilise public opinion in Taiwan, which was continued through the introduction of the referendum law, the proposal to hold a referendum on WHO membership, and ultimately the “defensive referendum” that was held in tandem with the 2004 presidential election.

That Chen Shui-bian secured re-election in 2004 shows that a democratic Taiwan will tend to push back and threaten to depart from the TIR if it sees its interests are being unduly damaged. Even more significant for the current debate on US policy is that these events took place in the face of hard opposition from Washington.

However, as with the sequence of events that surrounded Lee Teng-hui’s “state to state” announcement, what followed Chen’s victory also shows how democracy tends to constrain Taiwan’s political elite from moving very far from the status quo provided by the TIR. This can be seen in the high degree of public support for the trip by then KMT Chairman Lien Chan to China in 2005 and the ability of the KMT to sign an agreement with the CCP, the principles of which were

⁷ Liu Shih-chung (Liu Shizhong), *Lishi de jiujié: Tai-Mei guanxi de zhanlüe hezuo yu fenqi (200-2008)* (歷史的糾結: 台美關係的戰略合作與分歧 (200-2008)) (*The Ties of History: Strategic Cooperation and Divergence in Taiwan-US Relations (2000-2008)*), Taiwan Brain Trust, 2010, pp. 19-39.

incorporated in the campaign platform for Ma Ying-jeou in the 2008 presidential election. Ma's success in that election with a policy of "Three Nos" and a return to the '92 Consensus can again be seen as a restoration of the TIR.

Lessons for the present

It has also been shown that certain dynamics have become established for maintaining an optimum equilibrium, given the conflicting preferences of the three concerned parties. One of these is the strategic deterrence built into the ambiguity of the TRA. This has served to constrain both the PRC and Taiwan from departing too far from the optimum equilibrium of the status quo of no-independence and no unification.

Another dynamic that has been introduced is that of the impact of democratization in Taiwan on the TIR. This has had the complex effect of both consolidating the preference for achieving greater recognition for Taiwan, but also constraining the policy options available to the political elite for achieving this goal.

Given that these characteristics of the TIR have allowed it to endure for so long and successfully avoided the outcome all wish to avoid, namely armed conflict, despite major changes in the international system, it can be argued that it would not be in the interests of any of the parties to signal its demise by a withdrawal of the US commitment to Taiwan's security. Under democratization, both KMT and DPP administrations have shown that they are prepared to withdraw from collaboration with Washington and coordination with Beijing if the US and PRC are seen to be working together against Taiwan's interests. Conversely, messages of reassurance and support from Washington and Beijing when political parties in Taiwan adopt moderate policies are likely to enhance their support among voters.

It is somewhat ironic that policy makers in Beijing seem to have learned this lesson more effectively than some of the commentators recommending a radical change of policy in Washington. This can be seen in the way that the Hu Jintao administration has been careful not to exert too much pressure on the Ma administration to begin talks on political issues, despite obvious frustration over the lack of progress. Given the pattern of behaviour in Taiwan to date, Beijing seems to realise that if the KMT administration is seen to be giving too much away under duress, it would be a recipe for electoral defeat.

If the US government was to threaten to withdraw its conditional guarantee for Taiwan's security, the impact would be equally dramatic. By showing that behaviour in support of the status quo of the TIR will not be rewarded but will be punished by a diminution of Taiwan's security, incentives will be given to political actors to once again withdraw from the collaboration and coordination necessary

for maintaining the optimal equilibrium of the TIR. The instability that would result from this would make self-restraint exercised by Taipei, Beijing and Washington redundant, creating dangerous dynamics.

If the US wants to ensure stability, its options are thus limited. One possibility is to decide to tacitly accept that peaceful unification would lead to a better equilibrium than has been achieved by the present status quo. This, however, is not a valid option unless the political will for such an outcome exists in Taiwan. According to the opinion polls, the opposite is the case. If previous experience still holds, then any such message of a policy change would likely lead to a new politicisation of cross-Strait relations in the island's domestic politics that would encourage risk taking by candidates and trigger the dynamic for Taipei to withdraw collaboration with Washington and coordination with Beijing again. Such destabilising dynamics would become even more entrenched if the US was to take the more radical choice of changing the TRA in ways that water down the commitment to Taiwan's security.

Conclusion

It has been argued above that the TIR has successfully contributed to stability in the Western Pacific since it was established in the 1970s, well before democratization began in Taiwan. In this sense, Washington's conditional commitment to Taiwan's security has helped to ensure the optimal shared outcome for not only Taiwan and the US but also for the PRC by avoiding the outcome that all wish to avoid, namely armed conflict. Given the violence that has erupted in many other parts of the world under processes of international and domestic political change, this is no small achievement.

It may seem counter-intuitive to propose that maintaining the TRA serves the interests of the PRC, given that it has been denied its optimal outcome of unification. However, this needs to be balanced against the fact that Taiwan has been denied international recognition and Washington has had to devote large amounts of diplomatic and military expenditure to managing the regime. Going back to the first matrix, this may not be Beijing's preferred outcome, but it does represent the best collective outcome.

It has also been argued above that two new factors have the potential to change the TIR. The first of these is the structural change in the distribution of international power represented by the rise of China. This, however, on its own is not sufficient to undermine the regime because there are always different strategies available for using power to pursue interests. When the dynamics of democratisation in Taiwan are taken into account, the optimal strategy for the PRC is to use its growing power to maintain the TIR, rather than to change it. This is because the institutions in Taiwan that are created to assure coordination with

Beijing and collaboration with Washington also have to respond to democratic politics. These institutions have to respond to democratically elected political institutions, especially the Presidency, which are charged with framing the national interest and shifting the criteria by which policy decisions are made. Normally, this encourages the exercise of self-restraint by making policy makers in Washington and Beijing consider Taiwan's interests in addition to their own. If these democratic dynamics are ignored, a threat to the TIR can lead to a withdrawal of these same institutions withdrawal from coordination and collaboration. Under such conditions, the game of chicken becomes much more dangerous for all parties because it is played blindfold.