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# AMERICAN POLICY TOWARD TAIWAN: THE ISSUE OF THE *DE FACTO* AND *DE JURE* STATUS OF TAIWAN AND SOVEREIGNTY

*Stephen Lee\**

With its twenty-one million people, 36,000 square kilometers (about 11,000 square miles) of territory, and centralized government, it is an undeniable fact that Taiwan is an independent political entity. This entity ruled by the nationalist party (or KMT), under the national title of Republic of China (ROC), is generally referred to as "Taiwan" in the international community. Thus, according to international law, Taiwan has fulfilled all the requirements of an independent nation.

Nonetheless, since the People's Republic of China (PRC) replaced the Republic of China (ROC) as the only legitimate representative of China to the United Nations in 1971,<sup>1</sup> Taiwan has lost its membership in the United Nations and its *de jure* statehood has been obscured. However, the most serious impact on the status of Taiwan is the U.S. government's policies toward it.

On January 1, 1979, the Carter administration established formal diplomatic relations with the PRC and disconnected official U.S. ties with the ROC.<sup>2</sup> This US policy was made official by issuance of a joint communique stating: "[t]he Government of the United States of America acknowledges the Chinese position that there is but one China and Taiwan is part of China."<sup>3</sup> Meanwhile, the Taiwan Relations Act of 1979 was enacted to maintain "the

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<sup>1</sup> U.N. GAOR, 26th Sess., Supp. No. 29, at 2, U.N. Doc. A/8429 (1971).

<sup>2</sup> President Jimmy Carter, Address to the Nation and Communique on the Establishment of Diplomatic Relations between the United States and the People's Republic of China, (Dec. 15, 1978), in 14 WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, 2264 (1978).

<sup>3</sup> *Id.*

continuation of commercial, cultural, and other relations between the people of the United States and the people of Taiwan" in the absence of diplomatic relations.<sup>4</sup> Since then, the American government has maintained its "One China" policy by conducting official relations with the PRC, and merely unofficial relations with Taiwan. Moreover, the American government has repeatedly pointed out that its position on the China-Taiwan problem is that the U.S. will only intervene or involve itself in the China-Taiwan problem on the condition that it be resolved in a peaceful way.<sup>5</sup>

There are contradictions in this American policy in at least in three different respects elaborated as follows:

1. The U.S. took note of the PRCs claim that "One China" includes Taiwan as a part of China by using the term "acknowledge," but it did not "accept" or "recognize" the PRC policy.<sup>6</sup> As a matter of fact, the PRC, acting as the legitimate representative of China, has never governed or occupied Taiwan. The presumption of including Taiwan in a "One China" policy is contrary to the reality that Taiwan has been a sovereign state since even before the PRC took over China.

2. There is an official relationship between the U.S. and China demonstrated by each country's maintenance of an embassy in the other's national capital, however, the U.S. maintains the "American Institution in Taiwan" in Taiwan and Taiwan maintains the "Taipei Economic and Culture Offices" in the United States. Even though the U.S. and Taiwan define these organizations as unofficial, the heads and staff of both these organizations are provided with official functions, diplomatic privileges, and immunities.<sup>7</sup>

If the American government treated Taiwan as part of China, there would not be the need to set up any diplomatic offices in

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<sup>4</sup> Taiwan Relations Act, 22 U.S.C. §§ 3301-3316, Pub. L. 96-8 (1979).

<sup>5</sup> See testimony of Winston Lord, Assistant Secretary for East Asian and Pacific Affairs before US Senate Foreign Relations Committee, Subcommittee on East Asia & Pacific Affairs (Sept. 27, 1994), 1994 WL 525490 (F.D.C.H.), 1-11.

<sup>6</sup> Carter, *supra* note 2.

<sup>7</sup> Taiwan Relations Act, 22 U.S.C. §§ 3306, 3307, 3309-3311, Pub. L. No. 96-8 (1979).

Taiwan. The contradiction is very apparent when the U.S. government stresses a "One China" policy and official relations with the PRC, but practically maintains unofficial diplomatic relations with Taiwan as if Taiwan were a sovereign nation.

As stated by Winston Lord, Assistant Secretary of State for East Asian and Pacific Affairs before a Senate hearing on September 27, 1994; "[r]elations with the PRC are official and diplomatic, with Taiwan they are unofficial but strong."<sup>8</sup> He emphasized that this is "a carefully balanced approach."<sup>9</sup> Evidently it is a contradiction designed and executed by the American government to appease both China and Taiwan.

3. The U.S. government applies the Taiwan Relations Act so that it can sell defense weapons to Taiwan.<sup>10</sup> This serves the purpose of defending Taiwan against a possible invasion by China. This practice pragmatically violates the American "One China" policy and affects America's official relations with China. It proves that the U.S. government actually, but not officially, regards Taiwan as a political entity independent from China.

Nonetheless, the U.S. government only supports Taiwan's entrance into international organizations where there is no issue of statehood raised so as not to override the limitations of the American "One-China" policy.<sup>11</sup> In this respect, the American government is still reluctant to defer to Taiwan as a *de jure* independent state.

In view of the foregoing, there is no doubt that American policy toward Taiwan, in practice, is contradictory to the American "One China" theory. The above stated arguments also illustrate that the U.S. government accepts the *de facto* status of Taiwan's sovereignty, but does not recognize Taiwan's *de jure* status.

As the most powerful nation in the world, the United States is well known and respected in its role of "international policeman" when promoting human rights and justice in the world. Therefore,

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<sup>8</sup> Lord, *supra* note 5, at 3.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 1; 22 U.S.C. § 3301-3316 (1995).

<sup>11</sup> Lord, *supra* note 5, at 4.

American policy toward Taiwan should be reviewed and readdressed toward protecting the human rights of the 21 million people in Taiwan and toward achieving the treatment of treating China and Taiwan on an equal basis.

In this author's opinion, the solution to the contradiction between U.S. policy and practice should be carried out in the following steps:

First, the "One China" policy needs to be correctly interpreted to accurately illustrate the present relationship between China and Taiwan. A "One China" policy is correct if the PRC, not Taiwan, is regarded as the only China. Since Taiwan has never been ruled by the PRC, or became a part of China nominally or factually, it is right to say that Taiwan should not be included in a "One China" policy. Just as outer Mongolia no longer belongs to China, Taiwan is also independent of China. Furthermore, Taiwan is different from Hong Kong and Macao which will be returned to the PRC in 1997 and 1999. Hong Kong and Macao have been colonies under foreign rule and have never been sovereign states. The U.S. government should settle the contradiction of its "One China" policy by firming up the distinction between China and Taiwan. Quite simply, it must formally recognize that China and Taiwan are different and independent of each other.

Second, American policy in leaving the problem of China and Taiwan to be solved by those two entities alone is justifiable.<sup>12</sup> Principally, the U.S. government has no duty or obligation to get involved in any disputes between China and Taiwan. However, when the dispute concerns peace in the world, Asia, or the Asian Pacific Rim, and human rights are fundamental issue, the U.S. government simply must take action. Therefore, the US should advocate that the problem between China and Taiwan does not justify commencing an invasion or initiating a war. Furthermore, in order to protect the human rights of Taiwan's twenty-one million people, China must be prevented from making any attempt to attack Taiwan. Winston Lord,

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<sup>12</sup> *Id.* at 2.

the Assistant Secretary for East Asia and Pacific Affairs admitted that there would be serious consequences even if the PRC were merely to commence a blockade against Taiwan.

Finally, the U.S. government needs to enhance the position of Taiwan as a sovereign state. For the time being, it may still be difficult to foster the official and diplomatic relations with Taiwan without offending China, but Taiwan should be allowed to have membership in international organizations such as the United Nations. The U.S. government should support a balanced approach and, at the very least, it should not oppose Taiwan's entry into the United Nations. Taiwan has the same rights as other member-states, including China, to an official voice in world affairs. Even if Taiwan is admitted to the United Nations, China's status in the world would not be diluted because China is still a permanent member of the United Nations Security Council.

Recently, the Americans have facilitated peace treaties between Israel and Palestine, and between Israel and Jordan. Sincerely, they can also influence a peaceful co-existence between China and Taiwan. At the very least, when Taiwan decides to become a *de jure* independent nation by changing its national title by plebiscite, the U.S. government should have no reason to oppose Taiwan. Furthermore, the U.S. should challenge any Chinese interference with Taiwan's independence which might compromise the human rights of Taiwan's twenty-one million people. Once China and Taiwan become two independent and amicable nations, America's national interest will benefit from the enhanced stability and peace in the Asian Pacific Rim.

