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ARTICLE: Taiwan: Playing for Time

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\* Executive Director, Massachusetts Office of International Trade & Investment. I appear on this program in my private capacity; the views expressed are my own and are not necessarily those of Governor Cellucci or any other official of the Commonwealth of Massachusetts. My title is provided solely for purposes of identification.

## SUMMARY:

... The theme of this conference only nominally is Taiwan. ... I conclude this brief review with some thoughts about Taiwan in the context of U.S.-China policy, indeed, of U.S.-Asia policy generally. ... The international law governing civil conflict has little to do with policies toward China and Taiwan. ... Doing so would recognize the international significance of any use of force across the Strait without necessarily prejudging the legal character of Taiwan. ... Indeed, the United States has made clear its opposition to a use of force even though no longer bound by bilateral treaty to rush to Taiwan's defense. ... Unless the United States is willing to take these strategic risks in a region in which it has fought three wars in the last sixty years — and to do so in a nuclear age appears foolhardy — it should not in any way suggest that it would be militarily indifferent to a use of force against the *status quo* in the Taiwan Strait, even if the United Nations likely would not provide any support. ... U.S. policy toward the Taiwan Strait is inseparable, therefore, from its Asia policy and, of course, its China strategy. ...

## TEXT-1:

## [\*707] I. INTRODUCTION

The theme of this conference only nominally is Taiwan. From the U.S. perspective, it really concerns the larger topic of Asia and the United States. Reaching a realistic understanding of the issues at stake in the Taiwan question requires a wide-angle approach, taking into account the strategic situation in Asia and even the larger question of the direction of post-Cold War international politics.

The fifty years since the Chinese Communists won control of mainland China have seen profound change in global and Chinese terms. The end of the Cold War and collapse of the Soviet Union scarcely six years ago brought in their train the most far-reaching transformation of international affairs since the end of World War I. We have not yet seen the full consequences of this geopolitical earthquake. For the moment, as far as the U.S.-China relationship is concerned, fear of the Soviet Union as a common interest and basis for cooperation has disappeared. In the absence of Soviet pressure, the U.S.-Chinese relationship has lost its theme.

What is true of the U.S.-Chinese relationship is true of American foreign policy generally. The United States still has not found, as a policy lodestar, anything so powerful as anti-Communism and containment.

Chinese policy remains something of an enigma, if not wrapped in a mystery. It too is coming to grips with the end of Cold War certainties and confronting the inexorable pressures of globalization. The Chinese themselves probably only dimly see where they are headed.

China's foreign policy gives plenty of pause, without yet appearing to most Americans as unremittingly hostile. China appears not yet to [\*708] have reconciled its desire to be dominant in Asia with hunger for foreign capital, technology,

and training. While its leaders court foreign investment, its military are beginning to view the United States as a likely future opponent.

In purely Chinese terms, the last fifty years have witnessed changes of extravagant dimensions. On the mainland, China lurched to its present policy — capitalism without the Protestant Ethic, as one observer has called it — after nearly thirty years of failed social and economic management, including the Cultural Revolution. At the same time, Taiwan has married an extraordinary economic performance to the first experiment in democratic government in Chinese history.

The end of the Cold War and the appearance of democracy on Taiwan define the context in which Taiwan's future is presented as a geopolitical problem. In this context, international law provides some guidance to policymakers, but also requires some mental and linguistic gymnastics on the part of those trying to articulate it. The Taiwan issue has its own law of the case, if you will. My conclusion today is that the several forces and elements forging the Taiwan issue at the moment make playing for time not only appropriate to the present Asian strategic picture, but also appear to offer the possibility of continued trans–Strait peace. The *status quo* serves everyone's interests for the moment.

I shall discuss first the legal and policy context for U.S.–Taiwan policy and then examine some policy options and their foreseeable consequences. I conclude this brief review with some thoughts about Taiwan in the context of U.S.–China policy, indeed, of U.S.–Asia policy generally.

## II. THE LEGAL AND POLICY TABLE

Like other clients, policymakers look to lawyers in the first instance to tell them how much room they have to manoeuvre. Because the Chinese Civil War ended in incomplete victory, the law governing intervention in civil wars has its place in any discussion; but, ultimately, that law is not a fruitful source of policy guidance. The international law governing civil conflict has little to do with policies toward China and Taiwan. In any event, in that area of the law, when the language of legal commentary is stripped away, one is left with the reality noted by Thucydides that the strong take what they can and the weak give up what they must. n1 Thus, from the establishment of the Kuomintang on [\*709] Formosa after losing the mainland, Cold War considerations proved more important than legal ones in shaping development of the Taiwan question.

Whether the Communists could have taken Formosa immediately as part of the Civil War, they did not attempt to do so; and soon after, the United States made clear it would not tolerate a use of force from the mainland against Taiwan or vice versa. This U.S. policy has endured since—even after diplomatic relations were established with Beijing and severed, at least in a traditional sense, with Taipei.

The U.S. approach applies to the Taiwan Strait the policy of Article 2(4) of the U.N. Charter: "All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the United Nations." n2 As the Shanghai Communique expressed it in 1972,

The United States acknowledges that all Chinese on either side of the Taiwan Strait maintain there is but one China and that Taiwan is a part of China. The United States Government does not challenge that position. It reaffirms its interest in a peaceful settlement of the Taiwan question by the Chinese themselves. n3

Clarifying that position, the Taiwan Relations Act of 1979 provides in part that the United States decision to establish diplomatic relations with the People's Republic of China rests upon the expectation that the future of Taiwan will be determined by peaceful means; (4) to consider any effort to determine the future of Taiwan by other than peaceful means, including by boycotts or embargoes, a threat to the peace and security of the Western Pacific area and of grave concern to the United States. n4

The purpose of Article 2(4) is reasonably clear: to prohibit threats or uses of force inconsistent with U.N. purposes. Does an entity not widely recognized as an independent state thereby lose its right to enjoy the benefits of Article 2(4) and, indeed, the right of self–defense affirmed in Article 51 of the Charter? n5 That is the question posed by Taiwan, even if one does not apply to Taiwan the objective, four–part test for statehood under international law: an entity with "a defined [\*710] territory and a permanent population, under the control of its own government, and [engaging] in, or [having] the capacity to engage in, formal relations with other such entities." n6 Under that test, the only obstacle to Taiwan being universally accepted as a state is that the Great Powers and a majority of states, and, apparently, the people of Taiwan and of China, do not want Taiwan to be a state like any other. They prefer the formula of the Shanghai Communique, which emphasized the unity of China and the importance of peace.

Applying Articles 2(4) and 51 of the U.N. Charter to the Taiwan question in this context, however, is as reasonable as it was to do so in Korea, Vietnam, and Germany. Doing so would recognize the international significance of any use of force across the Strait without necessarily prejudging the legal character of Taiwan. Of course, literalists will disagree. But the United States and others appear comfortable with deterring such a use of force and trying to ensure that reunification, should it occur, will be uncoerced and express the desires of the people concerned. Indeed, the United States has made clear its opposition to a use of force even though no longer bound by bilateral treaty to rush to Taiwan's defense. This fact shows how problematic would be an assumption that the United States will not find itself in conflict with China should the Peoples Republic of China (PRC) attack Taiwan.

Even were Article 2(4) not generally understood to apply to all international situations, including the case of Taiwan, it arguably would be the law of the Taiwan case. Successive Presidents since Truman and successive Congresses have treated threats of force against Taiwan as threats to U.S. vital security interests.

Why after the Cold War should this attitude still hold sway? First, the security relationship with Japan, the most important U.S. relationship in the Pacific, depends on U.S. consistency. Peace on the Korean peninsula also depends on the reliability of the U.S. deterrent. Any other course would cause Japan, and perhaps South Korea, to reexamine its non-nuclear status and, in the case of Japan, its post-War role. Such an eventuality would have a seismic effect on Asian security relationships, assumptions, and stability.

Unless the United States is willing to take these strategic risks in a region in which it has fought three wars in the last sixty years — and to do so in a nuclear age appears foolhardy — it should not in any way suggest that it would be militarily indifferent to a use of force against [\*711] the *status quo* in the Taiwan Strait, even if the United Nations likely would not provide any support.

Finally, the U.S. commitment to Taiwan vindicates U.S. espousal of democracy as a fundamental policy interest. To leave Taiwanese democracy in the lurch scarcely a year after its full flowering would contradict everything the United States has insisted it stood for since Wilson's time and before.

### III. OTHER POLICY OPTIONS

Other policy options exist that do not undermine U.S. reliability as a strategic security partner. They nonetheless foreseeably would cause difficulty. First among them, now that Taiwan has adopted democratic government, is independence. This course would accept the reality that Taiwan meets objective legal criteria as a state. It may also defer to the wishes of the Taiwanese, although that is not clear today.

What are the likely consequences? The PRC might feel compelled to use force even if it meant unsuccessful (we should hope) war with the United States. Since it took power, the Beijing regime has made clear that it regarded integration of Taiwan into China an essential goal and at least since 1972 it has made clear the utter unacceptability of *de jure* Taiwanese independence. Powers deserve to be taken seriously when they have so clearly stated a position with respect to what they say are vital national interests.

A second course would be to declare that the end of the Cold War means the U.S. interest in Taiwanese security has diminished or disappeared. It could make clear that it would no longer defend Taiwan against a use of force and encourage the Taiwanese government to make the best deal it could with Beijing. It even could urge that Hong Kong be used as a model and commit to Taiwan's defense pending conclusion of the negotiation. The consequences flowing from a failure to deter the PRC from using force against Taiwan likely would follow adoption of either such policy. Asians likely would see it as a symptom of American weakness and disinterest in Asia, with profound security implications for the Pacific region. In any event, as the Korean and Iraqi wars showed, predicting that the United States will not respond to an attack in an area assumed to be outside its defense perimeter is foolhardy.

As this brief discussion suggests, once one deviates from the *status quo*, policy options look increasingly risky and unrealistic, at least for the foreseeable future.

### [\*712] IV. WHAT IS TO BE DONE?

Our foreign policy should advance our interests. With respect to the Taiwan Strait, the U.S. interest in Asian stability, security, and deterrence seems clear. Achieving these goals would help secure U.S. humanitarian and economic interests in the entire region.

U.S. policy toward the Taiwan Strait is inseparable, therefore, from its Asia policy and, of course, its China strategy.

U.S. regional interests ought now to be clear and accepted. They are as important as our interests in Europe and are essentially the same. We know that allowing any power to dominate Asia poses a threat to our security and independence, just as that situation would in Europe. Our Taiwan policy should reflect a coherent strategy to prevent such domination and deter aggression. That requires much more than we have at present. With respect to China, one respected commentator has noted:

Americans need to view China with neither panic nor illusion, and need to start thinking about China with the same seriousness and lack of sentimentality with which the Chinese are thinking about us. The United States needs a patient, long-term, comprehensive national strategy that focuses on maintaining, first, our military preeminence in the region and, second, our alliances and commitments. Without these two things we have no serious China policy at all, whatever other humane aspirations we may have. The worst strategy would be to adopt a confrontational posture toward China (on, say, human rights) while allowing the sinews of our strength to atrophy. Escalating moral rhetoric plus declining strength is an incoherent policy. As long as the Communist regime rules China, we should keep a certain moral distance so as not to endorse the legitimacy of its practices. But it will be historical evolution . . . , not Congressional prescriptions, that decide. Conflict between the two countries is not inevitable, if the United States maintains an effective deterrence while structuring the incentives and disincentives to encourage China's entry *into* the regional system, rather than an effort to upset it. The strategic issues must be our priority. If relations are handled clumsily, there is a danger of grave miscalculation on both sides, which could trigger a more classical scenario of confrontation for which there are all too many historical parallels. We can do better than that. n7

This policy is easy to state, but may not be so easy to achieve. It requires steadiness and collaboration with our Asian friends and allies. It requires acceptance that we have vital interests in Asia. Such a policy, however, is essential to the maintenance of international peace and security in that part of the world. It also is essential to continued acceptance [\*713] by the people of Taiwan of their province's anomalous international status.

#### V. CONCLUSION

The democratic future of Taiwan and the maintenance of peace in the Taiwan Strait require steadfast U.S. policy. We owe that to a people who have depended on U.S. strength for their prosperity and security for nearly fifty years; and we owe it to ourselves. Continued inability to sort our priorities and adopt a realistic, even cold-blooded view of China and other important Asian nations, will mean continued drift and possible miscalculation. A Chinese miscalculation about U.S. intentions is likely so long as our Asia policy only intermittently reflects the maturity and steadfastness represented by the sending of a fleet to the Taiwan Strait when the PRC threatened force in 1996.

#### FOOTNOTES:

n1 THUCYDIDES, THE PELOPONNESIAN WAR 402 (Rex Warner trans., rev. ed. 1972).

n2 U.N. CHARTER art. 2, para. 4 (*jus cogens* against international threat or use of force).

n3 66 DEP'T ST. BULL. 435 (Mar. 20, 1972); 11 *I.L.M.* 443 (1972).

n4 Taiwan Relations Act, 22 *U.S.C.* § 3301 (1979).

n5 *See* U.N. CHARTER art. 51 (affirmation of "inherent" right of individual and collective self-defense); *see also supra* note 3 and accompanying text (citing U.N. CHARTER art. 2, para. 4).

n6 *RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES* § 201 (1987).

n7 Peter W. Rodman, *Between Friendship and Rivalry: Report on a Trip to China*, 2 *Nixon Center Perspectives* (1997).

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