

## The scope of the Taiwan Policy Act

Written by Frank Chiang 方方方

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On Aug. 1, the US House of Representatives Foreign Affairs Committee unanimously passed a bill entitled the Taiwan Policy Act. Although the fate of the bill in the House and the US Senate is uncertain, the fact that it passed the committee by unanimous votes reflects the sentiment of the committee members.

In 1979, the US Congress enacted the Taiwan Relations Act. When then-US president Jimmy Carter's administration withdrew recognition of the Republic of China (ROC) as the representative government of China in December 1979, the US also terminated the US-China (ROC) Mutual Defense Treaty.

These acts terminated the international mechanism for the US to protect Taiwan in the event of aggression by the People's Republic of China. For the protection of the people of Taiwan and the security of the US in the Western Pacific, the US took an unprecedented measure in international relations: employing a domestic law to implement the foreign policy, the US Congress enacted Taiwan Relations Act.

Since then, every US administration has maintained that their policy toward Taiwan was based on the "one China" policy and the Taiwan Relations Act.

The Taiwan Relations Act is an unusual law. In the US, the executive conducts foreign affairs and makes foreign policy. The Taiwan Relations Act is unusual in that the US Congress set forth foreign policy guidelines in the act for the executive to implement.

In the US, laws enacted by Congress pursuant to the US constitution are supreme laws of the land. A government policy, such as policy expressed in a joint communique, cannot violate the law and its mandate.

Since the enactment of the act, many US administrations have adopted some special policies toward Taiwan, which may or may not be friendly to Taiwan, including then-US president Ronald Reagan's Third Communique of 1982, former US president Bill Clinton's policy of "no Taiwan independence" and former US president George W. Bush's policy of "no referendum for Taiwan."

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There are two reasons for the committee to show its concern by passing such a bill at this time. One reason is that US administrations for the past two decades have not followed the mandate of the Taiwan Relations Act.

For instance, notwithstanding that the act mandates that “the United States will make available to Taiwan such defense articles and defense services in such quantity as may be necessary to enable Taiwan to maintain a sufficient self-defense capabilities” (Sec. 3), the Third Joint Communiqué issued by the Reagan administration reduced the level of US commitment under the Taiwan Relations Act by providing that “arms sale to Taiwan will not exceed, either in quantitative or qualitative terms, the level of those supplied in recent years.”

The new Taiwan Policy Act says: “The language contained in the [Third] Joint Communiqué shall not, to any degree, diminish the responsibility of the US, as legislatively mandated in the Taiwan Relations Act.”

Likewise, neither Clinton’s policy of “no Taiwan independence” nor Bush’s policy of “no referendum for Taiwan” finds support in the three Joint Communiqués or Taiwan Relations Act.

The other reason for its concern is that since President Ma Ying-jeou (馬英九) took office, his policy has been coddling, if not kowtowing to, China.

The cross-strait Economic Cooperation Framework Agreement (ECFA) has pushed Taiwan closer to China. What makes the situation worse is the indifference or the silence of Taiwanese in the face of the silent invasion — a flood of Chinese visitors and money — of Taiwan.

The committee probably sensed that Taiwanese have lost confidence in the US’ commitment to protect them. Thus, the Taiwan Policy Act on one hand reminds the US executive of the mandate of the Taiwan Relations Act (Sec. 3: “Nothing in this Act will be construed to amend or supersede the Taiwan Relations Act.”); on the other hand, it signals to Taiwanese the level of the US’ commitment to protect them.

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The Taiwan Policy Act is comprehensive. It deals with political relations, security relations, economic and trade relations with Taiwan as a territorial political institution.

In political relations with Taiwan, the Taiwan Policy Act provides that “Notwithstanding any communiques entered into between the US and the People’s Republic of China (the ‘P.R.C.’), the US continues to assent to the six assurances provided to Taiwan in July 1982, including that the U.S. (1) has not agreed to set a date for ending arms sales to Taiwan; (2) has not agreed to hold prior consultations with the P.R.C. on arms sales to Taiwan; (3) will not play any mediation role between Taipei and Beijing; (4) has not agreed to revise the Taiwan Relations Act; (5) has not altered its position regarding sovereignty over Taiwan; and (6) will not exert pressure on Taiwan to negotiate with the P.R.C.” (Sec. 106).

In security relations with Taiwan, the Taiwan Policy announced that “any determination of the nature and quantity of defense articles and defense services to be made available to Taiwan that is made on any basis other than the defense needs of Taiwan, whether pursuant to the Aug. 17, 1982, [the Third Joint] Communiques signed with the P.R.C., or any similar executive agreement, order, or policy would violate the intent of Congress specified in the Taiwan Relations Act.”

In economic and trade relations, the act mandates that at the appropriate time the US should seek the negotiation of a free-trade agreement with Taiwan.

Although the US does not recognize Taiwan as a state, the policy guidelines prescribed in the Taiwan Policy Act do not contain a policy of “no Taiwan independence” or “no referendum for Taiwan,” as seen in the policies of Clinton and Bush.

The act is more friendly to Taiwanese than the policies of previous US administrations.

Some critics say that the Taiwan Policy Act perpetuates the rule of the ROC government in Taiwan. However, one does not necessarily have to read it that way.

Although the Taiwan Policy Act provides that “The US Government shall respect the right of the

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Taipei Economic and Cultural Representative (TECRO) to display its flag on the premises,” the Act also “support[s] a decision by Taiwan to change the name of the Taipei Economic and Cultural Representative Office.”

The key words are “a decision by Taiwan,” not by the ROC government.

Section 101 of the act provides that “The policies of the US shall be (1) supporting Taiwan, Taiwan’s democracy, and the human rights of its people.”

By implication, the US will respect the name of the representative’s office and the flag that the people of Taiwan choose.

The US Congressional Committee has exhausted its power to support Taiwanese. Taiwanese cannot expect the US or others to do more than that for them. They have to walk the rest of their journey themselves.

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