

The U.S. Perception of Taiwan's Sovereignty and the Future of Cross-Strait Relations

MARC CHIA-CHING CHENG

Washington's Taiwan policy has been a controversial issue for U.S. policymakers and politicians for decades. At the core of the Taiwan issue is the question of establishing sovereignty. However, there is no "silver bullet" for resolving cross-strait issues, especially the issue of Taiwan's sovereignty. This paper first presents a chronological review of the components of the U.S. government's "one-China policy" and then examines a definitional problem found in the debate on sovereignty and its implications for Taiwan's sovereignty. A preliminary assessment will be made of the U.S. perception of Taiwan's sovereignty by analyzing key documents and interviews which have been conducted in Washington. This paper will then conclude with a discussion of some of the implications for the future of cross-strait relations. It is argued that for the United States, Taiwan's sovereignty is defined as "one policy, three sovereignties, and five perceptions." The United States is reluctant to define Taiwan's sovereignty, and as interviews conducted in Washington indicate, Taiwan's status is clearly unsettled. The United States challenges neither the Republic of China's (ROC) governance of Taiwan, nor Beijing's position on Taiwan's sovereignty.

MARC CHIA-CHING CHENG (鄭家慶) is a Ph.D. candidate in the Graduate Institute of Diplomacy, National Chengchi University, Taiwan. He is currently deputy director of research at the Foundation on International and Cross-Strait Studies (FICS). He can be reached at <marc.fics@gmail.com>.

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[†]Institute of International Relations, National Chengchi University, Taipei, Taiwan (ROC).

eighty. In brief, the United States does not take sides on this issue, but is still bound to a certain degree by its domestic law, the Taiwan Relations Act. The United States' foremost concern is to strike a delicate balance between helping Taiwan to practice its consent, while at same time not violating its own national interests (which implies avoiding a military confrontation with China). This clearly takes precedence over getting involved in defining Taiwan's sovereignty.

KEYWORDS: Taiwan's sovereignty; one-China policy; U.S. perception; de jure; de facto.

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U.S. policy toward Taiwan has always been controversial among U.S. policymakers and politicians, and at the core of the Taiwan issue is the question of establishing sovereignty. For the People's Republic of China (PRC), sovereignty is a matter of fundamental principle. However, for Taiwan, which faces pressure from its electorate and a rising Taiwanese identity movement, the consent of its 23 million people matters more than traditional notions of sovereignty.

There is clearly no "silver bullet" that can provide a solution to cross-strait issues, especially the issue of Taiwan's sovereignty.¹ From the U.S. perspective, Taiwan's sovereignty is a legal issue.² However, most interviewees in this study agreed that it is more of a political question with legal implications. The government of the Republic of China (ROC) on Taiwan claims that the surrender of Japanese forces on Taiwan on October 25, 1945, was a formal action which officially effected a transfer of sovereignty. However, this is not what Washington perceives when it views the issue of Taiwan's sovereignty.³ The Starr Memorandum of 1971 reveals the early U.S. perception of the legal status of Taiwan,⁴ and it is still

¹ Author's notes of interview in Washington, D.C., October 31, 2006.

² Author's notes of interview in Washington, D.C., October 24, 2006.

³ Alan Romberg, *Rein In at the Brink of the Precipice: American Policy Toward Taiwan and U.S.-PRC Relations* (Washington, D.C.: Henry L. Stimson Center, 2003), 2.

⁴ Robert I. Starr, "Legal Status of Taiwan" (Memorandum to Charles T. Sylvester, July 13, 1971). This memorandum is reprinted in John J. Tkacik, ed., *Rethinking One China* (Washington, D.C.: The Heritage Foundation, 2004), 181.

an important reference for any discussion of U.S. policy on Taiwan's sovereignty.⁵ It states:

In neither [the Japanese Peace Treaty of 1951 nor the Treaty of Peace between the Republic of China and Japan of 1952] did Japan cede this area [of Formosa and the Pescadores] to any particular entity. As Taiwan and the Pescadores are not covered by any existing international disposition, sovereignty over the area is an unsettled question subject to future international resolution. Both the Republic of China and the Chinese Communists disagree with this conclusion and consider that Taiwan and the Pescadores are part of the sovereign state of China. The United States recognizes the Government of the Republic of China as legitimately occupying and exercising jurisdiction over Taiwan and the Pescadores.⁶

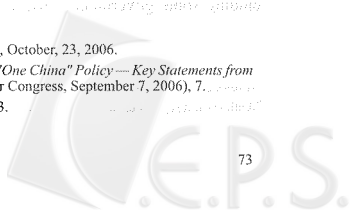
In the 1950s, 1960s, and even the 1970s, Taiwan's sovereignty was less important, because both Taipei and Beijing insisted that Taiwan had been "returned" to China in 1945. The "only" difference was which of them was the legitimate government of that China.⁷ In 1987, however, the ROC government ended martial law in Taiwan and in 1991 went as far as to recognize the "legitimacy" of the rule of the PRC over the mainland. The democratization of Taiwan and the ROC's renunciation of its claim to be the "sole legitimate government of China" fundamentally altered the cross-Strait tug-of-war over the legal representation of "China." With the rise of an indigenous Taiwanese identity and agenda-setting for election campaigns, the debate over Taiwan's sovereignty began to reemerge.

The Taiwan sovereignty issue obviously received a great deal of academic and political attention after President Lee Teng-hui (李登輝) of the ROC visited the United States in 1995. And Lee's characterization of relations between the two sides of the Taiwan Strait as "special state-to-state relations" in July 1999 opened a new phase in the ongoing debate over Taiwan's sovereignty. On August 3, 2002, Lee's successor, President Chen Shui-bian (陳水扁), used the phrase "one country on each side [of the Taiwan Strait]" which triggered further concern in the United States

⁵ Author's notes of interview in Washington, D.C., October, 23, 2006.

⁶ Shirley A. Kan, *China/Taiwan: Evolution of the "One China" Policy—Key Statements from Washington, Beijing, and Taipei* (CRS Report for Congress, September 7, 2006), 7.

⁷ Romberg, *Rein In at the Brink of the Precipice*, 3.



over Taiwan's status.

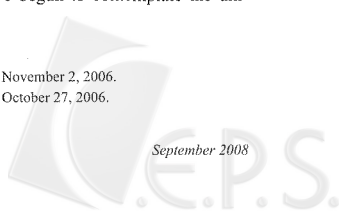
The legal basis for the U.S. perception of Taiwan's sovereignty is the U.S. government's "one-China" policy which can be found in five key documents: the Shanghai Communiqué (1972), the normalization communiqué (1979), the Taiwan Relations Act (1979), the "six assurances" (1982), and the August 17th Communiqué (1982). Several memorandums prepared separately by the National Security Council and the U.S. State Department on political and economic issues regarding Taiwan also reveal the United States' sometimes conflicting perceptions of this issue. In short, there is no single source document that clearly defines the U.S. perception of Taiwan's sovereignty; instead, this perception has to be drawn carefully from the various documents, piece by piece.⁸ Moreover, most of my interviewees agreed that Taiwan's sovereignty is a dynamic process rather than a static outcome.

Some might argue that the relevant memorandums only list potential policy options for the U.S. administrations in office at the time of their production. Indeed, in dealing with the issue of Taiwan's sovereignty, none of the documents represents an official U.S. policy. Despite these caveats, however, it is only these five documents that constitute a credible foundation for defining the U.S. perception of Taiwan's sovereignty since the United States switched recognition from the ROC to the PRC. Most of the interviewees considered the statements in the documents to be lacking in clarity, and to some extent deliberately ambiguous. Some even suggested that the documents are no more than diplomatic rhetoric.⁹ However, the documents have created albeit an ambiguous framework for Washington's "one-China" policy (different from Beijing's "one-China principle") which allows U.S. policy to swing between "de jure" recognition of China and "de facto" recognition of Taiwan.

However, recent press reports indicate that some Americans, including some government officials, have begun to contemplate the uni-

⁸ Author's notes of interview in Washington, D.C., November 2, 2006.

⁹ Author's notes of interview in Washington, D.C., October 27, 2006.



fication of China or at least significantly closer cross-Strait relations. They believe that it is inevitable that Taiwan will eventually integrate with the much larger mainland, especially economically. This trend is already under way, and they see it as leading inexorably to a peaceful resolution of the Taiwan sovereignty question. At the same time, they also worry that Beijing's rigid "one-China principle," when combined with an increasingly strong sense of Taiwanese political and cultural identity, will ultimately lead to increased tensions and even a possible military confrontation between the United States and China over the question of Taiwan's sovereignty.

The analyses in this paper are based on U.S. government positions as stated in official documents, comments or statements by current and ex-officials, and the comments and opinions of nonofficial American observers, mainly in Washington, D.C., who usually have an important impact on U.S. policy on cross-Strait issues.

This paper presents a chronological review of the components of the U.S. government's "one-China" policy and then goes on to examine a definitional problem in the debate on sovereignty and its implications for Taiwan's sovereignty. A preliminary assessment of the U.S. perception of Taiwan's sovereignty will be carried out by analyzing the key documents and the interviews which the author has conducted in Washington, D.C. This paper will conclude with a discussion of some of the implications for the future of cross-Strait relations. It is argued that the U.S. view of Taiwan's sovereignty may be defined as "one policy, three sovereignties, and five perceptions."

The Evolution of the U.S. Government's "One-China" Policy

Despite the various statements on the subject made over three decades, the U.S. "one-China" policy remains unclear. And the policy concerning Taiwan remains even more ambiguous and subject to different interpretations. Generally, the U.S. government's policy toward Taiwan is framed by the evolution of its "one-China" policy. It is mainly governed

by the Taiwan Relations Act of 1979 and three joint communiqués with the PRC (of 1972, 1979, and 1982).¹⁰ The "six assurances" made to the ROC government, even though they were in "non-paper" format,¹¹ also constitute an important part of the policy's foundation.

From the time of the Shanghai Communiqué of February 1972 to the present, we cannot find any decisive terms or precise wording that defines the U.S. position on Taiwan's sovereignty, and it has been described as a "well-calibrated agnosticism."¹² The U.S. government has not explicitly stated its position on the status of Taiwan, but has rather allowed it to be subject to different interpretations in Washington, Beijing, and Taipei.

In February 1972, only ten months after the Starr Memorandum, Washington appeared to contradict its position that Taiwan's sovereignty was an unsettled question. Given President Richard Nixon's perception of the strategic value of improved relations with Beijing, finding a partner in the struggle against the Soviet Union was far more important than upholding Taiwan's sovereignty. It is not surprising that, faced with challenges from the Soviet Union, Nixon and Mao Zedong (毛澤東) were eager to use each other and were able to agree to a compromise formula of "one China, but not now."¹³ In the Shanghai Communiqué, the Nixon administration declared that "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."¹⁴

¹⁰The United States released a review of its Taiwan policy on September 7, 1994. The review begins by stating that U.S. policy toward Taiwan is governed by these four documents.

¹¹As used in U.S. diplomacy, a "non-paper" is a document on plain bond paper, without seal or signature, intended to convey a position or policy in an informal but nevertheless authoritative manner.

¹²Harvey Feldman, "President Reagan's Six Assurances to Taiwan and Their Meaning Today," *Webmemo* (Heritage Foundation, October 2, 2007).

¹³Warren I. Cohen, "Nixon in China: A Turning Point in World History," in *Significant Events in U.S. Foreign Relations (1900-2001)* (An electronic journal of the U.S. Department of State, April 2006), 33. <http://usinfo.state.gov/journals/itps/0406/ijpe/ijpe0406.pdf>.

¹⁴http://usinfo.state.gov/eap/Archive_Index/joint_communique_1972.html.

By using the term "acknowledge" instead of "recognize," the communiqué could be interpreted as stressing continuity with the past U.S. policy of maintaining neutrality and equal distance from Beijing and Taipei, or as an indirect indication that Washington was moving toward acceptance of Beijing's "one-China" principle.

Neither the rhetoric of the Shanghai Communiqué nor the memorandum of secret talks between President Richard Nixon and Premier Zhou Enlai (周恩來) of the PRC in 1972 turned out to be expressions of the real U.S. policy under the administrations of Richard Nixon and his successor, President Gerald Ford. However, the communiqué did become an important reference for U.S. policymakers on this issue.¹⁵ Even after it shifted diplomatic recognition to the PRC, the United States still "acknowledged the Chinese position" that there is one China and that Taiwan is part of China. However, the object of U.S. acknowledgment shifted noticeably.¹⁶

Instead of the phrase "all Chinese on either side of the Taiwan Strait" in the 1972 Shanghai Communiqué, the 1979 normalization communiqué used "the Chinese position":

The United States of America recognizes the Government of the People's Republic of China as the sole legal Government of China. Within this context, the people of the United States will maintain cultural, commercial, and other unofficial relations with the people of Taiwan.

The Government of the United States of America acknowledges the Chinese position that there is but one China and Taiwan is part of China.

This ambiguous formulation goes considerably further in recognizing the PRC's claim to Taiwan. The 1982 communiqué further stated that the United States had no intention of pursuing a policy of "two Chinas" or "one China, one Taiwan":

¹⁵According to the declassified memorandums of conversation of the secret talks between Richard Nixon and Zhou Enlai, Nixon stated as the first of his "five principles" that "there is one China, and Taiwan is a part of China. There will be no more statements made—if I can control our bureaucracy—to the effect that the status of Taiwan is undetermined." The Carter administration called these promises "Nixon's Five Points."

¹⁶Statement of Hon. John Glenn, U.S. Senator from Ohio, on China-Taiwan policy, July 22, 1982, in Lester L. Wolff and David L. Simon, *Legislative History of the Taiwan Relations Act* (New York: American Association for Chinese Studies, 1982), 306-7.

The United States of America recognized the Government of the People's Republic of China as the sole legal government of China, and it acknowledged the Chinese position that there is but one China and Taiwan is part of China.

The United States Government attaches great importance to its relations with China, and reiterates that it has no intention of infringing on Chinese sovereignty and territorial integrity, or interfering in China's internal affairs, or pursuing a policy of "two Chinas" or "one China, one Taiwan."

Since President Jimmy Carter terminated diplomatic relations with Taiwan, the issue for the United States has been how to protect its significant security and commercial interests on the island. The Taiwan Relations Act (TRA), signed into law on April 10, 1979, was born of that need. The TRA was not designed to define or to clarify "one China," but rather to set out the terms and limitations by which successive administrations would have to abide in conducting relations with both Beijing and Taipei.¹⁷ In order to avoid upsetting U.S. relations with the PRC, the TRA placed Taiwan in a unique position. For example, Sec. 4(b)(1) 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."¹⁸

In other words, an entity no longer recognized would continue to be treated as the government of a friendly state for all purposes of U.S. law. The TRA went further by defining the term "Taiwan" essentially as the islands of Taiwan and the Pescadores, plus the people, entities, and governing authorities there.¹⁹

Sec. 15(2): The term "Taiwan" includes, as the context may require, the islands of Taiwan and the Pescadores, the people on those islands, corporations and other entities and associations created or organized under the laws applied on those islands, and the governing authorities on Taiwan recognized by the United States as the Republic of China prior to January 1, 1979, and any suc-

¹⁷Harvey J. Feldman, "The Taiwan Relations Act: Past, and Perhaps Future" (Remarks at the international forum on Taiwan's National Security, sponsored by the Taiwan International Interchange Foundation, Taipei, November 7, 1998). <http://www.wufi.org.tw/eng/feldman.htm>.

¹⁸Kerry Dumbaugh, *Taiwan: Text of the Taiwan Relations Act, the U.S.-China Communiqués, and the "Six Assurances"* (CRS Report for Congress, May 21, 1998), 3.

¹⁹*Ibid.*, 9.

cessor governing authorities (including political subdivisions, agencies, and instrumentalities thereof).

When he agreed to sign the August 17th Communiqué with Beijing, President Ronald Reagan sought to reassure Taiwan in an informal but authoritative manner.²⁰ On July 14, 1982, James Lilley, the head of the American Institute in Taiwan (AIT), delivered orally six assurances regarding U.S. policy toward Taiwan.²¹ These were that in negotiating the third joint communiqué with the PRC, the United States (1) had not agreed to set a date for ending arms sales to Taiwan; (2) had not agreed to hold prior consultations with the PRC on arms sales to Taiwan; (3) would not play any mediation role between Taipei and Beijing; (4) had not agreed to revise the Taiwan Relations Act; (5) had not altered its position regarding sovereignty over Taiwan; and (6) would not exert pressure on Taiwan to negotiate with the PRC.

In the "six assurances," the U.S. government did not really comment on Taiwan's sovereignty. However, many years later, in 2003, the issue of a referendum on independence in Taiwan compelled the United States to make a public statement on Taiwan's sovereignty. On December 9 that year, President George W. Bush bluntly expressed his opposition to the planned referendum in the presence of Premier Wen Jiabao (溫家寶) of the PRC in the Oval Office. Bush said: "We oppose any unilateral decision by either China or Taiwan to change the status quo. And the comments and actions made by the leader of Taiwan indicate that he may be willing to make decisions unilaterally to change the status quo, which we oppose."²² Then on October 25, 2004, Colin Powell, the U.S. secretary of state, said in an interview with Hong Kong-based Phoenix TV: "There is only one China. Taiwan is not independent. It does not enjoy sovereignty as a nation, and that remains our policy, our firm policy."²³

²⁰James Lilley explained that the "six assurances" were a sign to Taiwan that it was not being abandoned by the Reagan administration.

²¹Kan, *China/Taiwan: Evolution of the "One China" Policy*, 42.

²²<http://www.whitehouse.gov/news/releases/2003/12/20031209-2.html>.

²³<http://usinfo.state.gov/eap/Archive/2004/Oct/26-277540.html>.

U.S. officials were quoted as saying Powell had just used the wrong language. The State Department issued a clarification that said the United States' "one-China" policy had not changed.²⁴ However, U.S. government officials have made several remarks since 2007 that have been explicitly unfavorable to Taiwan. Two of the most explicit statements on Taiwan's sovereignty are those by Dennis Wilder and Thomas Christensen. On August 30, 2007, Wilder, the senior director for Asian affairs at the National Security Council, said: "Taiwan, or the Republic of China, is not at this point a state in the international community. The position of the United States government is that the ROC—Republic of China—is an issue undecided, and it has been left undecided, as you know, for many, many years."²⁵ Christensen, the U.S. deputy assistant secretary of state for East Asian and Pacific affairs, went further on September 11, 2007, saying: "We do not recognize Taiwan as an independent state, and we do not accept the argument that provocative assertions of Taiwan independence are in any way conducive to maintenance of the status quo or peace and stability across the Taiwan Strait."²⁶

From the United States' major official and several key oral statements, we might conclude that there is no clear opinion on Taiwan sovereignty. Within the framework of Washington's "one-China" policy, it is clear that Reagan's "six assurances," together with the Taiwan Relations Act, laid the main foundation for U.S. policy toward Taiwan, but did not deal with the question of Taiwan's sovereignty. The U.S. position on this question remains unknown, and part of the reason for this may lay in the complexity of the concept of sovereignty.

²⁴Edward Cody, "Powell's Comments in China Rile Taiwan," *Washington Post*, October 28, 2004; A18. <http://www.washingtonpost.com/wp-dyn/articles/A1564-2004Oct27.html>.

²⁵<http://www.whitehouse.gov/news/releases/2007/08/20070830-2.html>.

²⁶Thomas Christensen's address at the Defense Industry Conference organized by the U.S.-Taiwan Business Council in Annapolis, Maryland on the topic, "A Strong and Moderate Taiwan." <http://www.state.gov/p/eap/rls/rm/2007/91979.htm>.

Defining Sovereignty and Its Implications for Taiwan's Sovereignty

Within the modern world system, Westphalian sovereignty is often considered to be the only appropriate principle of international intercourse. However, though frequently used in international politics, the term "sovereignty" is rarely well defined, and the way sovereignty overlaps with "jurisdiction" confuses readers even more. Some argue that when we use the term "de jure" we are usually referring to sovereignty, whereas the term "de facto" implies jurisdiction.

This is not only a term that is difficult for politicians to define, even leading figures in the field of modern international law, such as Lassa Oppenheim, have admitted that there is no universal agreement regarding the definition of "sovereignty."

Sovereignty may refer to a personalized monarch (real or ritualized); a symbol of absolute, unlimited control or power; a symbol of political legitimacy; a symbol of political authority; a symbol of self-determined, national independence; a symbol of governance and constitutional order; a criterion of jurisprudential validation of all law (*grundnorm*, rule of recognition, sovereign); a symbol of the juridical personality of sovereign equality; a symbol of recognition; a formal unit of legal system; a symbol of powers, immunities, or privileges; a symbol of jurisdictional competence to make and/or apply law; and/or a symbol of basic governance competencies (constitutive process).²⁷

When people talk about "sovereignty" or "statehood," the most cited source is the Montevideo Convention of 1933 which defines a state as an entity possessing a permanent population, a defined territory, a government, and the capacity to enter into relations with other states. However, the principle of sovereignty and the practice of international politics may often diverge. The principle of sovereignty rests on a formal-legal concep-

²⁷For more details of each of these definitions, see Winston P. Nagan and Graig Hammer, "The Changing Character of Sovereignty in International Law and International Relations," *Columbia Journal of Transnational Law* 43, no. 1 (2004): 144-45.

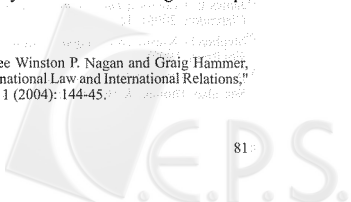


Table 1
Three Sovereignties in International Politics

De jure	Juridical/external sovereignty/Vattelien sovereignty/international sovereignty
De facto	Empirical/internal sovereignty/interdependence sovereignty/domestic sovereignty/sovereignty in the cross-Strait context
Domestic	Popular or individual sovereignty/Taiwan Relations Act/assent of the people of Taiwan

Source: Stephen D. Krasner, "Rethinking the Sovereign State Model," *Review of International Studies* 27, no. 5 (December 2001): 17-42.

tion of authority. The practice of international politics conforms better with a relational conception. From the legal perspective, sovereignty, in its most common modern usage, refers to the "totality of international rights and duties recognized by international law" residing in an independent state. It is not itself a right, nor is it a criterion for statehood; in other words, sovereignty is an attribute of states, not a precondition.²⁸

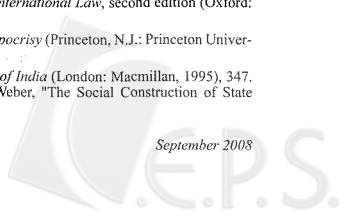
However, from the policy perspective, the development and reinterpretation of sovereignty has closely mirrored the evolution of the state. The norm of sovereignty has been defined, sustained, and interpretively changed by major powers. Stephen Krasner describes sovereignty as "organized hypocrisy."²⁹ Even though it might be difficult to give a clear-cut definition of sovereignty in terms of the practice of international politics, we can summarize the U.S. perceptions or definitions of sovereignty into three categories (see table 1).

The first "de jure" category includes juridical or external sovereignty which means "the legal identity of the state in international law, an equality of status with all other states, and the claim to be the sole official agent acting in international relations on behalf of a society."³⁰ What Krasner

²⁸James R. Crawford, *The Creation of States in International Law*, second edition (Oxford: Clarendon, 2006), 32.

²⁹Stephen D. Krasner, *Sovereignty: Organized Hypocrisy* (Princeton, N.J.: Princeton University Press, 1999).

³⁰Ramesh Thakur, *The Government and Politics of India* (London: Macmillan, 1995), 347. See also Thomas J. Biersteker and Cynthia Weber, "The Social Construction of State



calls "Vattelian sovereignty" refers to the exclusion of external sources of authority, both de jure and de facto.³¹ And one interviewee defined it as "international sovereignty,"³² which refers to the recognition that is accorded to judicially independent territorial entities which are capable of entering into voluntary contractual agreements.

The second "de facto" category refers to the idea of an empirical or internal sovereignty, which is based on the understanding that states have the right and the ability to control the people, resources, and institutions within their borders. It is demonstrated through a country's capacity to manage its affairs.³³ "Interdependence sovereignty" or "domestic sovereignty" has similar implications which put more emphasis on the authority structures within states and the ability of these structures to effectively regulate behavior.³⁴ "Sovereignty in the cross-Strait context" is a term within this category with "Chinese characteristics."³⁵

The third, "domestic," category is different from the other two in that it focuses more on domestic factors than on the state as an actor in international politics. The term "popular sovereignty" or "individual sovereignty" is predicated on the claim that all people are equal and entitled to fundamental freedoms, and that governments control people only with their consent.

Even the United States' sovereignty could be categorized in a similar way, and it could be claimed that U.S. policies are based on the support (or the lack of support) for certain definitions of sovereignty. However, U.S. practices or policies with regard to Taiwan's sovereignty are not so logical.³⁶

Sovereignty," in *State Sovereignty as Social Construct*, ed. Thomas J. Biersteker and Cynthia Weber (Cambridge: Cambridge University Press, 1996), 2.

³¹Stephen D. Krasner, "Rethinking the Sovereign State Model," *Review of International Studies* 27, no. 5 (December 2001): 20.

³²Author's notes of interview in Washington, D.C., September 11, 2006.

³³Samuel M. Makinda, "Security and Sovereignty in the Asia-Pacific," *Contemporary South-east Asia* 23, no. 3 (December 2001): 405.

³⁴Krasner, "Rethinking the Sovereign State Model," 20.

³⁵Author's notes of interview in Washington, D.C., September 11, 2006.

³⁶Author's notes of interview in Washington, D.C., November 9, 2006.

Some people argue that Taiwan may not have juridical sovereignty, but it is empirically sovereign because it has its own government, and that government controls all the institutions, resources, and people within its territory.³⁷ Some try to define Taiwan as a "sui generis entity" or "near-state." The more common thinking in Washington might be that Taiwan enjoys everything a sovereign state does, apart from the name and flag.³⁸ In brief, many attempt to define Taiwan as an entity which holds many of the attributes of sovereignty commonly associated with statehood, but which lacks full standing as a state, especially in terms of international sovereignty.

However, whenever Taiwan talks of itself as a "sovereign state," even though it might be referring to empirical sovereignty, the United States is reluctant to accept it. This is because the United States realizes that the application of the term "sovereign state" to Taiwan is more than Beijing is willing to contemplate as a matter of legal principle.

One interviewee asserted that the English word "sovereignty" is to blame for the deadlock in cross-Strait relations.³⁹ Most of the interviewees agreed that the available legal definition of sovereignty, if there is one, is not sufficient to resolve the undetermined status of Taiwan, and that the optimism that legal arrangements might resolve the deadlock seen in cross-Strait relations is misplaced. One former National Security Council official even asserted that "it's all about DEMOCRACY and SECURITY and not sovereignty."⁴⁰

Even experts in international law assert that without a change in political will or perceived interests on one or both sides of the Strait, focusing on a formal solution afforded by international law will do little good and may do considerable harm.⁴¹ It is thus imperative that we understand the

³⁷Samuel M. Makinda, "The United Nations and State Sovereignty: Mechanism for Managing International Security," *Australian Journal of Political Science* 33, no. 1 (March 1998): 101-15.

³⁸Author's notes of interview in Washington, D.C., October 26, 2006.

³⁹Author's notes of interview in Washington, D.C., October 19, 2006.

⁴⁰Author's private email correspondence with ex-NSC official in Washington, D.C., September 1, 2006.

⁴¹Jacques deLisle, "The China-Taiwan Relationship: Law's Spectral Answers to the Cross-Strait Sovereignty Question," *Orbis* 46, no. 4 (Autumn 2002): 733.

Table 2
The Views of the United States, Taiwan, and China on Taiwan's Sovereignty

	Taiwan sovereignty	China sovereignty	Sovereignty category
CCP	Taiwan is part of China; both mainland and Taiwan belong to the same China	Only one: Beijing	De jure
KMT	Taiwan is part of China, but Taiwan and the mainland should enjoy equal status	Acknowledgment of two governments before unification	De facto
DPP	Taiwan does not belong to the PRC, and the PRC's or China's sovereignty does not apply to Taiwan	Beijing is the government of the PRC; Taipei is the government of Taiwan	Domestic (appeal to popular sovereignty)
U.S.	Taiwan's status is unsettled; however, the United States does not challenge the ROC's governance of Taiwan, or the PRC's position on Taiwan's sovereignty	ROC before 1979, currently PRC	Domestic (bound by the Taiwan Relations Act)

Key: CCP: Chinese Communist Party; KMT: Kuomintang; DPP: Democratic Progressive Party.

Source: Vincent Wei-cheng Wang, "The Chen Shui-bian Administration's Mainland Policy: Toward a Modus Vivendi or Continued Stalemate?" *American Asian Review* 20, no. 3 (Fall 2002): 98.

position of each party on the issue of Taiwan sovereignty as well as the sovereignty category to which each party appeals (see table 2).

Most countries have established diplomatic relations with Beijing and recognize the government of the PRC as the "sole legal government of China." It is thus easy for the Chinese Communist Party (CCP) to claim that Taiwan is part of China as its *de jure* sovereignty or international sovereignty is constructed vis-à-vis the recognition of the international community.

The basic positions of the Kuomintang (KMT, 中國國民黨) and the Democratic Progressive Party (DPP, 民主進步黨) on Taiwan's sovereignty

are different. The KMT tends to be pro-integration: Taiwan is part of China, but Taiwan and the mainland should enjoy equal status, while the DPP favors separation: Taiwan does not belong to the PRC, and the PRC's or China's sovereignty does not apply to Taiwan. However, the differences between the two parties are decreasing.

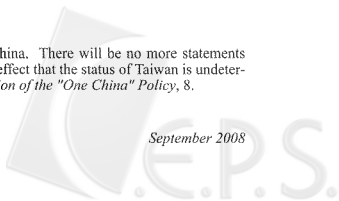
The United States is reluctant to define Taiwan's sovereignty, and we might conclude from interviews conducted in Washington, D.C., that Taiwan's status is not settled. However, while the United States does not challenge the ROC's governance of Taiwan, neither does it challenge the PRC's position on Taiwan's sovereignty. In brief, the United States does not take sides on this issue, but it is bound (to a certain degree) by the Taiwan Relations Act. The foremost concern of the United States is to strike a delicate balance between helping Taiwan to practice its consent while at the same time avoiding any violation of U.S. national interests (which implies avoiding a military confrontation with China), and this clearly takes precedence over getting involved in defining Taiwan's sovereignty.

U.S. Perception of Taiwan's Sovereignty

From the legal basis of the U.S. government's "one-China" policy and the U.S. interviewees' interpretations of Taiwan's sovereignty, we will attempt to conceptualize U.S. attitudes or perceptions on this issue.

From the legal perspective, Taiwan's sovereignty is undetermined or unsettled, and the United States will not define Taiwan's sovereignty publicly. The foremost among Nixon's "Five Principles," which were laid out during secret talks with Zhou Enlai in February 1972, was that "Taiwan is part of China."⁴² This never became Washington's official policy on the issue of Taiwan's sovereignty, but rather represented a personal commitment to the PRC. Some scholars of international law argue that the present

⁴²There is one China, and Taiwan is a part of China. There will be no more statements made—if I can control our bureaucracy—to the effect that the status of Taiwan is undetermined." Full text in Kan, *China/Taiwan: Evolution of the "One China" Policy*, 8.



status of Taiwan is that of a Chinese territory, rather than a territory subject to a condominium, or a territory with undetermined title. James Crawford uses the example of the joint communiqué issued by the United States and the PRC 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.⁴³

Crawford emphasizes "does not challenge that position" to indicate that the United States, like most other states, has more or less unequivocally recognized the status of Taiwan as that of a Chinese territory. However, the use of "acknowledge" rather than "recognize" might only have a slight difference of meaning in international law, but from a policy perspective, the two terms are very different.⁴⁴ In 1971, Zhou Enlai clearly stated his opposition to the fact that the United States, like the United Kingdom, only "acknowledged" the PRC position on Taiwan, because to China, use of that term was tantamount to supporting the idea that the island's status remained undetermined.⁴⁵

It is understandable that some people get confused by the subtle differences between the terms "acknowledge" and "recognize" or "do not support" and "oppose," because for most Americans, and even for some senior U.S. government officials, there is no big difference between them. For example, one interviewee argued that Colin Powell's remarks that Taiwan enjoyed no sovereignty as a nation were not meant to contribute to the debate over Taiwan's sovereignty, but merely to show its special relations with the United States.⁴⁶ The same reason lay behind Thomas Christen-

⁴³Crawford, *The Creation of States in International Law*, 209.

⁴⁴During debate on the Taiwan Relations Act in February 1979, Deputy Secretary of State Warren Christopher responded to Senator Jacob Javits' note on the difference by saying that "we regard the English text as being the binding text. We regard the word 'acknowledge' as being the word that is determinative for the U.S."

⁴⁵Romberg, *Rein In at the Brink of the Precipice*, 36.

⁴⁶Author's notes of interview in Washington, D.C., November 2, 2006.

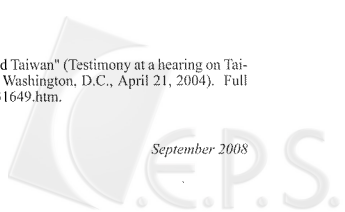
sen's statement on September 11, 2007, that "we do not recognize Taiwan as an independent state." The United States is clearly aware that words matter in the formation of its cross-Strait policy.⁴⁷

The United States avoids an explicit definition of Taiwan's sovereignty. This can be seen from Dennis Wilder's statement of August 2007 about Taiwan not being a state in the international community and the U.S. government position being that the Republic of China is an undecided issue. Even though the United States supports democracy in Taiwan and the island's proper international status, this does not mean that the United States supports Taiwan's sovereignty. These are uncomfortable realities, yet they are the facts with which the United States grapples and it will "do no one any favors if we are unclear in our expectations or obfuscate where those limitations are."⁴⁸ Obviously, Taiwan's sovereignty is one of these cases.

The ROC government is merely the governing authority on Taiwan according to its definition in the Taiwan Relations Act. However, the United States believes that Taiwan enjoys everything that a sovereign state does, except the name and flag. After the United States "recognized" the government of the PRC as the sole legal government of China in 1979, and terminated "governmental relations between the United States and the governing authorities on Taiwan recognized by the United States as the Republic of China prior to January 1, 1979," the ROC was no longer a "sovereign state" in terms of international sovereignty according to the United States; it was merely "the governing authority on Taiwan." And Washington's relations with Taiwan have remained unofficial relations with "the islands of Taiwan and the Pescadores, the people on those islands, corporations, and other entities and associations created or organized under the laws applied on those islands, and the governing authorities on Taiwan recognized by the United States as the Republic of China prior to January

⁴⁷Ibid.

⁴⁸James A. Kelly, "Overview of U.S. Policy Toward Taiwan" (Testimony at a hearing on Taiwan, House International Relations Committee, Washington, D.C., April 21, 2004). Full text on <http://www.state.gov/p/eap/rls/rm/2004/31649.htm>.



1, 1979, and any successor governing authorities."⁴⁹ However, because of its "one-China" policy, the United States does not officially use the title "Republic of China," although it very much hopes that Taiwan will keep using that title.⁵⁰

The Taiwan Relations Act, which falls within the context of U.S. domestic law, clearly gives Taiwan the same status as "foreign countries, nations, states, governments, or similar entities." The laws of the United States which refer or relate to a "sovereign entity" apply with respect to Taiwan. To quote the Act:

Whenever authorized by or pursuant to the laws of the United States to conduct or carry out programs, transactions, or other relations with respect to foreign countries, nations, states, governments, or similar entities, the President or any agency of the United States Government is authorized to conduct and carry out, in accordance with section 6 of this Act, such programs, transactions, and other relations with respect to Taiwan (including, but not limited to, the performance of services for the United States through contracts with commercial entities on Taiwan), in accordance with the applicable laws of the United States.⁵¹

Even though it was not intended that the Taiwan Relations Act should define or establish Taiwan's sovereignty, some interviewees argued that the United States, which provides Taiwan with "arms of a defensive character" and other "relations with respect to foreign countries," has given Taiwan the same position as that enjoyed by any other "sovereign state."⁵²

Every administration has had its own policy toward China and Taiwan since 1979, but none has ever fundamentally changed the U.S. "one-China" policy which is different from the PRC's "one-China principle." Throughout the history of U.S.-China or U.S.-Taiwan relations, most of the interviewees would agree that the United States has never fundamentally changed its "one-China" policy. In 1972, while still recognizing the ROC, the Nixon administration declared that it "acknowledges" that "all Chinese on both sides of the Taiwan Strait" maintain that there is one China

⁴⁹AIT website, http://www.ait.org.tw/en/about_ait/tra/.

⁵⁰Author's notes of interview in Washington, D.C., November 2, 2006.

⁵¹Full text on AIT website, http://www.ait.org.tw/en/about_ait/tra/.

⁵²Author's notes of interview in Washington, D.C., November 13, 2006.

and Taiwan is a part of China, and that the United States did not challenge that position. And the Carter administration in 1979 and the Reagan administration in 1982 reiterated that the United States "acknowledged the Chinese position" that there was but one China and that Taiwan is part of China.⁵³

Even though in the 1982 communiqué, the Reagan administration further stated that the United States had no intention of pursuing a policy of "two Chinas" or "one China, one Taiwan," in the earlier "six assurances," President Reagan had reiterated that the United States "has not changed its position regarding the sovereignty of Taiwan." In 1994, after its Taiwan Policy Review,⁵⁴ the Clinton administration stated that the United States had "acknowledged" the Chinese position on "one China." Even so, President Bill Clinton's "three no's" of 1998 aroused suspicion that there had been a change in policy. Stanley Roth, the assistant secretary of state, testified in 1999 that "every point made there [in the "three no's"] had been made before by a previous administration and there was no change whatsoever."⁵⁵ In 2000, Clinton, in a speech at Johns Hopkins University, further stated that cross-Strait relations must be resolved peacefully "with the assent of the people of Taiwan."

On April 25, 2001, George W. Bush stated that the U.S. commitment to Taiwan was an obligation to do "whatever it took to help Taiwan defend herself." He also said that "a declaration of independence is not the one-China policy, and we will work with Taiwan to make sure that that doesn't

⁵³Kan, *China/Taiwan: Evolution of the "One China" Policy*, 8.

⁵⁴Winston Lord, assistant secretary of state for East Asian and Pacific affairs, testifying before the Senate Foreign Relations Committee, September 27, 1994, noted that "the lengthy, detailed inter-agency policy review that we have conducted is the first of its kind launched by any Administration of either political party since we shifted recognition to Beijing in 1979." While opposing legislation to specifically allow visits by top leaders of Taiwan, the administration decided to send high-level economic and technical officials to visit Taiwan, to establish a sub-cabinet level economic dialogue with Taiwan, to allow Taiwan's office in the United States to change its name to the Taipei Economic and Cultural Representative Office (TECRO), and to support Taiwan's membership in international organizations where statehood is not a requirement and Taiwan's voice to be heard in organizations where its membership is not allowed.

⁵⁵Kan, *China/Taiwan: Evolution of the "One China" Policy*, 10.

happen." One interviewee said that Bush's position is clear: he has sympathy for Taiwan, but he does not support the independence of Taiwan.⁵⁶ This shows that the United States subscribes to a dynamic definition of Taiwan's sovereignty that is recalibrated to fit changing circumstances and interests, rather than being an immutable principle.

Several interviewees agreed that James Kelly's testimony of 2004 clearly differentiated the United States' "one-China" policy from Beijing's "one-China principle" by calling the former "our one China":

In my testimony, I made the point "our One China," and I didn't really define it, and I'm not sure I very easily could define it. ... It is not the One-China policy or the One-China principle that Beijing suggests, and it may not be the definition that some would have in Taiwan. But it does convey a meaning of solidarity of a kind among the people on both sides of the Strait that has been our policy for a very long time.⁵⁷

Even as U.S.-Taiwan relations maintain a positive trend, U.S.-China relations are developing even faster because of the rise of the Chinese economy and a shared international responsibility. This growing gap will undermine the foundation Taiwan would need to progress from its current status. Most of the interviewees agreed that Taiwan is a success story for democracy and that it is unlikely that the United States would give up on Taiwan. However, they all pointed out the critical implications that China's economic growth and its increasing international engagement could have for Washington's economic and strategic interests. The PRC is now the third-largest U.S. trading partner, with total U.S.-China trade in 2007 estimated at US\$386 billion. The China-U.S. economic and strategic dialogue since 2006 shows that Sino-U.S. economic cooperation will go even further.

One interviewee asserted that the issue of Taiwan's sovereignty would become less and less important:

If we put "interest" and "time" as two variables, the PRC has 1.3 billion people and its military and economy continue to grow, maybe in 2040, China will become a democracy or at least more humane, even though U.S.-Taiwan relations

⁵⁶ Author's notes of interview in Washington, D.C., November 2, 2006.

⁵⁷ See note 48 above.

also develop in positive way, but the gap between U.S.-China and U.S.-Taiwan relations would become bigger.⁵⁸

Most of the interviewees agreed that the growing gap will undermine the ability of Taiwan to gain on its current status. Even though the United States will keep to its commitment to support democracy in Taiwan, that might be one of the few things that the United States can do for Taiwan. Taiwan, meanwhile, can only hope to enjoy U.S. support if it avoids taking unilateral steps that risk destroying all that it has accomplished.⁵⁹ One interviewee said plainly that by pursuing sovereignty, Taiwan will definitely destroy what it enjoys now.⁶⁰ Some of the interviewees, who really understand the historical background of U.S.-Taiwan relations, confessed that the United States might even support Taiwan's "de facto domestic sovereignty," which would mean that neither Taiwan nor mainland China would have jurisdiction over the other side. The United States will not support Taiwan in its bid for international sovereignty.⁶¹

The issue of Taiwan's sovereignty is what the two sides of the Strait make of it. The United States will accept any peaceful resolution as long as it has the consent of the people of Taiwan. U.S. policy has stressed the *process*—such as the peaceful resolution of the Taiwan question, dialogue, the assent of the Taiwanese people, and no provocations or unilateral changes by either side—rather than the *outcome*.⁶² Ever since the Shanghai Communiqué of 1972, the United States has urged China to seek a peaceful resolution of the Taiwan question:

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.⁶³

⁵⁸ Author's notes of interview in Washington, D.C., October 17, 2006.

⁵⁹ See note 48 above.

⁶⁰ Author's notes of interview in Washington, D.C., November 13, 2006.

⁶¹ Author's notes of interview in Washington, D.C., September 11, 2006 and November 7, 2006.

⁶² Kan, *China/Taiwan: Evolution of the "One China" Policy*, 7.

⁶³ *Ibid.*

The long-standing position of the United States on cross-Strait policy is that it is not willing to be a direct participant in the dispute between the PRC and Taiwan, but rather it has a strong interest in doing all it can to create an environment that is conducive to a peaceful resolution.⁶⁴

The U.S. position is still based on the so-called "six assurances," neither seeking to mediate between the PRC and Taiwan, nor exerting pressure on Taiwan to come to the negotiating table. Even though the United States will keep to its commitment to make available defensive arms and defensive services to Taiwan in order to help Taiwan meet its self-defense needs, this is not a blank check for Taiwan to resist cross-Strait dialogue.

Most interviewees agreed that the United States will accept any peaceful resolution as long as it has the consent of the people of Taiwan. Even though one asserted that it was obvious that no matter what the outcome, China would still remain unhappy.⁶⁵ Several interviewees urged China to envisage a more pragmatic way forward on the Taiwan sovereignty issue during talks held with Chinese officials.

Frankly speaking, the U.S. policy on cross-Strait issues is not unified. As one interviewee pointed out, the Department of Defense or the Vice President's Office might adopt the different view that a separate Taiwan is more in the interests of the United States than reunification with China would be.⁶⁶ However, more interviewees tended to agree that peaceful integration is more likely to be the future outcome than peaceful separation.⁶⁷ However, without peaceful resolution and the consent of the people of Taiwan, the United States will not accept any unilateral decision. In brief, even though the Taiwan sovereignty issue is what both sides of the Strait make of it, the consensus among the people of Taiwan plays a more important role.

⁶⁴See note 48 above.

⁶⁵Author's notes of interview in Washington, D.C., October 31, 2006.

⁶⁶Author's notes of interview in Washington, D.C., November 2, 2006.

⁶⁷Author's notes of interview in Washington, D.C., November 13, 2006.

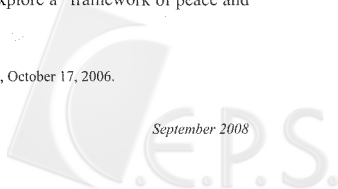


Implications for Future Cross-Strait Relations

Under the current circumstances, it is hard to think that the United States would support any policy on the Taiwan sovereignty issue which would favor Taiwan's separation from China, because the United States has mixed feeling about the current Taiwanese domestic political situation and recognizes that China would have a strong response to such a separation. The most likely outcome for a peaceful resolution might not favor Taiwan. For example, one interviewee suggested a "Hong Kong Model Plus."⁶⁸ However, more interviewees asserted that the cross-Strait situation is not static. And what should be done to change the circumstances or to accelerate movement in terms of Taiwan's sovereignty? Here are some things that should be done in order to bring about a win-win-win outcome.

1. There is a general assessment in Washington that under the current circumstances, peaceful integration *should* be easier than peaceful separation, since Beijing has the will and power to stop Taiwan permanently separating from China.
2. However, if the Chinese people are really desperate to see all the entities of China reunited, no matter which China that might be, Chinese leaders *should* adopt a more pragmatic way in terms of Taiwan's sovereignty.
3. Since the United States explicitly states that it does not support Taiwan gaining international sovereignty, China *should* be confident in itself.
4. No peaceful resolution *should* be accepted by the United States without the consent of the people on both sides of the Taiwan Strait, especially "the assent of people of Taiwan." However, if either side pushes the United States for a clear definition of Taiwan's sovereignty, the outcome might not be what they expected.
5. The two sides *should* begin to explore a "framework of peace and

⁶⁸ Author's notes of interview in Washington, D.C., October 17, 2006.



stability," a "peace accord" without any preconditions, which could help to reduce the likelihood of military miscalculation and accidents, and to generate a final outcome for the Taiwan sovereignty issue.

No one knows what will happen to China and Taiwan, since both sides are encountering great domestic challenges. In brief, one day when we look back on the history of this issue, we might have the same impression as Charles Dickens did at the beginning of *A Tale of Two Cities*: "It was the best of times, it was the worst of times."

Appendix: List of Interviewees

1. Alan Romberg, director of East Asian studies, Henry L. Stimson Center
2. Banning Garrett, director of Asia programs, Atlantic Council of the United States
3. Barbara Schrage, managing director, American Institute in Taiwan
4. Bates Gill, Freeman Chair in China Studies, Center for Strategic and International Studies
5. David Lampton, director of Chinese Studies at The Nixon Center; George and Sadie Hyman Professor of China Studies, Johns Hopkins School of Advanced International Studies (SAIS)
6. Derek Mitchell, senior fellow for Asia Projects in the International Security Program, Center for Strategic and International Studies
7. Douglas Grob, assistant professor of government and politics, University of Maryland
8. Douglas Paal, former director of the Taipei Office, American Institute in Taiwan
9. Gregory Man, director, Political Military Affairs, American Institute in Taiwan
10. Jeffery Bader, director of the John L. Thornton China Center and senior fellow in Foreign Policy Studies, Brookings Institution
11. John Tkacik, senior research fellow in Asian Studies, Heritage Foundation
12. Jonathan Adams, assistant director of Asia programs, Atlantic Council of the United States
13. Kerry Dumbaugh, specialist in Asian affairs, Congressional Research Service
14. Michael Fonte, DPP liaison in Washington, D.C.

15. Michael Green, Japan chair and a senior adviser, Center for Strategic and International Studies
16. Michael Swaine, senior associate and co-director of the China Program, Carnegie Endowment for International Peace
17. Randall Schriver, former deputy assistant secretary of state in the Bush administration
18. Richard Bush, senior fellow and director of the Center for Northeast Asian Policy Studies, Brookings Institution
19. Scott Kastner, assistant professor of government and politics, University of Maryland
20. Scott Tanner, senior political scientist, RAND Corporation
21. Shirley Kan, specialist in National Security Policy. Foreign Affairs, Defense, and Trade Division, Congressional Research Service
22. Stephen Yates, former Asia security director, Office of the Vice President in the Bush administration

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