



Taiwan Communiqué

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123

The Taiwan Relations Act at 30

April 2009 marks the 30th anniversary of the TRA, the law passed by Congress in 1979, which codified US informal ties with Taiwan after the break of relations with the “Republic of China” and normalization of relations with the “People’s Republic of China.”

On the following pages we first discuss how the US commitments under the TRA have helped Taiwan during the past three decades. Still over time it has become somewhat anachronistic: it has locked Taiwan into an informal relation with the US, which was perhaps warranted at the time it was passed. However, since then Taiwan has evolved into a vibrant democracy in which the large majority of the people want their country to be accepted as a full and equal member in the international community. The TRA and the “One China” policy have not kept up with this development; on the contrary, they have contributed to the island’s continuing international isolation, and thus need to be reassessed.

US commitment to an Asian democracy

The TRA contains important clauses on the determination of Taiwan’s future by peaceful means, the provision of defensive arms to Taiwan, and “...*maintenance of US capacity to resist any resort to force or other forms of coercion that would jeopardize the security, or the social or economic system, of the people of Taiwan.*”

The TRA also contains an important human rights clause, reaffirming “*the preservation and enhancement of the human rights of all the people on Taiwan*” as objectives of the United States. This clause was particularly important in the 1980s, when it became a standard reference for those in Congress – such as Senators Edward M. Kennedy and Claiborne Pell, as well as the Taiwanese-American community and native Taiwanese *tangwai* opposition leaders in Taiwan itself, who pushed for human rights and democracy on the island.

Over the past decades, the TRA was the legal basis for continued arms sales to the island, which served an important function in keeping an undemocratic China at bay. It was also an important rationale for maintaining a strong US military capacity in the East Asia region, ready to resist any attempts by China to coerce Taiwan and impose its authoritarian will on the democratic island.

The US readiness to defend Taiwan from Chinese aggression was best exemplified by the sending of two aircraft carrier battle groups to the waters surrounding Taiwan in March 1996, when China ratcheted up its threats and intimidations during Taiwan's first free and open presidential elections. After the arrival of the US naval forces, the Chinese sabre rattling abruptly subsided, but the episode also became one of the drivers for the acceleration of the Chinese military buildup, which had started a few years earlier.

While the Chinese military budget continued at growth rates of 15-20% per year, Taiwan's defense has seriously lagged behind during the past decade, mainly due to the fact that the KMT-dominated legislature time and again blocked the purchase of defensive arms from the US, which were promised by President Bush in 2001 when he made his well-known declaration that the US would do "whatever it takes" to help defend Taiwan.

As the Bush presidency drew to a close, the Bush Administration, in a last-minute decision, notified Congress on October 3rd 2008 of the approval of approximately half the package originally proposed. It is now up to the new Obama Administration to find a constructive way forward. This is not made easy by the fact that the new KMT government of Ma Ying-jeou is showing itself wishy-washy on Taiwan's defense, preferring to rely on its rapprochement with China to maintain peace in the Strait. However, China is stepping up the military pressure on the island, and is continuing its military buildup.

Taiwan Communiqué comment: *Against the background of the present situation, it is essential that the Obama Administration makes clear that it will stick to its commitments under the TRA to help defend Taiwan in the face of Chinese military threats. Any wavering will be interpreted by China as a sign of weakness, and an unwillingness to help defend the democratic island.*

*At the same time, it is important to pay attention to several important clauses which have been neglected, certainly in recent years. One of these is the human rights clause, which states that "**The preservation and enhancement of the human rights of all the people on Taiwan are hereby reaffirmed as objectives of the United States.**" This was relevant in 1979, when the Taiwanese still languished under the KMT's martial law, but is equally relevant today, when we are witnessing a serious erosion of human rights and justice on the island.*

Another important clause is found in Section 3303.(d): *“Nothing in this chapter (the TRA) may be construed as a basis for supporting the exclusion or expulsion of Taiwan from continued membership in any international financial institution or any other international organization.”* At the time, Taiwan was a member in a number of international organizations, and it was therefore emphasized that it should not be excluded. This is highly relevant now, when a democratic Taiwan wants to gain membership in international organizations.



Five architects of the 1979 Taiwan Relations Act: Harvey Feldman (State Department), Senators Jacob Javits (D-NY) and Claiborne Pell (D-RI) on the top row, and Congressmen Jim Leach (R-IA) and Lester Wolff (D-NY) on the bottom row

... but perpetuation of “informal” ties

It must be emphasized that in 1979 the US did not break with the then KMT regime because it represented *“Taiwan.”* Diplomatic ties were severed because the KMT government still claimed to represent *“all of China.”* In view of the ascendance of the PRC in the 1960s and 1970s, this had become an untenable position.

Thus, in the late 1970s “informal ties” with “the people of Taiwan” became the last-resort solution. Numerous earlier attempts by the US and other countries in the 1950s, 1960s and 1970s to move towards logical and reasonable solutions such as “dual recognition” and “One China, one Taiwan” had been blocked by the KMT regime in Taipei. Back in those days, the PRC was not very strong yet, and it would have been feasible for the international community to adopt such a solution. However, they were nixed by a recalcitrant Chiang Kai-shek.

The present “One China” policy thus has its roots in a situation where two governments claimed sovereignty over China. The answer of the international community was that only one government would be recognized as such: until the early 1970s this was the “ROC” government in Taipei, afterwards the PRC government in Beijing.

In the process of normalization of relations with China, the PRC attempted to extend its claim to sovereignty over Taiwan and tried to get other countries to agree that Taiwan was “part of China.” In the now well-known formulations, most Western countries only “acknowledged” or “took note” of the Chinese position, but did not in any way “agree to” or “recognize” the claim. Still, in the “One China” policy which subsequently evolved, it incorrectly came to mean that the island was somehow part of China, instead of the original meaning that only one government was recognized.

It is also important to remember that the native Taiwanese (85% of the population of the island) were not in any way represented in the discussions on Taiwan’s status. However, in the 1980s Taiwan made its remarkable transition to democracy, culminating in the 1992 elections for all members of the Legislative Yuan, and the first free and open presidential election in 1996.

Thus, in spite of this transition to democracy, and the positive contributions made by the TRA to stability in the Taiwan Strait as indicated above, the TRA and the anachronistic “One China” policy have served to keep Taiwan in international diplomatic isolation, and need to be reassessed and modified in a positive direction.

Taiwan Communiqué comment: *In view of its commitments to “change we can believe in”, the Obama Administration is in a good position to break out of the stranglehold of the outmoded “One China” policy, and move towards a concept which affirms Taiwan’s right to make a free and democratic decision on its future, and its right to be a full and equal member of the international community, in accordance with the basic principle of self-determination as enshrined in the UN Charter.*

This can be done peacefully by emphasizing to China that it is in its own interest to accept Taiwan as a friendly neighbor, instead of perpetuating the tail end of a Chinese Civil War in which the Taiwanese had no part. The end result would be very much like Canada and the United States coexisting peacefully in spite of the hostility which lay at the foundation of them taking diverging paths two centuries ago.

An economic agreement with China? *From CEPA via CECA to ECFA*

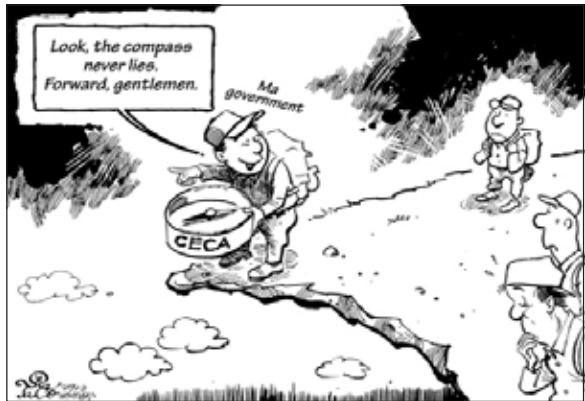
During the past few weeks, a hot public debate about a possible economic agreement with China burst into the open in Taiwan. In mid-February 2009, KMT government officials announced that they would start negotiations with China with the purpose of signing such an agreement.

The democratic opposition of the DPP and other civic groups in Taiwan immediately objected that no consultations had been held, that it was a highly sensitive issue, and Taiwan should therefore have a reasonable consensus before proceeding.

In the initial discussion, the agreement was referred to as Closer Economic Partnership Agreement (CEPA), but when it was pointed out that the form and structure of such an agreement was analogous to the – unequal – agreement signed between Hong Kong and the PRC, the Ma Administration changed the term to Comprehensive Economic Cooperation Agreement (CECA), implying that this represented equality between the two sides.

Unconvinced, the democratic opposition on the island continued to hammer away at the proposals, and on 27 March 2009, President Ma made yet another about face, and

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Ma government: "Look, the compass never lies. Forward gentlemen!"

proposed the name Economic Cooperation Framework Agreement (ECFA). Still, in spite of the new gloss, Ma Administration officials were at a loss on what the agreement would entail, or whether it would fall under WTO guidelines for bilateral trade agreements.

Another complication is the relation between this agreement and other upcoming “ASEAN+X” agreements which are in the works. The Ma Administration is arguing that with an ECFA, it will be easier for Taiwan to join such agreements. Opponents say that this is far from certain, and that even with an ECFA, China will continue its attempts to isolate Taiwan internationally.

The DPP expresses its opposition

The democratic opposition of the DPP and the smaller Taiwan Solidarity Union continue to oppose such an agreement under any name, arguing that there were multiple problems with the agreement of the type being proposed by the Ma Administration:

* Since the PRC insists that such an agreement would be concluded under the ignominious “One China” principle, it would undermine Taiwan’s sovereignty, and degrade Taiwan to the same level as Hong Kong and Macao. Statements out of the PRC government also indicate that it perceives such an agreement as a “step towards unification”;

* Whatever its form, it would be an agreement between a very large China and a very small Taiwan: any sense of balance would be gone, and the interests of China would quickly wipe out those of Taiwan;

* The present economic recession will in all likelihood have severe repercussions in China, including social unrest. Closer links with China will leave Taiwan more vulnerable to dumping of Chinese goods, especially in the agricultural sector, while

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China's "One China" principle vs. Taiwan's CECA

China's cheap labor will undercut Taiwan's workers in the already weakened traditional industrial sector. The overall effect is that Taiwan will be dragged along in the downward spiral of China's economic meltdown;

In addition, the Ma Administration signaled that it intended to send the text of a proposed ECFA to the legislature only for a "review" and not a full approval, prompting a protest from the (KMT) Speaker of the Legislative Yuan, Mr. Wang Jin-pyng. The DPP and others have argued that in view of the fact it is a major agreement, it should be subject to a public referendum.

Opinion poll: not under "One China" framework

On 12 March 2009, the DPP released the results of a public opinion poll conducted earlier that week. The poll showed that 80 percent of the respondents were opposed to signing an ECFA under a "one China" framework. A large majority of the respondents (78.2 percent) also thought the government should first seek a consensus in cross-party negotiations on an ECFA before engaging in talks with Chinese officials.

Just more than one-third of those surveyed said they believed Taiwan would be excluded from international trade if it did not improve economic cooperation with China, while almost twice as many people disagreed.

A majority was concerned that an influx of low-priced goods and agricultural products as a result of improving economic cooperation with China would pose a serious threat to Taiwan's manufacturing industry and cause unemployment to soar, the survey showed.

Almost 90 percent of those surveyed said the agreement should first be subject to discussion and supervision by the legislature, while only 6.7 percent disagreed. Almost two-thirds said the government should hold a referendum on signing such an agreement, while 32.3 percent disagreed.

'Six cents' on a trade agreement with China

By Peter Chow, professor of economics at the City University of New York. This article was first published in the Taipei Times on 19 March 2009. Reprinted with permission.

On the controversial issue of the proposed economic cooperation framework agreement (ECFA) with China, I would like to offer my "six cents."

One, the status of signatory, not the title of the agreement: The government claims the trade pact is for business, not politics. Anybody with an undergraduate level under-

standing of international law can see that is not true. Whatever the title is, the most important issue is the status of the signatory.

What is the exact status of Taiwan in signing a trade pact with China? Is it “Chinese, Taipei,” “Separate Customs Territory of Taiwan,” “the Republic of China,” “Taiwan” or “Taiwan (Taipei), China”? How will it erode Taiwan’s de facto independence? Leaders must be sure not to trade off Taiwan’s de facto independence for probable economic benefit as I wrote earlier (“*ECFA poses three likely outcomes for Taiwan*,” **Taipei Times**, March 5, page 8).

Two, transparency and democratic procedures: Any trade pact must be transparent, open to the public and approved by democratic procedures. In view of the polarization on the issue and its deep impact on the livelihood of Taiwanese people, Taipei needs to handle the proposed trade pact with more delicate tactics. To ratify the Maastricht Treaty, many members of the EU held a referendum before they joined, as did Brazil and Bolivia on ratifying the Free Trade Area of the Americas.

Given that opinion in Taiwan is divided, a referendum would not only consolidate Taiwan’s democratization and demonstrate its sovereignty to the world community, it would also offer Taipei a bargaining chip as indicated in my fourth point below.

Three, objective cost-benefit analyses: Free trade is a two-way street. Any trade pact is a “give and take” with gains in some sectors and losses in others. Leaders must not exaggerate the potential gains and hide the losses as they try to sell the ECFA to the public. An objective cost-benefit analysis on the pact is a “must.”

Four, bargaining leverage and negotiation strategy: The party that is more eager to reach an agreement with the other side is more likely to make concessions and gain less from the deal, while the one in the driver’s seat of the negotiation is likely to gain the

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Ma Ing-jeou government: "We're almost there."

most. Taipei needs to objectively assess all the positive and negative aspects of the emerging trade blocs under ASEAN Plus One and ASEAN Plus Three.

Meanwhile, Taiwan can use the above-mentioned referendum procedure as a bargaining chip in its negotiation with Beijing while Beijing's National People's Congress acts as a rubber stamp, thus depriving Beijing from using this tactic.

Five, don't underestimate the externalities: Forty percent or more of Taiwan's exports are destined for China, and Taiwan has already had an asymmetric trade dependency on the Chinese market without any formal trade pact. With the ECFA, Taiwan's trade with and investment in China will accelerate. That is an intrinsic or hidden cost for Taiwan. In addition to its vulnerability of relying on a single market — putting all eggs in one basket — domestic income and labor employment will be significantly affected. The “factor price equalization” theory dictates that more of Taiwan's investments would shift to China and wage rates in Taiwan would drop to become similar to those in China.

Six, the compensation principle and remedy policy: Freer trade will result in a winner and loser. For the aggregate national interest, the total gains from freer trade must be greater than the total loss. The government needs to have a set of “remedy policies” to compensate those industries that will suffer from freer trade.

Remembering 228

February 28th 2009 marked the 62nd commemoration of the “228 Incident” in Taiwan. It refers to the date February 28th 1947, when the arrest of a cigarette vendor in Taipei led to large-scale protests by the native Taiwanese against the corruption and repression of Chiang Kai-shek's Chinese Nationalists, who came over from China and occupied Taiwan “on behalf of the Allied Forces” after Japan's defeat in 1945.

In the following days Chiang's government secretly sent troops from China to the island. The Chinese soldiers started to round up and execute a whole generation of leading figures, students, lawyers, doctors. It is estimated that at least 28,000 people lost their lives in the turmoil. During the following four decades, the Chinese Nationalists ruled Taiwan with iron fist under a martial law, which lasted until 1987.

Thousands of others were arrested and imprisoned in the “White Terror” campaign which took place in the following four decades. Many of these remained imprisoned until the

early 1980s. Until the beginning of the 1990s, the events of 1947 were a taboo subject on the island. The Kuomintang did not want to be reminded of their dark past, and the Taiwanese did not dare to speak out for fear of retribution by the KMT's secret police.

The massacre is still a defining factor in the political divide in Taiwan: the Taiwanese see it as the horrific beginning of the Kuomintang's repressive minority rule, and dominance of the political system at the expense of the native Taiwanese population, which ended only with the transition to democracy under former President Lee Teng-hui in the late 1980s and early 1990s.

On the following pages we present a brief overview of the commemorations held around the world, and then highlight several unsolved murders from the 1980s, one of which also occurred on February 28th.

Taiwanese around the world commemorate

The event was commemorated by Taiwanese around the world at hundreds of locations, including Washington DC, New York, Los Angeles, and cities in Europe. In Taiwan itself, all major cities held events. More than 1,000 people took part in a sit-in rally on Freedom Plaza in Taipei. The group formed the Chinese characters “wu wang 228” — “Do not forget 228” — to remind the public not to forget the tragedy.

Photo: Taipei Times



"Do not forget 228" at Freedom Plaza in Taipei

Prof. Chen Yi-shen, the chairman of the Taiwan Association of University Professors, the group that organized the rally, stated: “*Everyone in this country — not just those who were killed during the incident — is a victim of the 228 Incident, yet we only got to talk about the incident in*

public and tried to find the truth about it after martial law was lifted more than 20 years ago.” He added: “*But 20 years after we began our search for the truth, did we find it? Did we find out who should take ultimate responsibility? Did we prosecute the culprit?*”

He referred to the fact that even after the end of martial law, the KMT has been unwilling to engage in a “*truth and reconciliation*” process along the lines of South Africa or East Germany, whereby those who were responsible for atrocities step forward to acknowledge their involvement. Even Cambodia recently started a trial of one of those responsible for the “Killing Fields” of 30 years ago. In Taiwan, none of the persons in the military or Chiang Kai-shek government responsible for the 228 Massacre were ever brought to justice.

The continuing tension came out into the open when President Ma Ying-jeou, who did attend commemorative ceremonies in Taipei and later in the day in Kaohsiung, was heckled by protesters. President Ma did state that “*no apologies or compensation can bring back the lives of the victims,*” but many in Taiwan question his sincerity in view of the fact that Ma’s government is taking steps to rehabilitate Chiang Kai-shek and even rename Freedom Plaza back to Chiang Kai-shek Square.

During a ceremony in Taipei, former DPP Chairman Lin Yi-hsiung, whose mother and twin-daughters were murdered on 2-28 in 1980 (see story below) told the Taipei Times: “*It is a great insult to the Taiwanese people when the government employs abundant resources to commemorate a man who is perceived by most historians in other countries as a dictator.*”

Ma has also not countered moves by members of his party who cut the funds for the 228 Memorial Museum in Taipei, and failed to speak out when a KMT legislator proposed cancelling the national 228 Memorial holiday.

Ms. Tsai Ing-wen, chairwoman of the DPP opposition party, was quoted by the Taipei Times as saying: “*We can forgive historical mistakes but history cannot be forgotten.*” She added: “*Our generation of Taiwanese cannot forget and must tell the next generation that Taiwan history experienced such a tragedy, which destroyed so many families.*”

The close of the Taipei ceremonies was filled with irony where Ma and Taipei Mayor Hau Lung-bin joined with massacre victims’ family members to untie a large white knot above the stage. The knot ceremony was to symbolize reconciliation, but the guests were unable to untie the knot creating an awkward moment over the divisions that remain in Taiwan’s society about the massacre and the role of Ma’s ruling party in the tragedy.

Unsolved murders from the 1980s

The date of February 28th is also a painful reminder of still unsolved political murders in Taiwan: on that date in 1980, the mother and twin-daughters of Mr. Lin Yi-hsiung were knifed to death in their home in Taipei in broad daylight. The home was under 24-hour police surveillance at the time, as Mr. Lin — a prominent opposition leader who later

became the chairman of the DPP — was imprisoned following the Kaohsiung Incident of December 1979. The *Formosa Magazine* Incident — as it is also referred to — became a turning point in Taiwan's history and the beginning of the end of the KMT's martial law rule.

Still, to this day — three decades later — the murders have not been resolved, as those who were responsible (almost certainly members of the secret police or its accomplices) have not been brought to justice.

Investigations during the DPP Administration of President Chen Shui-bian were stonewalled by a judicial system and a police apparatus still permeated by KMT supporters not interested in bringing the matter to the surface. In spite of some pronouncements during his election campaign that he would get “to the bottom” of the matter, President Ma Ying-jeou has done little during his first year in office to bring the matter to a close and prosecute those responsible.



Lin Yi-hsiung (R) and his family in 1979, before his mother and twin-daughters were murdered

A second unsolved murder case from the early 1980s is that of Carnegie-Mellon professor Chen Wen-cheng, a young statistics scholar teaching at Carnegie-Mellon University in Pittsburgh. In early July 1981, Professor Chen was visiting his homeland, together with his wife and young child.

He was called in for questioning about his political activities in the US by the Taiwan Garrison Command. The next day — 3 July 1981 — his body was found next to a building at National Taiwan University in Taipei. The body had thirteen broken ribs, a broken spine and numerous other internal and external injuries, which had been inflicted by beatings.

After the case received wide international attention, the Kuomintang authorities tried to suggest that it was “either suicide or accident.” The evidence proved otherwise: an American forensic pathologist, Dr. Cyril Wecht — who traveled to Taiwan together with a colleague of Dr. Chen to investigate the case — concluded that Dr. Chen was a victim

of homicide, and that his death was caused by being dropped from an upper floor of the fire escape while unconscious (see “Murder in Taiwan”, *American Journal of Forensic Medicine and Pathology*, June 1985).

However, in spite of the wide international attention in the foreign press, and the strong efforts by the U.S. Congress and by Carnegie-Mellon University president Richard M. Cyert to get to the bottom of the case, the Kuomintang authorities were able to delay any further investigation and thus cover up the matter.



Prof. Chen Wen-cheng with his wife and baby son in 1981, just before their fateful return to Taiwan

Taiwan Communiqué comment: *It is high time that both cases are resolved and come to closure. It is apparent that under the present circumstances the judicial and political system in Taiwan – still under strong influence of the same Kuomintang under which the murders took place – has not had the courage to address the issue squarely.*

We therefore appeal to the US Congress and the Obama Administration to take the human rights clause of the TRA seriously, and urge the Kuomintang government in Taipei to bring those who were responsible for these political murders to justice.

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The judicial circus continues

In the two previous issues of *Taiwan Communiqué* we reported extensively on the court cases against President Chen Shui-bian, his wife, and a number other present and former DPP government officials. The procedures used by the prosecution were criticized by international observers as being severely flawed.

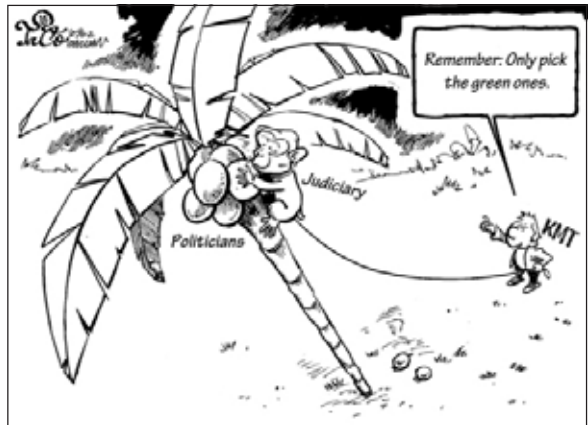
Below we first summarize a number of international newsmedia articles, which conclude that the judicial system itself is on trial, and then give an overview of a number of flaws

in the proceedings, which in any other nation would have resulted in a mis-trial. We conclude with an assessment of the situation by Freedom House.

The judicial system itself is on trial

During the past two months, the court proceedings of course led to headlines in Taiwan's newspapers, but also received considerable attention in the international newsmedia. A brief sampling:

The London-based **Economist** published an article on 22 January 2009, titled *Trial and Error* in which it stated that "a former president and the judiciary are in the dock." The article described a number of examples of "sloppy improprieties" and political bias in the proceedings. It concluded that "... the judiciary's lack of professionalism risks creating public cynicism about its independence, undermining both the drive against corruption and respect for the courts' decisions."



KMT to the judiciary monkey: "Remember, only pick the green ones."

On 4 February 2009, the **GlobalPost**, an internet newspaper, published an article by Mr. Jonathan Adams (who often writes for **TIME Magazine** and the **Christian Science Monitor**), in which he described how the trial had "morphed into a media circus." A few quotes from Mr. Adams' analysis:

The trial of former president Chen Shui-bian hasn't even begun. But as far as the media and many Taiwanese here are concerned, the verdict is already "guilty." ...

... the case has turned into a media circus in which Chen is being tried in the court of public opinion. The island's paparazzi-style media are hounding his family, and TV stations are playing the story like a soap opera — think "Dynasty" meets "Law and Order" — while hyping every twist and turn. All of this has some wondering if Taiwan's media and judiciary are giving Chen a fair shake.

A couple of weeks later, the **New York Times** published an article titled *Case against ex-leader stirs unease in Taiwan* (21 February 2009), which focused on the skit performed by a number of prosecutors during a Ministry of Justice Law Day social event, in which prosecutors mocked former president Chen. The article stated: “*Legal experts here and around the world cite the skit ... as one of several incidents that raise troubling questions about whether the rule of law is being followed in the proceedings against Mr. Chen.*”

The article added: “*The case has prompted broader concerns about Taiwan’s legal code. Its detention and criminal procedure laws were drafted in the 1930s and early ’40s by Chinese Nationalist legal scholars who mainly looked to Nazi Germany for ideas.*”

In an interesting twist in the case, a Hong Kong-born reporter for the **Financial Times** — Mr. Robin Kwong — was able to visit Mr. Chen in prison in Tucheng, a suburb of Taipei. In the article, published in the *Financial Times* on 22 February 2009, Mr. Kwong quotes the former president as admitting that he did not properly manage his family’s finances, but maintained that he was not corrupt, and that his prosecution had been politically motivated by the Kuomintang government in its efforts to move closer to China.

The **Taipei Times**, Taiwan’s main English-language newspaper (which — together with the **Taiwan News** — has done excellent reporting on the case), came out with several biting editorials criticizing the proceedings against Chen. In a main editorial titled *More tricks in the Chen legal circus* — published on 7 March 2009 — it stated: “*The proceedings to date in this most vital of trials have been so badly compromised that expert analysis from the International Council of Jurists, for example, may be essential to demonstrate the gravity of the problem.*”

In a final note: at the end of January 2009, the former president’s office published a book written by Mr. Chen during his November-December 2008 pre-trial incarceration, including a 13-day hunger strike. The book, titled **The Cross of Taiwan**, consists of two sections: “*Long Live Taiwan*” and “*Prison Conversations.*” In the first section he describes the five stages of his life, and his vision for Taiwan’s future. The second section contains a diary he kept during his pre-trial detention. The book is becoming a best-seller in Taiwan.

Flaws in prosecution against former President Chen

From mid-February through mid-March 2009, a number of pre-trial hearings took place. The official trial against the former president started on 26 March 2009, while a related trial against his wife got underway on 17 March 2009. The president and his wife

acknowledged that funds were transferred overseas, but denied that these were state funds, but consisted of left-over campaign donations.

In the first pre-trial session, on 24 February 2009, the former president pleaded not guilty to the corruption charges, and stated that it amounted to political prosecution. He charged that the prosecutors had a political agenda, and that his transgressions were similar to those of Mr. Ma Ying-jeou, who was declared “not guilty” in a “Special Affairs Fund” trial two years ago. The series of pre-trial proceedings also brought to light a number of severe flaws in the prosecution. A very brief summary:

Photo: Taipei Times

- * Meetings between defense lawyers and their clients were still taped, and admitted in Court as “evidence”, seriously violating the basic principle of lawyer-client privilege. Earlier this year, Taiwan’s Council of Grand Justices had outlawed the procedure, but left a loophole in that it wouldn’t go into effect until 1 May 2009;



Former President Chen, leaving a Court session

- * The prosecution presented video-taped interrogation of a number of witnesses as “evidence.” However, many of the tapes had gaps in the soundtracks, leading Chen’s defense lawyers to charge that the tapes had been doctored with, and that information favorable to the defense had been removed;
- * The videotapes also showed that the prosecutors used threats to induce the witnesses to confess to the charges. In one particularly disturbing episode, Special Investigation Panel prosecutor Lee Hai-lung was heard telling former Hsinchu Science Park Director Dr. James Lee: *“If [what you say] is in a written disposition, you’ll have an ugly death.”*
- * In one pre-trial session in early March 2009, the prosecution objected to a defense request for the calling of particular witnesses, because *“... doing so might benefit the defendants.”* Which leaves one to wonder: isn’t it a basic ingredient of a fair trial that the defense can call witnesses for the defense?

While former President Chen continues to be detained, and is therefore prevented from waging an adequate defense, one of the major prosecution witnesses – China Trust vice-Chairman Jeffrey Koo Jr – was able to travel freely and even leave the country for China; It didn't seem to matter that Mr. Koo was on Taiwan's most wanted list for several years. He returned to Taiwan in November 2008 and — in a highly suspicious move — suddenly became witness for the prosecution;

Taiwan's democratic test continues

By Christopher Walker and Sarah Cook. Mr Walker is director of studies and Ms. Cook is an Asia researcher at Freedom House. The two visited Taiwan in mid-January. This article first appeared in the Taipei Times on February 17th 2009. Reprinted with permission.

Since shedding authoritarian rule two decades ago, Taiwan has achieved commendable progress in democracy. On a recent visit, however, it was clear that while democracy continues to flourish, a number of serious concerns have arisen that threaten to shake public confidence in the country's democratic institutions.

Our meetings with senior officials of both major political parties, as well as leaders of Taiwan's diverse non-governmental organizations and academic community, revealed a palpable sense that the political system is becoming less transparent and more exclusive. Several developments have triggered alarms among Taiwan's civil society and international observers.

First, the judicial system's impartiality and ability to hold the current government to account has come into question. The restoration of the Chinese Nationalist Party (KMT) to full political control in the aftermath of President Ma Ying-jeou's decisive victory in last year's elections — along with an overwhelming legislative majority for his party — has weakened important checks and balances that had been in place over the previous eight years.

In the months since the KMT retook control, a spate of investigations have been launched against former Democratic Progressive Party (DPP) officials and businesspeople connected to it. The apparent imbalance with which these cases are being pursued raises concerns of selective justice. One prominent lawyer in Taipei describes the phenomenon as a “judicial recession.”

Further exacerbating tension is the country's politicized, tabloid-style news media, especially the use of certain outlets to discredit (would-be) defendants before they have their day in court. Six 24-hour cable news channels — four KMT-aligned and

two favoring the DPP — pump out a steady diet of over-the-top coverage of political and legal scandal. A robust flow of leaks enables a pernicious form of “*trial by media*” for those pulled into the judicial vortex.

These phenomena came to a head in two recent cases. The first is that of former president Chen Shui-bian. The ultimate decision on the former president’s guilt or innocence will be decided by the courts, as it should be. However, the judicial process requires the utmost scrupulousness to ensure there is neither the fact nor perception of political interference. So far, such care has been lacking. A slipshod switching of judges just before year’s end and a grossly impolitic skit mocking the former president — during a party organized by Ministry of Justice officials — have raised eyebrows at home and abroad about the seriousness of the officials entrusted with handling this sensitive case.

Photo: Taipei Times



Protest against Chinese envoy Chen Yunlin on 6 November 2008 in Taipei

The second case involves the investigation into clashes between police and citizens protesting Chinese envoy Chen Yunlin’s visit to Taiwan in November 2008. During this historic visit, more than 100 demonstrators and police were injured. Other citizens have complained of official harassment in response to peaceful acts of protest.

The National Police Agency undertook one review shortly after the event, which resulted in mild discipline, followed, incongruously, by promotions of several key officers. It apparently has undertaken a second more comprehensive internal review, but those findings have not been made public.

The Control Yuan is undertaking its own investigation, but the extent to which its findings will be made public is unclear. Perplexingly, the process of such an investigation, or even whether it is taking place at all, remains unknown to even the most well-informed members of Taiwan’s civil society, let alone the public-at-large.

Given the increasing unease with the trajectory of democratic governance in Taiwan, several immediate steps by the authorities to enhance transparency would help lay such concerns to rest.

Comprehensive reports and regular status updates should be published of any investigations carried out by key government bodies, including the Control Yuan, the police and other agencies, irrespective of the political orientation of their subjects.

The authorities should also make a dedicated effort to stop the debilitating cycle of leaks from criminal investigations. Ma and relevant senior officials must make clear that any information improperly dispensed by prosecutors, investigators or any other judicial or law enforcement body will not be tolerated.

Finally, as the current administration makes decisions that will affect generations of Taiwanese to come — particularly in its sensitive cross-Strait negotiations — it should take an inclusive and open posture toward the public. The combination of closed-door talks with the Chinese Communist Party and a dismissive attitude regarding citizen complaints of official abuse risks creating an atmosphere of highhandedness within government and alienation outside it.

Several developments in recent weeks — including a Council of Grand Justices' decision on the unconstitutionality of recording client-lawyer conversations and the Control Yuan's public criticism of prosecutorial leaks — are encouraging signs that Taiwan's self-correcting democratic mechanisms are functioning. Concerns remain, however, over the evenhandedness with which standards of accountability are being applied.

Taiwan has established itself as a democracy whose significance extends far beyond its shores. In a region where the ideals of democracy are directly challenged, fundamental principles of transparency and pluralism need particularly vigorous safeguarding. The current era of closer relations with China's government, known more for secretiveness and intolerance of dissent than for democratic governance, make these standards even more important for Taiwan.

* * * * *

Report from Washington

Taiwan and the 111th Congress

By Coen Blaauw, FAPA Headquarters

Since the November 2008 general elections, the Congressional Taiwan Caucus has lost a total of 20 members. CTC co-chair Rep. Steve Chabot (R-OH) lost his race in the first district of Ohio. He will be sorely missed. His seat at the helm of the CTC has been taken

over since by Rep. Lincoln Diaz-Balart (R-FL) a long-time friend of Taiwan and senior member on the powerful Rules Committee.

In early March, Rep. Dana Rohrabacher (R-CA) resigned as CTC chair. According to the **Taipei Times** of 16 March 2009, “*Rep. Rohrabacher, one of the most ardent pro-Taiwan legislators in Washington on Thursday said he would resign from his position as co-chairman of the Congressional Taiwan Caucus, saying his support for the Taiwan Caucus would be pointless when Taiwan was working with autocratic China rather than fighting against it.*”

Rohrabacher said that his resignation was primarily the result of a growing gap in goals between him and Taiwan’s KMT government, which is leaning much more towards China. His place has been taken over by Rep. Phil Gingrey (R-GA). The November elections did not affect the membership of the Senate Taiwan Caucus.

During the first week of the new 111th Congress, on 9 January 2009, long-time Taiwan supporter Rep. John Linder (R-GA) introduced resolution HCR18 urging the Administration to establish diplomatic relations with Taiwan. Similar resolutions were introduced in 2005 and 2007 by then Rep. Tom Tancredo (R-CO), who has since retired from Congress. Additionally, the resolution calls for end to the U.S. One China Policy and Taiwan’s full membership in international organizations.

At the end of February 2009, staunch Taiwan supporter and CTC member Congressman Scott Garrett (R-NJ) issued a statement in the Congressional Record urging his colleagues to join him in observing the 62nd commemoration of Taiwan’s February 28 massacre that took place in 1947 (see **Remembering 228** on pp 9-13).

Congressman Garrett stated: “*The 2-28 event had far-reaching implications. Over the next half-century, the Taiwanese democracy movement that grew out of the incident helped pave the way for Taiwan’s momentous transformation from a dictatorship under the Chinese Nationalists to a thriving and pluralistic democracy.*”



**Congressman John
Linder (R-GA)**



**Congressman Scott
Garrett (R-NJ)**

He concluded: “*In some ways, the 2-28 Incident was similar to the “Boston Massacre” that occurred in the Massachusetts colony in 1770. Both events launched a movement to full democracy and helped galvanize a struggle for independence.*”

Book Review

Taiwan; the Search for Identity by Prof. Jerome F. Keating

Reviewed by Gerrit van der Wees

This is Jerome Keating’s third book on Taiwan. Those who read his earlier works (*Island in the Stream* – reviewed in Communiqué no. 95, and *Taiwan, the Struggles of a democracy* – reviewed in Communiqué no. 110) know he has a warm spot in his heart for Taiwan, and a sharp pen aimed at the Chinese Nationalists of the Kuomintang.

In this book he returns to the two main themes of his earlier works: Taiwan’s complex history and the varied but converging Taiwanese identity of its people. In fact the key message is “*the whole is greater than the sum of its parts*”, meaning that the island’s strength is that over the centuries it was influenced and shaped by a great diversity of cultures, languages and peoples. He is thus critical of the efforts by the Chinese Nationalists to impose their single-minded “Chinese” identity on the population.

He does this through a dozen insightful, incisive and hard-hitting sketches, each dealing with a particular angle of Taiwan’s history or the identity of its people. In the first one, plaintively titled “*Taiwan, who’s your Mama?*” he shows how recent archaeological discoveries of ancient jade workshops dating back to 2000 BC, indicate that the Taiwanese aboriginal tribes were the center of a thriving sea trade extending to all of Southeast Asia and even as far as New Zealand. He also discussed recent DNA research showing how most of the Polynesian populations apparently originated with one of the 11 aborigine tribes in Taiwan.

Another essay discusses the “*Taike Spirit*”: the very down-to-earth Taiwanese spirit which continues to fight to be free. This spirit had to bend under successive colonizers, but each time fought hard to achieve its freedom and independence. Keating credits this spirit to the innovative, easygoing yet rambunctious way the Taiwanese are approaching everything in life: politics, leisure and business not excluded.

He allocates several essays to debunking the many myths surrounding former dictator Chiang Kai-shek: he argues that the KMT’s powerful propaganda machine had built up

a glowing aura around Chiang, which was totally undeserved, and which prevented a truly free and democratic system from being established in Taiwan for many decades. He shows how Chiang's only purpose was to "recover the mainland", and that Taiwan's democracy suffered as a result.

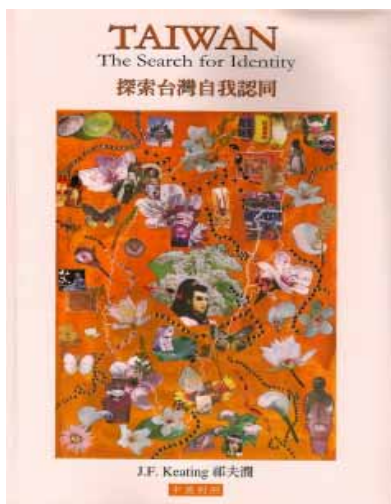
In one essay, "***Losing China***", Keating describes how from the early beginnings in the 1920s, the Kuomintang was a party "of the privileged, by the privileged, and for the privileged." He argues that, certainly, there were noble people with noble ideas within the Kuomintang, but that – then as it is now – the prevailing attitudes were those of haughty arrogance, power, privilege and entitlement, "*which are difficult to surrender even for the noble cause of one's country.*"

In a further historical essay, "***Losing Taiwan***", he highlights the destruction and corruption in Taiwan *after the end of World War II*, which occurred when Chiang's Chinese Nationalist troops descended on the island, and treated it like occupied territory.

In an essay titled "***Kaohsiung and Beyond***", Keating discusses the 1979 *Kaohsiung Incident*, which is generally considered the "*beginning of the end*" for the KMT's martial law, but also the lingering divide within the society due to the fact that no *truth and reconciliation* process ever took place.

Keating partially blames the "*don't ask, don't tell*" attitude, which prevails among many within the KMT system. He states: "*it was not perhaps on the scale of German citizens living outside Dachau or other prison camps, but it casts a pallor on those KMT members who lived in, participated in, and benefited from the KMT's domination of Taiwan. Many of these same people still hold office today.*"

In his final four essays, Keating focuses on present day Taiwan. The first in this series, "***In Search of an adequate system***" he argues that, although democracy has come to Taiwan, the playing field is not level yet. In addition to the lack of transitional justice mentioned earlier, he discusses the disproportionate advantage held by the KMT is the Legislative Yuan due to the inadequacies of the present single-district system.



In a second essay, titled *“Finding identity and purpose amidst bamboozle”* Keating zooms in on the international media has largely failed to pay sufficient attention to Taiwan’s Taiwanese identity and mainly focused on the seesaw struggle with China. In Taiwan itself, the main media outlets such as the **China Times** and **United Daily** are still KMT-dominated, and thus follow its indoctrination. Two other ways the Taiwanese are being bamboozled is through the KMT-dominated Legislative Yuan and through the fact that the KMT is able to use money-politics to get the vote out.

A third essay, titled *“Kuo Yu-hsin and Taiwan’s democratic identity”*, recounts how in October 2005, then Taipei Mayor Ma Ying-jeou tried to twist the facts by arguing that one of the pioneers of the Taiwanese democracy movement, the late Kuo Yu-hsin, did not support Taiwan independence. It was left to Kuo’s granddaughter DeeAnn to set the record straight: in a letter to the Taipei Times she wrote: *“This claim (by Ma Ying-jeou) is patently false, and appears to be either a calculated effort by Ma to distort the legacy of Kuo for political purposes; or an uninformed – and therefore irresponsible – rewriting of history.”*

In a fourth essay, *“Taiwan needs more than talk and promises”*, Keating discusses Ma Ying-jeou, and presents him as one of the main “posing and bamboozling” politicians. A quote: *“Ma is not necessarily an evil man; he is not even incompetent as long as he has an able-bodies staff. Inept is a more appropriate word for a man who has style without substance and an image dependent upon hype.”*

In his last chapter, *“Let Taiwan be Taiwan”*, Keating returns to his theme *“The whole is greater than the sum of its parts”* and urges that the people of Taiwan be allowed to create their own dream: *“The dream must be Taiwan’s dream, not China’s dream, not the dream of other countries and not the dream of profiteers around the world. All those latter people will sacrifice Taiwan’s identity for their own greed and a share of what may now the China market but tomorrow will be another market.”*

In closing: Keating’s work presents razor-sharp insights into what “the Taiwanese identity” is all about: it doesn’t pretend to be a scholarly work or a comprehensive historical overview, but a straightforward and honest treatment of one of the most important and sensitive issues dealing with Taiwan. Highly recommended!

The complete title of the book is *Taiwan; the Search for Identity*, by Prof. Jerome F. Keating. SMC Publishing Inc., 2008, Taipei Taiwan. The essays in this work are both in English as well as in Hanji.

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CONTENTS

Taiwan Communiqué no. 123
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The Taiwan Relations Act at 30

A US commitment to a democracy 1
... but perpetuation of "informal" ties 3

An economic agreement with China?

From CEPA via CECA to ECFA 5
The DPP expresses its opposition 6
Opinion poll: not under "One China" framework 7
"Six cents" on trade agreement with China
by Professor Peter Chow, CUNY 7

Remembering 228

Taiwanese around the world commemorate 9
Unsolved murders from the 1980's 11

The judicial circus continues

The judiciary itself is on trial 13
Flaws in the prosecution against Chen Shui-bian ... 15
Freedom House speaks out again 17

Report from Washington

Taiwan and the 111th Congress, by Coen Blaauw 19

Book Review

Taiwan, in search for Identity
by Jerome Keating, reviewed by Gerrit vd Wees 21

The goals of FAPA are: 1) to promote international support for the right of the people of Taiwan (Formosa) to establish an independent and democratic country, and to join the international community; 2) to advance the rights and interests of Taiwanese communities throughout the world; and 3) to promote peace and security for Taiwan

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