



THE TAIWAN RELATIONS ACT AT 40



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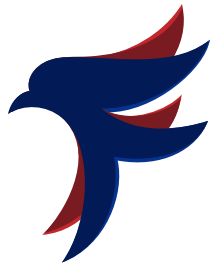
COVER:

From top to bottom: Deng Xiaoping and Jimmy Carter - 1979 (Source: Wikimedia Commons);

Gate of Great Centrality and Perfect Uprightness (Source: Thomas J. Shattuck);

The USS Reagan in the Taiwan Strait (Source: United States Navy);

Tsai Ing-Wen (Source: Taiwan Presidential Office)



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INTRODUCTION

April 10, 2019 marks forty years since the adoption of the Taiwan Relations Act. When President Jimmy Carter announced in December 1978 that the United States would, as part of normalization of U.S.-PRC relations, sever diplomatic ties and terminate a mutual security treaty with the Republic of China (Taiwan), the U.S. and Taiwan faced an urgent question: What would the U.S. do to give the government and people of Taiwan some degree of assurance that Washington would not abandon its newly vulnerable longtime ally. A major part of the answer was the Taiwan Relations Act, which starts with a statement of purpose that links ongoing support for Taiwan with broad U.S. foreign policy interests: “To help maintain peace, security, and stability in the Western Pacific and to promote the foreign policy of the United States by authorizing the continuation of commercial, cultural, and other relations between the people of the United States and the people on Taiwan, and for other purposes.” The TRA created a durable foundation for an unofficial relationship between the U.S. and Taiwan, with provisions addressing Taiwan’s security, arms purchases, human rights, and participation in international agreements and organizations.

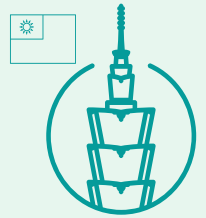
Relations between the United States and Taiwan have evolved over four decades. Taiwan has transitioned peacefully from authoritarian rule to become a vibrant liberal democracy with a strong record on human rights. The relationship has been notably positive and stable throughout the last decade. At the same time, Taiwan is facing a more formidable challenge from across the Taiwan Strait. A much wealthier and more powerful China has shifted the military balance strongly in its favor, and burgeoning trade and investment ties have given Beijing much potential economic leverage. In recent years, the robustness and reality of U.S. security commitments to Taiwan and the region have faced growing doubts. In these changing contexts, U.S.-Taiwan relations are again moving into a new phase as the TRA turns forty.

In the following collection of essays, Jerome A. Cohen, Jacques deLisle, Vincent Wei-cheng Wang, Shelley Rigger, June Teufel Dreyer, Russell Hsiao and Marzia Borsoi-Kelly, and Thomas J. Shattuck offer their perspectives on the past, present, and possible future of the Taiwan Relations Act, U.S.-Taiwan relations, and the role of China in the U.S-Taiwan relationship.

- Jacques deLisle & Thomas J. Shattuck



U.S. - TAIWAN RELATIONS



TAIWAN RELATIONS ACT (1979)

"To help maintain peace, security, and stability in the Western Pacific and to promote the foreign policy of the United States by authorizing the continuation of commercial, cultural, and other relations between the people of the United States and the people on Taiwan, and for other purposes."

PEACE & SECURITY

- U.S. will "maintain the capacity of the United States 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 on Taiwan."
- The U.S. will "consider any effort to determine the future of Taiwan by other than peaceful means...a threat to...peace and security...and of grave concern to the United States."
- "The United States will make available to Taiwan such defense articles and defense services in such quantity as may be necessary to enable Taiwan to maintain a sufficient self-defense capability."



U.S. Navy conducts Freedom of Navigation Operations (FONOPs) in the Taiwan Strait (4 in the last 6 months)

\$255.6 million

cost of newly opened (2018) Taipei facility of the American Institute in Taiwan.



Taiwan is the U.S.'s **11th** ranked trading partner

\$17 billion U.S. FDI in Taiwan
\$8 billion Taiwan FDI in U.S.

STRONG AND STABLE RELATIONS

- Taiwan has rights and responsibilities in U.S. law equivalent to those of a recognized state and government.
- The U.S. supports Taiwan's membership or participation in international organizations and agreements, including WTO, WHA, APEC, and bilateral accords.
- American Institute in Taiwan and Taipei Economic and Cultural Representative Office serve as de facto embassies.
- "The preservation and enhancement of human rights of all the people on Taiwan" are "objectives of the United States."

JOINT COMMUNIQUÉ (1982)

The U.S. "intends to reduce gradually its sales of arms to Taiwan."

SIX ASSURANCES (1982)

The U.S. will not:

1. "set a date for termination of arms sales"
2. "alter the terms" of the Taiwan Relations Act
3. "consult with China" before making Taiwan arms sales decisions
4. "mediate between Taiwan and China"
5. alter U.S. position that Taiwan sovereignty is to be "decided peacefully by the Chinese themselves" or "pressure Taiwan" to negotiate with China
6. "formally recognize Chinese sovereignty" over Taiwan

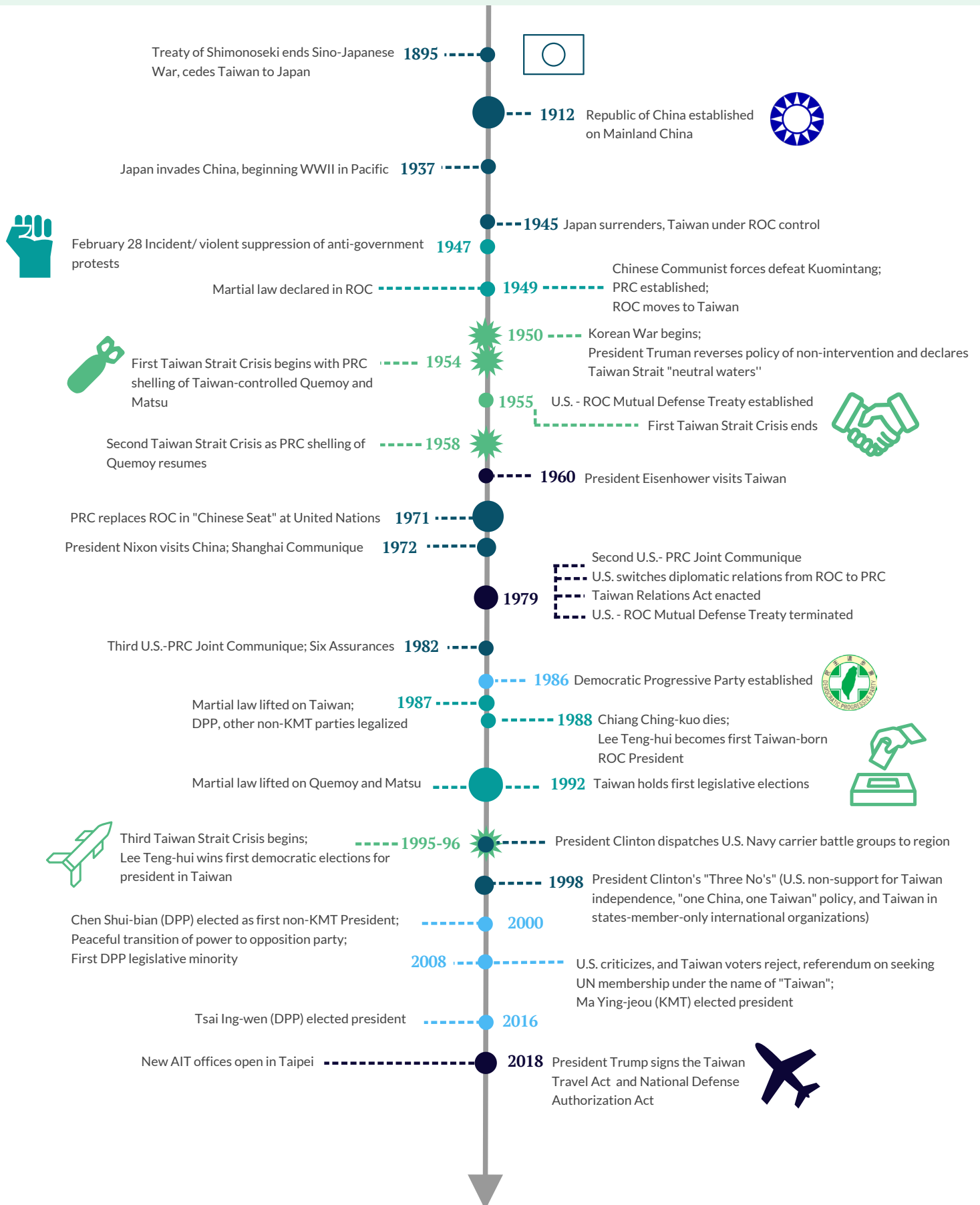
SHANGHAI COMMUNIQUÉ (1972)

"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."

JOINT COMMUNIQUÉ (1979)

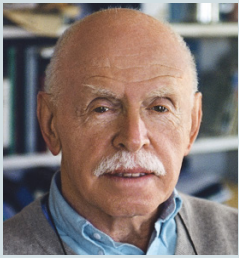
The United States and People's Republic of China "have agreed to recognize each other and to establish diplomatic relations." The U.S. "recognizes the Government of [the PRC] as the sole legal Government of China," but maintains "cultural, commercial, and other unofficial relations with the people of Taiwan."

KEY EVENTS



THE TAIWAN RELATIONS ACT: CHARTING A STABLE COURSE FOR THE U.S. IN ASIA

JEROME A. COHEN



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The Taiwan Relations Act (TRA) is a model of legal ingenuity spurred by political necessity. Jimmy Carter inherited Richard Nixon's challenge, which was to establish diplomatic relations with the People's Republic of China (PRC). Nixon took the first step in February 1972 with his famous trip to Beijing, where he, Henry Kissinger, and China's leaders concluded the Shanghai Communiqué. The Communiqué gave ambiguous assurance to China about Taiwan. The U.S. government "acknowledged" the PRC's claim to the island and stated that it "does not challenge" that claim, but the United States never made clear what this meant, and the U.S. has never subsequently clarified its formal position. But what the U.S. said in the Shanghai Communiqué was enough at that time, given the fact that Chairman Mao Zedong and Premier Zhou Enlai and Nixon and Kissinger wanted to cooperate to balance the power of the rising Soviet Union.

Although that cooperation began in early 1972, it took until December 15, 1978 for formal diplomatic relations to be agreed on. Even then, the two sides could not deal with all the issues. The Carter administration, nevertheless, decided

to bite the bullet that Nixon had avoided and establish formal relations with the Mainland, breaking formal relations with the Kuomintang (KMT) government on Taiwan. This was a terrific blow to the KMT government and a great concern to everyone on Taiwan. It was also a daring step in American politics, given the support that the Chiang Kai-shek's KMT government still enjoyed within America's Republican Party and the understandable worries that many in the U.S. had for Taiwan's future. Nixon, of course, had been a Republican president and a notorious anti-communist, which gave him the domestic political freedom to make the first move toward recognizing China—a move that no Democratic Party president could have politically survived in 1972. Carter, a more insecure Democratic president, had the tougher task of completing the job that Nixon had started.

But the two Communiqués left open the status of Taiwan, and the U.S. insisted, as part of the deal for normalizing relations with the People's Republic, that Washington would continue to have non-official, non-diplomatic, but cultural and economic ties with Taiwan. The question was how to do it.



Deng Xiaoping and Jimmy Carter signing the Joint Communiqué on the Establishment of Diplomatic Relations.

The Birth of the Taiwan Relations Act

Many members of Congress were very uneasy about Taiwan's future. I was in Taiwan in 1978 at several points. I saw the terrific anxiety of the people there about what was to come. They needed further assurance because it was not clear what the U.S. would do. Many people thought that the establishment of U.S. diplomatic relations with China would merely be a first step that would soon lead to the collapse of the Republic of China on Taiwan, the way the withdrawal of American troops in 1973 soon led to the collapse of the South Vietnamese government. The problem was how to prevent that, and the U.S. Congress, in imaginative negotiations—ones that took several months—with the executive branch including the State Department and others, came up with a law.

That law, the Taiwan Relations Act, is not an international agreement. It is merely the unilateral act of one government saying, "This is our interpretation of the situation." It had two functions, mainly. One was to warn Beijing that any non-peaceful attempt to solve the problem by taking over Taiwan would be regarded by the United States as a grave threat to security in the Western Pacific. That is, in diplomatic language,

it could lead to military opposition by the United States.

It had a second major function: How do you continue to give the Republic of China on Taiwan the continuing necessary legal status in the United States that it had enjoyed when the two had formal diplomatic relations? The U.S. had to find some substitute arrangement so that, for example, if somebody from the Republic of China wanted to come into U.S. courts, they could come in just the way they used to, and if somebody wanted to sue Taiwan officials or people, that it be no less, and no more, possible than before 1979. The U.S. wanted to try to give Taiwan all the continuing privileges and benefits that the Republic of China enjoyed when the two maintained diplomatic relations even though Carter had severed formal ties.

The key was really the first function because, when the U.S. ended diplomatic relations with Taiwan, it affected the 1954 mutual defense treaty between the ROC and the United States. The abrogation of diplomatic relations meant an end to the defense treaty. The U.S. terminated the treaty with China's agreement in an orderly way. The defense treaty had a provision like many treaties: If you wanted to withdraw, you

could give one year's notice that you were going to do so, and that is what the U.S. did.

But what would substitute for the defense treaty? The answer, in part, was the Taiwan Relations Act, which was to provide comfort to Taiwan. Of course, the TRA was not formally a treaty, but only a law, and the language on defense cooperation is very vague, even by the standards of mutual defense treaties. In effect, it says to Beijing, "If you take non-peaceful steps, we will consider this a very grave threat to our security." It doesn't say, "And we will come to the defense of Taiwan." But it leaves open this possibility and implies that the U.S. has the discretion to do so. The NATO agreement also has this kind of language, but people understand the context, and over time, vague words take on added weight. Forty years later, the Taiwan Relations Act is rightly regarded as having become very important.

The question Beijing has had from the day formal relations were established has been: How long would the new U.S. relationship with Taiwan go on, especially the arms sales that the TRA provided for? How long could the United States be allowed to provide arms to a government it no longer recognized, and with which it no longer had diplomatic relations? Once the U.S. had recognized the People's Republic of China on the Mainland as the only legal government of China, how could it justify continuing to provide arms to a regime that no longer was in Washington's eyes the legal government of China and that was condemned as an illegitimate regime by the newly recognized legal government of China? These questions have been a source of continuing tension in Washington's negotiations and discussions with Beijing since 1979. Forty years on, no one has solved this problem.

Arms Sales under the Taiwan Relations Act

In February 2019, Assistant Secretary of Defense Randall Schriver offered assurances that the U.S. will continue to provide Taiwan with all the arms necessary to defend itself. That is what the TRA

says: for Taiwan to defend itself, not to attack the Mainland. Taiwan had to give up that idea, which Chiang Kai-shek had endorsed, with the unrealistic hope that he might renew the civil war with the communists and retake the Mainland.

In the 1980s, Beijing thought the arms sales problem would be settled rather quickly. In the "Third Communiqué" issued by the U.S. and the PRC in 1982, the Reagan administration assured Beijing that, as tensions relaxed across the Strait and as the situation improved, the U.S. would gradually reduce arms sales to Taiwan. But the end to arms sales that Beijing hoped for has not happened. The U.S. formula for arms sales that has prevailed is not the one Beijing believed it had secured after negotiations on several occasions, but, rather, the Taiwan Relations Act's formula. Under the TRA, the U.S. remains obligated to continue to "make available to Taiwan such defense articles and defense services in such quantity as may be necessary to enable Taiwan to maintain a sufficient self-defense capability." For Beijing, this is more than a thorn in its side.

Arms sales are symbolically important, but they also are a very practical question because on both sides of the Strait, military planners that are constantly considering, if force has to be used, what will happen? Would there be a three-day war? Would there be a long, drawn-out contest? Would the United States come to Taiwan's aid? Would Japan join in? What damage would be done to China? Could such a war threaten the Chinese leadership's grip on power if China could not quickly and effectively subdue Taiwan? Would war decimate not only the people on Taiwan, but also the people in Shanghai and other Mainland places?

Many people think that war will never happen, but that Beijing will use other means, and that Beijing's recent intensification of pressures against Taiwan—military, political, economic, and psychological—will gradually erode the will of the people in Taiwan. Well over a million Taiwanese are living and working in the Mainland, and some observers think more Taiwanese will move there, becoming more vulnerable to Chinese influence. Some expect that the Mainland will

use continuing and greater economic incentives to seduce the people in Taiwan and that their will to resist will be sapped. We don't know, but none of this seems likely, judging from the evidence we now have about attitudes in Taiwan. Still, a lot depends on what leaders in the United States say that reassures, or fails to reassure, Taiwan, and how Taiwan—as well as the Mainland—behaves in cross-Strait relations.

China-Taiwan Relations in the 21st Century

My former student, Ma Ying-jeou, accomplished something very impressive during his two terms as president in Taiwan (2008-2016). He managed to make over 20 agreements with the Mainland (on economic matters) despite the Mainland's longstanding positions that: Beijing will never treat Taiwan on an equal basis; the central government of China is in Beijing and Taiwan's government is merely a government of one of China's provinces; and there is no possibility of there being “two Chinas,” two Chinese governments.

How did Ma do it? He managed to get China to join Taiwan in making use of the supposedly “unofficial” organizations each side had established—Taiwan's Straits Exchange Foundation and the Mainland's Association for Relations Across the Taiwan Strait. As a result, the cross-Strait agreements were not agreements between the government in Beijing and the government in Taiwan; they were agreements between semi-official organizations at most, what might be called “white glove” organizations. In reality, they were agreements between the governments, but they did not say so because that would be unacceptable to Beijing.

This was a classic example of what Holmes Welch, a wonderful American scholar, in the late 1950s, called the “Chinese art of make believe”—the ability, if required, to engage in imaginative methods, often using euphemisms or fictions, to reach agreements that would not otherwise be possible. Ma and his Mainland counterparts, using these devices, concluded 23 important



President Tsai Ing-wen (Source: Taiwan Presidential Office)

agreements. In 2012, when asked by the Taiwan media what I thought of Ma's prospects during his second term (which was about to begin), I said: “If he can manage to go on making agreements with the Mainland without sacrificing the island's security, he should be nominated for the Nobel Peace Prize.”

Sadly, Ma's successor and current president, the very able Tsai Ing-wen (of the Democratic Progressive Party), has not convinced the Mainland of the sincerity of her earnest efforts not to rock the boat of cross-Strait relations by not pushing for formal Taiwan independence. Since she came to office in 2016, the Mainland has refused to implement some of the agreements that Ma concluded. This has had a very negative effect on cross-Strait relations and is part of the pressure tactics that the Mainland is bringing to bear on Taiwan under Tsai.

The PRC not only conducts military maneuvers around Taiwan and sends military planes to encircle the island, and so on. China is not only squeezing Taiwan economically. Beijing is also refusing to deal with Tsai's government in Taiwan, even though it was legitimately elected. Beijing refuses to recognize that the majority of people on the island do not want to be integrated with China.

This has created a very difficult situation for Taiwan. Tsai is seeking greater U.S. help. Tsai is also trying to implement her “New Southbound Policy,” in an effort to reduce Taiwan’s economic reliance on the Mainland by expanding its relationships with Southeast Asian countries and even Australia. This effort is having some positive effect, but Taiwan still faces serious economic problems, in part because the Mainland itself is having economic problems. As China’s economy continues to slow down, Taiwan has greater problems. And Taiwan’s economic dependence on the Mainland also means political vulnerability.


All of these issues are occurring at a time when the U.S. is confronting a very volatile situation in the Greater China region. Most people are not focusing on Taiwan as part of the U.S.’s troubled relations with China. There is more concern with other issues: trade disputes and Trump’s attempt to use trade policies to press China to open its economy in the way it keeps pledging to do; the South China Sea disputes and examples of China’s “aggression” in that region; and the dangerous situation with North Korea and its nuclear arms program. We seem to have many more immediate problems than those concerning Taiwan.

The Importance of the Taiwan Issue

But the ultimate challenge in U.S.-China relations—and one that may be coming back to bite us again—is Taiwan. The American people may be confronted with a huge issue that is full of ambiguity: If push comes to shove and military conflict breaks out in the Taiwan Strait or China takes other serious coercive measures against Taiwan, are we going to say: “Look, we have so many headaches in the Middle East, we’re involved in an endless mess in Syria. We’ve not succeeded in leaving Afghanistan. Although the war has ended in Iraq, we haven’t gotten out of there. There is no satisfactory solution to any of our involvements in the Middle East, including Iran and Yemen. Are we now going to get involved in a war with China over Taiwan?”

Beijing’s increased military capability means that it could do a lot of damage to U.S. forces and even

the United States, with its huge arsenal of missiles and many long-range nuclear weapons, as well as its regular military forces and conventional assets. Faced with this reality, are Americans going to say what British Prime Minister Chamberlain said when Hitler threatened Czechoslovakia before World War II: “It’s a little country far away”? What are we going to do?

The Taiwan Relations Act, repeatedly and recently reaffirmed by senior U.S. officials, says we should come to the aid of Taiwan. Well, will we? And to what extent? One of the challenges is that most Americans don’t know much about Taiwan. The typical story, maybe it’s apocryphal, but I think it’s plausible and may be indicative of a much larger vulnerability in the U.S. commitment to Taiwan: An American woman was interviewed by an American journalist who asked, “What do you think about Taiwan?” And she said, “Oh, I love Thai food.” 

THE TAIWAN RELATIONS ACT AT 40: POLITICAL ENTRENCHMENT OF FOREIGN POLICY THROUGH LAW

JACQUES DELISLE



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Although the Taiwan Relations Act (TRA) and the policies it declares and underpins consistently offend China, the TRA has been a durable and fundamental pillar of Taiwan's security for 40 years. It has helped foster stability in U.S. policy toward Taiwan and cross-Straits relations and, in turn, regional peace and stability through oft-tumultuous times. There are many reasons that this has been so, but the TRA's legal content and character are a significant part of the explanation.

Given its creation at a moment of great peril for Taiwan, the TRA's effects are even more remarkable, yet despite its origins, it has been a durable and fundamental pillar of Taiwan's security for four decades. When the TRA was adopted, prospects seemed dim of a functionally independent and relatively secure Taiwan. As part of the deal to normalize relations with the People's Republic of China (PRC), the U.S. terminated its mutual defense treaty with the Republic of China (ROC) and thereby undercut the principal external guarantee of Taiwan's security. Washington also severed diplomatic relations with Taipei, striking one in a series of blows to the ROC's international status. The U.S.'s move came less than a decade after

Taipei had lost the Chinese seat at the United Nations to Beijing and amid many governments' moves to switch recognition from the ROC to the PRC. Although the lack of recognition and diplomatic relations has few necessary practical consequences, the existence of widespread recognition and diplomatic ties is an indicator—and an element—of the capacity to engage in international relations, which in turn is a key criterion for state status under international law and, more importantly, in the international politics that international law partly tracks and reinforces.

The Road to the Taiwan Relations Act

Beyond these international law-related blows to Taiwan, the broader politics of U.S.-ROC relations were grim for Taiwan. When the U.S. administration under Richard Nixon and Henry Kissinger had set in motion the forces that led to the ROC's loss of formal security and diplomatic ties, it had done so amid expectations that Taiwan would be eventually absorbed by the PRC. In those circumstances, there seemed to be little need to find alternative means to protect Taiwan's security and autonomy in the long run, or to grapple fully with the complex and fraught

legal-political question of Taiwan's status and sovereignty.

The Shanghai Communiqué that marked the first formal step toward these fundamental changes in U.S.-ROC relations set forth Washington's acknowledgement of the view on both sides of the Strait that there was but one China that included Taiwan. The principle was reaffirmed explicitly in the 1979 second Communiqué that normalized U.S.-PRC relations, and prompted the TRA. Partly a product of the Chiang Kai-shek regime's own position that there was but one China that included Taiwan (although the legal government was the ROC, not—as Beijing claimed—the PRC), the Communiqués' framing built into U.S. policy (and PRC expectations about U.S. policy) an international law-related element adverse to robust state-like status for Taiwan and an implication that every time another government shifted recognition or diplomatic ties from Taipei to Beijing, it eroded a key component of Taiwan's international stature and, in turn, security.

Some in the U.S. who sought to limit the damage to Taiwan turned to legal means. Some of Taiwan's supporters in Congress sued, challenging President Carter's termination of the mutual defense treaty without the Senate's consent. This legal challenge failed, partly because it rested on a weak argument that the Senate's role in consenting to the U.S.'s entering a treaty meant that the U.S. could withdraw only if the Senate-consented, and partly because U.S. courts are reluctant to wade into disputes between the president and Congress over major foreign and security policy issues.

Key Components of the Taiwan Relations Act

The other, more successful legal initiative to limit the impact on Taiwan of the U.S.'s termination of the security treaty and formal relations with the ROC and establishment of ties with the PRC was the TRA. Several of the TRA's substantive features have been important for symbolic and signaling, as well as practical, reasons.



Mao Zedong with Richard Nixon

The TRA's arms sales provision, committing the U.S. to sell "arms of a defensive character" (based solely on judgments about Taiwan's needs) and to maintain its own capacity to resist force or coercion that would jeopardize the security of the people on Taiwan, has provided a second-best alternative to the terminated mutual defense pact. This feature was bolstered by wider policy language in the TRA declaring that peace and stability in the region are interests of the United States and that the U.S. insists that the future of Taiwan be decided by peaceful means (in part, as a condition of the U.S. establishing relations with the PRC).

This provision and statements of U.S. interests and commitments have broader, if oblique, implications of U.S. positions concerning Taiwan's status and, therefore, security. Resonance with principles of international law—and the related politics of international security—are much of the reason. It is perfectly permissible under international law to provide weapons or intervene forcibly on behalf of the government of another state, but it is not, under all but extraordinary circumstances, permissible to do so for a long-ousted government or a secessionist province.

The TRA establishes functional substitutes for the legal rights and responsibilities and diplomatic relations that the ROC possessed before 1979 and would have lost. The TRA directs that Taiwan would continue to be treated in U.S. law largely as if it were a state, and the ROC as if it were the

government of a recognized state maintaining formal relations with the United States. The TRA provides for Taiwan and the United States to maintain the near-equivalents of embassies and consulates (the American Institute in Taiwan (AIT) and the Taipei Economic and Cultural Representative Office and Taipei Economic and Cultural Offices) in one another's territories. It also provides for Taiwan to enjoy attention from State Department staff (seconded to the Washington office of AIT), sovereign immunity in U.S. courts, continued capacity to be a party to international agreements with the United States (as well as U.S. support for Taiwan's participation in international organizations), and other state-like powers and obligations under U.S. law.

The “as if” status for Taiwan signaled ongoing U.S. support for Taiwan's robust, state-like standing both with the U.S. and in the world. This signal helped ameliorate the threat posed by the inexorable trend of states' shifting diplomatic ties and recognition from Taipei to Beijing. The TRA thereby became an early component of what would become post-derecognition Taiwan's now long-running pursuit of security through acquiring as many formal and informal attributes of sovereign statehood as possible, without crossing Beijing's redline by asserting formal, *de jure* independence.

These symbolically significant provisions of the TRA also addressed seemingly mundane matters with much practical significance for Taiwan's ability to function internationally. Absent the enjoyment of the state-like powers, privileges, or responsibilities that the TRA confers, Taiwan and Taiwanese entities and individuals would have found it much more difficult to undertake the level and range of economic engagement with the United States that has occurred. Without the TRA's commitment to U.S. support for ROC access to international economic accords—including, in recent years, the World Trade Organization, a still-unfinished bilateral Trade and Investment Framework Agreement, and, before the U.S. opt out, possibly the Trans-Pacific Partnership—Taiwan would have faced more serious obstacles to the international economic integration that has been vital to its economic success.

The TRA's declaration of a U.S. interest in the human rights of the people in Taiwan—which for a time read as a rebuke and warning to the authoritarian regime in Taipei—soon resonated with a vital basis for post-democratization Taiwan's ability to maintain U.S. support and garner international status. This “values”-focused provision resonates with Carter-era foreign policy principles that have persisted and periodically have become more prominent in the years since, including during the wave of global democratization that accompanied the end of the Cold War and Taiwan's democratization. In this context, the TRA's human rights provision has supported Taiwan's ability to invoke its now-long-strong record on human rights and democracy in its quest for international stature.

The TRA's Entrenchment of—and in—U.S. Policy

In addition to its content, the TRA's singular ability to entrench U.S. policy toward Taiwan issues has been a key to its effectiveness in helping Taiwan attain a measure of security. This entrenchment has several salient features. The TRA generally and the specific provisions that do most to enhance Taiwan's security and status have been remarkably enduring and stable, surviving for 40 years with no fundamental change and with few changes of any sort. Despite periodic calls for the U.S. to abandon Taiwan or acquiesce in its Finlandization, on one hand, or bills in Congress to require significantly stronger support and clearer commitments to Taiwan's security, on the other, the TRA has remained largely unscathed as an anchor for U.S. policy. Unlike many laws, it has not been gutted through executive branch interpretation or willful neglect.

Although modest in substantive requirements and leaving the executive branch with substantial discretion and room for interpretation, the TRA also has served as a lodestar and a safe harbor for occasionally wayward U.S. leaders and policymakers. From the Clinton administration's invitation permitting Lee Teng-hui to deliver a Taiwan-status-boosting speech at Cornell University, to President Clinton's seemingly “pro-



Lee Teng-hui (Source: Taiwan Presidential Office)

China” “three noes” (expressing non-support for Taiwan independence, two-China or one-China-one-Taiwan policies, and Taiwan’s membership in states-member-only organizations); from the second President Bush’s remark that he would do “whatever it takes” to help Taiwan defend itself, to Secretary of State Colin Powell’s statement that Taiwan “does not enjoy sovereignty”; and from President-elect Donald Trump’s acceptance of a congratulatory phone call from Taiwan’s President Tsai Ing-wen and his expressed skepticism about the U.S.’s One-China Policy, to President Trump’s pledge to Xi Jinping that the U.S. would maintain the One-China policy and declaration that he would not take another call from Tsai without consulting Xi, U.S. administrations have defused worries and expectations of policy shifts by denying that there had been, or would be, any change to U.S. policy that was firmly grounded in the TRA, as well as the three U.S.-PRC Joint Communiqués and, to a lesser extent, the Reagan-era Six Assurances.

Compared to the other “sacred texts” of the U.S.’s Taiwan and cross-Strait policy, the TRA is uniquely embedded because of its status as U.S. law. It binds the president and executive branch subordinates, who cannot lawfully disregard the TRA as they could the three U.S.-PRC Communiqués, or any number of lesser statements of policy issued during the past 40 years. Unlike the Communiqués, the TRA is not

negotiable with Beijing, or Taipei. The TRA’s qualitatively higher status is greater still because, from Washington’s perspective (although not from Beijing’s), the three Communiqués are mere foreign policy statements, not treaties creating binding international legal obligations. Unlike the similarly unilateral Six Assurances, the TRA has always been fully public and consistently acknowledged as a core part of the canon of U.S. Taiwan policy. Because of this high formal place in U.S. law, the TRA has helped presidents and senior administration officials to play a “two-level game” in which they are (at least ostensibly) constrained from making lasting or fundamental policy changes, including ones sought by Beijing or Taipei.

The TRA is entrenched—and entrenches U.S. Taiwan policy—also because of features of U.S. constitutional law and politics, specifically the separation of powers. Policy proclamations from the executive branch, joint communiqués, or statements issued by officials of the U.S. and other governments, and the like, are actions by one branch of government—albeit the dominant one in foreign affairs. They thus can be altered or reversed by the unilateral action of that same, single branch. As the litigation over Carter’s termination of the U.S.-ROC mutual defense treaty made clear, even binding international agreements can be changed by the president alone without the consent of the legislative branch.

As legislation passed by Congress and signed by the president, the TRA is qualitatively different—inalterable until subsequent legislation changes it. Separation of powers-related politics further insulates and entrenches the TRA and its policies. Although the president is relatively dominant in foreign affairs and Congress often shirks its limited responsibility by leaving the president to take the risk of foreign policy failures, much of the time, U.S. policy concerning Taiwan has not been an area where Congress has been strongly inclined to cede power or duck controversial issues. The relatively robust textual provisions in the TRA concerning presidential reporting, congressional review, and congressional oversight reflect at least an intention by the

TRA's framers to bind and monitor the president on Taiwan policy.

Recently, Congress has become exceptionally active, departing from the long-prevailing pattern of considering but not passing legislation relating to Taiwan's status and security. In 2018-2019, Congress passed, and the president signed, a National Defense Authorization Act, the Taiwan Travel Act, and the Asia Reassurance Initiative Act. Making declarations of U.S. policy and urging—but not purporting to require—the president to take action, these laws call for possible mutual port calls by the American and Taiwanese navies, reciprocal visits by high-level officials of the U.S. and ROC governments, and enforcement of “all existing commitments” consistent with the TRA, the three Joint Communiqués, and the Six Assurances (as well as taking steps to counter efforts by Beijing to change the status quo and to support efforts by Taiwan to strengthen asymmetric defense capabilities).

Another, more accidental aspect of the TRA has contributed to entrenching U.S. policy commitments to Taiwan. The TRA regularly generates moments of political focus. Its arms sales provision has meant that there will be relatively regular requests and offers of tranches of weapons sales, which are a tangible and symbolic reaffirmation of the U.S.'s support for Taiwan's security, even more so in the face of the opposition and denunciation that inevitably issue forth (albeit with varying intensity) from Beijing. The TRA—a pivotal and largely unchanged law—has a strongly commemorated enactment date. Every decade or half-decade anniversary brings statements of celebration of, and support for, the TRA from official Taipei and official Washington. This year, the TRA's 40th birthday is especially pointed, coming less than a year after the opening—and just weeks before the official opening—of the new USD 255 million AIT complex in Taipei's Neihu district.

Preserving the TRA's Subtle Virtues

Finally, despite consistent umbrage from Beijing, the TRA has helped to limit the impact of U.S. Taiwan policy on U.S.-PRC relations. Although

the TRA rankles Beijing as a reflection and source of what Beijing sees as Washington's disregard for Chinese sovereignty and interference in China's internal affairs, the TRA's character as U.S. domestic law creates “acoustical separation” that has deflected condemnation from Beijing and afforded Beijing an option to forego sharper confrontation. The TRA's expression of U.S. support for Taiwan are legally operative “only” in the form of legislative directives to the executive branch and courts in the United States about how to engage Taiwan. The TRA does not direct foreign policy behavior, with the partial exception of arms sales, where the TRA gives the president much formal and greater de facto discretion. And the TRA expresses no position on the hot-button issues of statehood or sovereignty for Taiwan. Because the TRA formally is “merely” domestic law, the PRC can dismiss it as incapable of altering what Beijing regards as the U.S.'s international legal commitments in the Communiqués to accept “one China” and eventually end arms sales to Taiwan.

To be sure, the TRA can, and does, face criticisms from nearly all sides. But seeking to remedy its shortcomings or perceived faults through amendment would put at risk much that Taipei and Washington should and do value, and that has been at least tolerable to Beijing. Opening so fundamental and long-stable a pillar of U.S. policy on so volatile an issue could move in unpredictable and ultimately undesirable directions. Moreover, legislation that brings significant amendment—or supersession, or even major supplementation—of the TRA risks eroding the distinctive place, and therefore the unique power, of the TRA in defining and maintaining U.S. policies that have brought stability in U.S.-Taiwan-PRC relations, security and autonomy for a now-impressively-democratic Taiwan, and stability in the wider region. 

THE TAIWAN RELATIONS ACT AT 40: NEW DYNAMICS OF AN ENDURING FRAMEWORK

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The Taiwan Relations Act (TRA) was enacted in 1979 to “to solve an unprecedented diplomatic problem: How to continue U.S. substantive relations with the people on Taiwan even though the U.S. government terminated diplomatic relations with the government in Taipei, as a precondition for normalization of relations with Beijing,”¹ as Stephen Solarz, the former Chairman of the Subcommittee on Asian and Pacific Affairs of the House of Representatives, put it. This unique legislation has guided U.S.-Taiwan relations for 40 years—longer than many have anticipated. It is a remarkable accomplishment. However, the time-tested wisdom of TRA is also being challenged by many new developments, raising the question whether this durable framework remains adequate.

Its durability has been analyzed. Jacques deLisle attributes the success to three reasons: (1) the TRA created functional replacements for Taiwan; (2) as the most important “sacred text” governing

U.S.-Taiwan and cross-strait relations, the TRA has provided policy stability; and (3) as a U.S. domestic law, the TRA has limited the adverse impact of U.S. Taiwan policy on U.S.-China relations.²

In a piece written for the 30th anniversary of the Taiwan Relations Act, I emphasized three characteristics: (1) the TRA has created a pragmatic exception for Taiwan, so the U.S. could treat Taiwan as a state and its governing authorities as a government (cf. Section 4); (2) the origin of the TRA reflected a rare “equilibrium” between the U.S. Congress and the executive branch that ensures executive-legislative joint responsibility for Taiwan’s security; and (3) the TRA was conceptually designed as a transitory piece of legislation enacted in tandem with a “status quo” constructed by the needs of U.S. foreign policy.³

1 U.S. Congress, House of Representatives, Subcommittees on Human Rights and International Organizations and on Asian and Pacific Affairs, *Implementation of the Taiwan Relations Act, Hearing and Markup*, May 7, June 25, and August 1, 1986 (Washington, D.C.: Government Printing Office, 1987) p. 1.

2 Jacques deLisle, “The 40th Anniversary of the Taiwan Relations Act,” *Taiwan Insight* (18 March 2019), <https://taiwaninsight.org/2019/03/18/the-40th-anniversary-of-the-taiwan-relations-act/>.

3 Vincent Wei-cheng Wang, “The Taiwan Relations Act at 30: Enduring Framework of Accidental Success?” *Taiwan Review*, vol. 59, no. 4 (1 April 2009), <https://taiwantoday.tw/news.php?unit=4,29,31,45&post=4360>.

While the TRA contributed to Taiwan's security, prosperity, and freedom, it did not increase Taiwan's dignity. In the past 40 years, Taiwan has evolved into a vibrant democracy. Yet, the U.S. government still maintains self-imposed and outdated restrictions on conducting "unofficial relations" with Taiwan. Gerrit van der Wees argues that "the TRA is perpetuating Taiwan's diplomatic isolation and lack of international status."⁴ Meanwhile, the People's Republic of China (PRC), under Xi Jinping, has worked actively to erase Taiwan's already limited international personhood, to flex military muscles, and to compel unification under the "one country, two systems" formula. U.S. policy toward Taiwan, under the aegis of the TRA, the Six Assurances, and the Three U.S.-China Communiqués, needs an update.

Developments in U.S. Laws—and Attitudes—on Taiwan

The durability of the TRA contributed to both policy resilience and inertia. One of the Six Assurances stipulated that the United States would not alter the terms of the TRA.⁵ Historically, attempts to shift the TRA toward a more or less pro-Taiwan direction have not succeeded. One such example was the Taiwan Security Enhancement Act of 2000, passed overwhelmingly in the House of Representatives, but eventually tabled in the Senate.⁶ The unusual legislative-executive equilibrium achieved at the TRA's onset, as discussed before, made it hard to deviate. Although implementation by the executive is important, Congress does monitor executive implementation and ensures a baseline. The two check and balance each other.

4 Gerrit van der Wees, "Taiwan relations beyond the 40th anniversary of the Taiwan Relations Act," *Taiwan Insight* (28 March 2019), <https://taiwaninsight.org/2019/03/28/taiwan-relations-beyond-the-40th-anniversary-of-the-taiwan-relations-act/>.

5 H.Con.Res.88 - Reaffirming the Taiwan Relations Act and the Six Assurances as cornerstones of United States-Taiwan relations. 114th Congress (2015-16). <https://www.congress.gov/bill/114th-congress/house-concurrent-resolution/88/co-sponsors>.

6 The text can be found at http://usinfo.org/sino/taiwan_enhance.htm.

However, this historical pattern began to change in the past few years. In 2018, the 115th Congress departed from long-prevailing practice and enacted several bills notably addressing quasi-diplomatic and security ties with Taiwan: the National Defense Authorization Act (NDAA),⁷ the Taiwan Travel Act (TTA),⁸ and the Asia Reassurance Initiative Act (ARIA).⁹ These laws purport to declare U.S. policy and ask the president to consider port calls in Taiwan by U.S. Navy ships and reciprocal visits by high-level officials of the U.S. and ROC governments, and conduct regular transfers of defense articles to Taiwan that are tailored to meet the existing and likely future threats from the PRC.

What explains this trend? Are these enacted laws supplementing or replacing the TRA? Both congressional-executive relations and U.S. relations with China in the Trump administration have changed from previous eras. Whereas support for Taiwan in Congress has always been strong and bipartisan, the executive branch (especially the State Department and the White House) typically has played a more cautious role as a brake because it implements laws and must deal with the repercussions from Chinese reaction. Typically, the executive branch is not keen on more pro-Taiwan legislative endeavors, and prefers to preserve as much executive discretion (and less legislative mandate) provided by a legal framework like TRA. For a bill to become law of the land, it must be introduced and passed in one chamber, sent to the other chamber and passed there, resolve differences, and finally be sent to the president for signature. For the first two years of the Trump administration (2016-18), there was a unified government, as Republicans controlled both chambers of Congress and the White House. The sponsors of these three acts—Cory Gardner, Steve Chabot, and Mac Thornberry—were all Republican lawmakers. The

7 H.R.2810 - National Defense Authorization Act for Fiscal Year 2018. 115th Congress (2017-18). <https://www.congress.gov/bill/115th-congress/house-bill/2810/text>.

8 H.R.535 - Taiwan Travel Act. 115th Congress (2017-18). <https://www.congress.gov/bill/115th-congress/house-bill/535/text>.

9 S.2736 - Asia Reassurance Initiative Act of 2018. 115th Congress (2017-2018). <https://www.congress.gov/bill/115th-congress/senate-bill/2736/text>.



Tsai Ing-wen visiting NASA.

dynamics of legislative-executive relationship concerning Taiwan changed from occasional tension to more cooperation.

This also has to do with the changing attitudes of the executive branch. In the Trump government, many officials and advisors take a more critical view of China and want to address the long-term neglect of Taiwan by providing it with more support. These people appear less concerned about Chinese sensitivities. For example, in the past, proposals such as port calls in Taiwan by U.S. Navy ships or the exchange of high-ranking officials would have received the State Department's preemptive opposition before Chinese condemnation.

After the 2018 midterm election with the House of Representatives changing hands to the Democrats, this new pattern still seems to hold. Several key committee chairpersons are members of the Congressional Taiwan Caucus. The historically present bipartisan support for Taiwan in Congress is now reinforced by bipartisan antipathy of China, which is also shared by the executive branch. The coalescence of these forces helps explain the passage of such laws as TTA, NDAA, and ARIA, which in the past would have most likely languished in a single Congress session, like the well-intentioned Taiwan Security Enhancement Act. However,

certain important pro-Taiwan provisions of earlier single-session bills, such as strengthening military cooperation and permitting exchange of high-level officials, were eventually incorporated in the passed acts in 2018. The time for these ideas has finally arrived thanks to the fortuitous confluence of trends pointed out here.

Responding to Chinese Boldness

In recent years, American elite attitudes toward China have noticeably darkened. Many began to question the longstanding engagement policy, which has dominated the American (or Western) approach in dealing with China for 40 years and has not led to a more open and liberal China. Instead, China has become a strategic and economic competitor, posing threats to Western interests and values through sharp power or influence operations.

China's assertiveness was even replicated in its approach toward Congress. In 2016, the Taiwan Travel Act was introduced to the U.S. Congress by Representative Steve Chabot and Senator Marco Rubio. The bill sought to address a shortcoming in U.S.-Taiwan relations: lack of high-level communication since 1979, when the U.S. started to restrict its officials' visits to Taiwan. The absence of high-level communication complicated U.S.-Taiwan

relations (in essence, alliance management). The need for understanding each side's strategic intentions was made painfully clear during the 1995-6 Taiwan Strait Crisis, when the U.S. risked a military confrontation against China even though President Bill Clinton did not know his Taiwanese counterpart's leadership style or strategic intentions, or pick up the phone to talk to him directly—all thanks to the U.S. self-imposed restrictions. Yet, trying to change this—under the unofficial framework—was politically difficult, and the executive branch certainly understood Beijing's predictable reaction.

In August 2017, Chinese Ambassador Cui Tiankai sent a letter expressing “grave concern” to leaders of the House and Senate, demanding they block provisions related to Taiwan in the National Defense Authorization Act of that year, which included the Taiwan Travel Act as well as the Taiwan Security Act of 2017.¹⁰ In the letter, Cui stated that the legislation represents “provocations against China's sovereignty, national unity and security interests,” and “[has] crossed the ‘red line’ on the stability of the China-U.S. relationship.” U.S. lawmakers perceived this wording, together with the Chinese threat of “severe consequences,” as inappropriate interference and “out of line.”¹¹

Both Members and aides took exception to Cui's reproach. Ranking House Foreign Affairs Committee Democrat Eliot Engel (D-NY) said in response: “China carries out this kind of heavy-handed behavior with other countries around the world. It's interesting to me that they now feel that they can get away with these kind of threats and vague pressure tactics with the U.S. Congress.”¹² China's heavy-handed tactics and direct threats to U.S. Congress through official communications backfired, by forcing Congress

10 S.1620 - Taiwan Security Act of 2017, 115th Congress (2017-2018), was read twice and referred to the Committee on Foreign Relations on 7/24/2017, but did not pass. It was another one of those single-session bills. <https://www.congress.gov/bill/115th-congress/senate-bill/1620/all-actions?overview=-closed#tabs>

11 Josh Rogin, “China threatens U.S. Congress for crossing its ‘red line’ on Taiwan,” *The Washington Post* (12 October 2017); and Charlotte Gao, “China's Lobbying Against the Taiwan Travel Act Backfires,” *The Diplomat* (17 October 2017).

12 Rogin, “China Threatens.”

to make a show of force against perceived Chinese bullying.¹³ This may have contributed to the unanimous passage of the TTA. President Trump quickly signed it into law on March 16, 2018. The Chinese were reportedly taken aback that Trump did not veto it or “approve” it by refusing to sign within the ten-day period. In the past, China could expect that the U.S. government would help rebuff the pro-Taiwan Congress and restrain the adventurous Taiwan. Not anymore.

Lawmakers introduced several other bills aimed at strengthening U.S.-Taiwan relations or bolstering support for Taiwan: for example, Reaffirming the United States commitment to Taiwan and to the implementation of the Taiwan Relations Act, Taiwan Reassurance Act, Taiwan Allies International Protection and Enhancement Initiative (TAIPEI) Act of 2018, etc. Some express the sense of Congress. Others require cooperation from the executive branch. While not all of them will pass, and analyzing their prospect of passage is beyond the scope of this paper, the “exceptions” of 2018 may not have ended.

Regardless of their legislative fates, both of these pro-Taiwan bills and the three enacted laws of 2018 address the demonstrated shortcomings of TRA. As such, they should be seen as supplements or follow-ups to the TRA, rather than its replacement.

Other than Chinese abrasiveness, the passage of the TTA, ARIA, and NDAA may also belie a reduced congressional confidence in the adequacy of existing commitments, especially under a mercurial and disruptive president.¹⁴

If such “exceptions” continue to increase, one needs to ask whether they result from a particular confluence of factors (in other words, the Trump policy toward China and the more cooperative congressional-executive relationship are exceptions, rather than the rule) or point to a need for a paradigm shift.¹⁵


13 Gao, “China's Lobbying.”

14 deLisle, “The 40th Anniversary.”

15 Thomas Kuhn, *The Structure of Scientific Revolution* (Uni-

What's Next?

The TRA has provided an enduring framework for maintaining and improving U.S.-Taiwan relations for 40 years. It can be and has been flexibly implemented. Protecting the substance of U.S.-Taiwan relations and Taiwan's interests through a unique domestic law was an ingenious statecraft that compartmentalized the more nettlesome issues about Taiwan's sovereignty (undoubtedly contributed by the diplomatic limbo imposed by U.S. de-recognition in 1979) and international personality. However, through practice, it has shown that Taiwan's dignity remains constrained and vulnerable under the current U.S. policy framework—one China policy based on those sacred texts, of which TRA is the most important. Encouragingly, the Trump administration and Congress have begun to take a more active approach toward Taiwan's international space and push back against China's diplomatic squeeze of Taiwan.¹⁶ Whether these measures will be sufficient remain to be seen.

Looking into the next decade, will the TRA remain adequate for accomplishing those goals its framers intended for? While the basic framework has worked well, the "TRA paradigm" may need a robust upgrade. If a new paradigm is better than a series of addendums, then what would it be? Is it time for  the U.S. to rethink its one China policy?

versity of Chicago Press, 1970).

16 Concrete actions include: the United States government summoned U.S. ambassadors to Panama, Dominican Republic, and El Salvador, the three Western Hemisphere countries that cut diplomatic relations with Taiwan, for home consultation; the TAIPEI Act ;and Secretary of State Mike Pompeo's testimony that the U.S. would use everything in its toolbox to help Taiwan keep its remaining diplomatic allies.

CAN THE TAIWAN RELATIONS ACT THRIVE IN AN ERA OF AMERICA FIRST?

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The Taiwan Relations Act (TRA) is rightly lauded as one of the most durable and effective laws governing foreign policy in U.S. history. For 40 years, the TRA has helped stabilize Washington's relations with Taiwan and with the People's Republic of China (PRC). It has enabled the U.S. to continue to carry out relations with Taipei that are consistent with its commitments to the PRC under the Shanghai Communiqué (1972) and the Normalization Communiqué (1979). It has remained useful and relevant through massive changes in international politics and in Taiwan's domestic politics. But today, the U.S. appears to be adopting a new approach to foreign policy. Whether the TRA will retain its relevance in this new era—the era of American First—remains to be seen.

The TRA is, at its heart, a product of the Cold War. Until just 40 years ago, the U.S. formally recognized the Republic of China on Taiwan as the official Chinese state because American leaders were loath to afford that status to the Communist Party-led PRC. Anti-Communism, a value the U.S. shared with Taiwan, was deeply embedded in U.S. politics. Many politicians, including powerful members of Congress,

were furious when they learned the U.S. was planning to switch recognition to the PRC. The TRA was their attempt to soften the effects of derecognition; it offered Taiwan moral support, backed by economic, political, and military commitments.

Given its origins in an anti-Communist alliance, the TRA might have lost its relevance when the Soviet Union fell. What value would a staunchly anti-Communist, but authoritarian, regime have had for the U.S. once Communism was no longer a threat? But by the time the USSR collapsed, Taiwan had shifted its “value proposition” in line with changing American priorities and global trends. Over the course of the 1980s, Taiwan's authoritarian system evolved in the direction of a liberal democracy, a process that was completed in the early 1990s. Like a Sichuan mask-changer, Taiwan deftly swapped out authoritarian anti-Communism for liberal democracy, acquiring a face that aligned with America's post-Cold War priorities such as free trade and human rights diplomacy. Instead of becoming irrelevant, the TRA acquired a new value, as the foundation for a reconstituted U.S.-Taiwan relationship.

In the post-Cold War era, U.S. officials held



Taiwan up as an exemplar of the virtues of the time. The “bulwark against Communism” became a “beacon of democracy” celebrated for its smooth, bloodless transition and vibrant, globalizing economy. The TRA was capacious enough to accommodate this transition; the original document referenced human rights as a strength of Taiwan, and President Bill Clinton enshrined democracy in the Taiwan policy catechism when he said the U.S. would support changes to the relationship between the PRC and Taiwan only if they were made peacefully, by both sides working together, and only if the Taiwanese people assented to the changes.

Throughout the 1990s and the early 2000s, making the case for Taiwan and the TRA was easy. Even though it lacked formal representation in most foreign capitals and international organizations, Taiwan was an active presence in the global economy. Taiwan-based manufacturing firms played a pivotal role in bringing mainland China into global manufacturing networks when they began moving their labor-intensive operations across the Taiwan Strait in the late 1980s. In the 1990s, Taiwan became a leading exporter of high-tech goods, including motherboards, PCs, and semiconductors. Taiwanese firms such as Foxconn led (and lead) the world in electronics manufacturing services. As technology matured, Taiwanese firms integrated the mainland into

advanced supply chains, making the PRC an exporter of tech products sold around the world.

At the same time that its firms were climbing the value chain and becoming indispensable to the 21st century economy, Taiwan’s democracy was consolidating. The last pre-transition president, Lee Teng-hui, was re-elected in 1996 in the island’s first direct presidential election. He was followed in 2000 by Chen Shui-bian, a member of the island’s long-banned opposition, the Democratic Progressive Party. The partisan pendulum has made two full swings in the years since, underscoring the degree to which Taiwan’s political leadership is accountable to a demanding electorate. At the same time, the island’s media landscape and civil society have provided outlets for a huge range of voices.

During the post-Cold War era, Taiwan’s strategic value to the U.S. appeared to diminish as the zero-sum ideological confrontation that characterized U.S.-China relations in the Cold War gave way to a brisk trading relationship and rich people-to-people ties. Until recently, Sino-U.S. relations blended cooperation and competition, but confrontation seemed unlikely. Taiwan’s value to the U.S. was as a reliable trading partner, a constructive example of democratic flourishing, and a bridge to the mainland. In other words, Taiwan’s political and economic virtues were

enough to secure Washington's favor even after the end of the Cold War. While the U.S. never committed to defend Taiwan unconditionally (and even rebuked Taiwanese leaders who tested that principle), American leaders routinely spoke of Taiwan as a friend and partner worthy of American support. The TRA provided the legal justification and concrete substance for a comprehensive relationship.

In 2016, U.S. policy took a sharp turn under the slogan "America First." It is difficult to discern what America First really means; its implementation has been fragmented and chaotic, with nearly as many retreats as advances. Nonetheless, the impulse infuses Donald Trump's every foreign policy utterance. This impulse is a poor fit for the longstanding justifications for U.S.-Taiwan relations. In both style and substance, America Firstism is perilous for Taiwan.

Stylistically, America Firstism is shaped by one of Trump's best-known traits: his transactional mindset. In the era of America First, allies are only worth keeping if they return value in the immediate term. In an America First world, investing resources to maintain a network of friendly nations that will fight together in the event of an attack on any one of them is a sucker's bet. The smart play is to make allies pay up. This mentality is deeply threatening to Taiwan, which has little to offer the U.S. as a military partner. Taiwan needs U.S. protection, not because it is helping the U.S., but because it is a friend and partner. But America Firstism is indifferent to claims such as these.

In substance, America Firsters are at best indifferent, and in some cases actively hostile, to the very achievements that made Taiwan attractive to U.S. policymakers during the Cold War and post-Cold War eras. Taiwan's extraordinary economic development, which the U.S. supported and celebrated for decades, has put it in the cross-hairs of a U.S. administration that seeks to return the U.S. economy to the 1950s. Despite decades of synergistic, mutually profitable economic cooperation with Americans, Taiwan has been saddled with sanctions aimed at forcing steel and aluminum manufacturing


back to the American homeland. Taiwan will suffer even more if the U.S. follows through with sanctions on PRC exports, since much of the PRC's output of finished electronics and other goods is produced by Taiwan-owned firms with important high-value operations on Taiwan.

As for Taiwan's democracy, while U.S. officials outside of the White House still celebrate the island's strong record of political reform and human rights, the White House itself has made it clear that these are not priorities on which hard choices will be made. Donald Trump has sought deep funding cuts in programs aimed at promoting human rights and democracy, and he has lauded dictators and human rights abusers around the world. In the age of America First, Taiwan's vibrant democracy, active civil society, and comprehensive freedom are not the attributes likely to win the favor of the U.S. president.

There is one dimension on which Taiwan might have value to an America First administration: as an obstacle to China's ambitions.

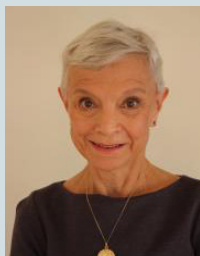
The TRA does not treat Taiwan as an obstacle to China's ambitions. On the contrary, its purpose is to "preserve and promote extensive, close, and friendly commercial, cultural, and other relations between the people of the United States and the people on Taiwan, as well as the people on the China mainland and all other peoples of the Western Pacific area." The TRA treats Taiwan not as a means to an end, but as an entity worthy of protection in its own right: it defines threats to Taiwan as threats to the "interests of the United States and . . . matters of international concern." The TRA says U.S.-PRC relations rest "upon the expectation that the future of Taiwan will be determined by peaceful means," and it backs up that expectation with the promise of arms sales and a requirement that the U.S. maintain the ability to resist the coercion of Taiwan. The TRA even offered its support to Taiwan's nascent democracy movement when it promised that "the preservation and enhancement of the human rights of all the people on Taiwan are hereby reaffirmed as objectives of the United States."

The genius of the TRA is that it allowed the U.S. to continue substantive relations with Taiwan while building constructive, cooperative relations with Beijing. It did not put Taiwan between the U.S. and China or turn it into an instrument of U.S. policy. This structure supported Taiwan through the final decade of the Cold War, and when the Cold War ended, it supported a democratizing and then democratic Taiwan through the post-Cold War era.

The principles enshrined in the Taiwan Relations Act—the pursuit of friendly relations with the people on both sides of the Taiwan Strait, the protection of Taiwan from coercion, the expectation of peaceful relations, the enhancement of human rights—fostered an environment in which Taiwan survived and even thrived for four decades. These are not America First principles, but they are American principles, reflecting enduring American values. We can only hope that the TRA will survive this new moment in American politics and continue to provide a platform for stable U.S.-Taiwan relations for decades to come. 

THOUGHTS ON THE PAST, PRESENT, AND FUTURE OF THE TAIWAN RELATIONS ACT

JUNE TEUFEL DREYER



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As nearly all supporters of Taiwan agree, the Taiwan Relations Act (TRA) is a fine document. Those of us who were in Washington when members of Congress, State Department officials, and administration personnel were trying to craft the legislation can only marvel that the document signed into law as PL 96-8 on April 10, 1979, came into being at all, much less that it was able to bridge the sharp divisions among interested parties that preceded the final design. Several of those who provided input either hoped or feared that the TRA would be short-lived, easing the way for the absorption of Taiwan into the People's Republic of China (PRC) after what was referred to as "a decent interval."

By virtue of the fact that it has survived for 40 years, the TRA can be considered a success. No dead letter, it is frequently cited in support of the continuing U.S. commitment to Taiwan. Despite the care taken in its framing, however, the TRA is not a perfect document. What does it mean to say that the United States will supply to Taiwan such defensive arms as are needed to maintain a military balance in the Taiwan Strait? With a small fraction of the population of China and an even smaller fraction of China's military assets,

there is not and never can be a military balance across the Taiwan Strait without the United States military. And who is to decide which arms will be made available, in what quantity, and when? The TRA says that the administration and Congress will jointly decide, but in general, the administration has made those judgments with little input, and sometimes contrary to, the views of those members of Congress who have expressed opinions.

President Ronald Reagan gave the Six Assurances to Taiwan of which the third is that the United States would not consult with China in advance before making decisions about United States arms sales to Taiwan. Yet, the Six Assurances were treated as private: the official mantra has been that U.S. policy toward China is governed by the TRA and the Three Communiqués with the PRC, with no mention of the Six Assurances. And nearly every U.S. arms sale decision seems to be made with the probable reaction of the PRC taken heavily into account—the elephant in the room, as it were. As a Taiwanese student of the Sun Yat-sen Center for Science and Technology (CSIST), referencing Taiwan's then-recent accomplishments in indigenous defense capacity, said to me some years ago, "Washington

won't agree to sell us what we want until we show that we can make it ourselves."

These imperfections notwithstanding, most agree that the TRA should not be amended, since any suggestion that modifications are even being considered is sure to ignite a firestorm of rage from the PRC, followed by the now familiar pattern of increased military activity in the area, economic sanctions on the countries that have incurred Beijing's ire, and arrests of its citizens on alleged spying charges.

What Can We Do to the TRA?

Recognizing these strictures, can anything be done to make the TRA better? As the PRC frequently reminds us, it is not a treaty. Could it be made into a treaty? Leaving aside the legal difficulties of concluding something akin to a security treaty with an entity whose sovereignty Washington has not acknowledged, and marshaling sufficient votes to pass if it were submitted to the Senate, treaty status would not actually provide better guarantees.¹ If the TRA has loopholes and ambiguities, so do treaties. To take one example, according to Article 5 of the U.S.-Japan Security Treaty:

Each Party recognizes that an armed attack against either Party in the territories under the administration of Japan would be dangerous to its own peace and safety and declares that it would act to meet the common danger in accordance with its constitutional provisions and processes. Any such armed attack and all measures taken as a result thereof shall be immediately reported to the Security Council of the United Nations in accordance

¹ "Treaties" in the U.S. constitutional sense require ratification. But most "treaties" in the international law sense that the U.S. makes are done as "executive agreements" and not submitted to the Senate. Treaties/international agreements are common with entities that are not sovereign states. The U.S. has international agreements that include Taiwan, Hong Kong, the EU, and so on. Security treaties, however, are generally not done with non-states (and even more so with "provinces" of other states).

with the provisions of Article 51 of the Charter. Such measures shall be terminated when the Security Council has taken the measures necessary to restore and maintain international peace and security. (emphasis added)

Does anyone imagine that the PRC, a veto-wielding member of the UN Security Council, would be cooperative in taking the steps needed truly to restore or maintain peace and security? Even in the case of the North Atlantic Treaty Organization (NATO), regarded as the gold standard in mutual security, the relevant articles, number four and five, state,

ARTICLE 4 The Parties will consult together whenever, in the opinion of any of them, the territorial integrity, political independence or security of any of the Parties is threatened.

ARTICLE 5 The Parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all; and consequently they agree that, if such an armed attack occurs, each of them, in exercise of the right of individual or collective self-defense recognized by Article 51 of the Charter of the United Nations, will assist the Party or Parties so attacked by taking forthwith, individually and in concert with the other Parties, such action as it deems necessary, including the use of armed force, (emphasis added) to restore and maintain the security of the North Atlantic area. Any such armed attack and all measures taken as a result thereof shall immediately be reported to the Security Council. Such measures shall be terminated when the Security Council has taken the measures necessary to restore and maintain international peace and security.²

² Treaties that combine the "Article 51" and "report to the

Moreover, even these limited guarantees should not give any NATO member a false sense of security. When President Donald Trump was questioned by Tucker Carlson on Fox News in July 2018 on whether the U.S. should go to war if Montenegro, which joined the organization in 2017, were attacked by Russia, he replied,

*I've asked the same question. You know, Montenegro is a tiny country with very strong people. . . . They're very strong people. They're very aggressive people. They may get aggressive, and congratulations you're in World War III. Now I understand that, but that's the way it was set up.*³

Time for a New Interpretation?

If the TRA cannot be amended or be made a treaty, perhaps it could be reinterpreted, as indeed the Japan government, in response to China's rising power, has done to its peace constitution. Those who would like to do so might well consider the result of the Clinton administration's 1993-1994 policy review. Buoyed by Clinton's criticism of his rival, incumbent President George H.W. Bush, for "coddling dictators from Baghdad to Beijing,"⁴ supporters of Taiwan had high hopes for his administration.

Instead, the new president, seemingly enticed by the prospect of expanding economic

UNSC" clauses leave the state parties to the treaty a lot of room to maneuver. The Article 51 right to self-defense pre-dates the UN Charter and survives its adoption. It is available to states without their having to go to the UNSC. And the treaties (including as quoted here) say, or leave room for parties to say, "We will report to the Security Council, but we're going to keep on using force until we decide that the UNSC has done enough."

3 Christian Gomez, "Trump Questions NATO 'Article 5' Mutual Defense Clause," *The New American*, July 18, 2019, <https://www.thenewamerican.com/usnews/foreign-policy/item/29573-trump-questions-nato-article-5-mutual-defense-clause>.

4Nicholas D. Kristof, "China Worried by Clinton's Linking of Trade to Human Rights," *New York Times*, October 9, 1992, <https://www.nytimes.com/1992/10/09/world/china-worried-by-clinton-s-linking-of-trade-to-human-rights.html>.

relations with the PRC, moved quickly to establish good relations with those he had only recently criticized. The policy review, rather than reinforce the TRA, represented a step backward. For example, whereas the TRA says that "nothing in this Act 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," the Taiwan Policy Review narrowed this commitment: It supported Taiwan's membership in international organizations "where statehood is not a prerequisite."⁵ The administration also stated its strong opposition to congressional leaders legislating authorization for visits by high-level Taiwan government officials to the U.S., or reciprocal visits from high-level U.S. officials to Taiwan, saying that "[the administration] will make judgments as to what level of visitor best serves our interests" and that it was prepared to establish only a sub-cabinet economic dialogue. Even those meetings were to take place outside of government offices.

Oddly, since the Taiwan Policy Review was a clear assertion of the administration's right to determine what the TRA had seemed to envision as subject to joint oversight by the president and Congress, there seemed to be little concern from the legislative branch, which normally carefully guards against its prerogatives being infringed by the executive. A small concession to Taiwan allowed the name of its representative office in the U.S. to be changed from the unwieldy and misleading Coordination Council for North American Affairs to its current title, the slightly less unwieldy and misleading Taipei Economic and Cultural Representative Office (TECRO)—all while maintaining that nothing about U.S. policy had changed.

Given the dissatisfaction with the 1994 document, the general feeling among Taiwan's supporters toward the TRA is best summed up as "if it ain't broke, don't fix it." Still, times have changed.

5 American Institute in Taiwan, "Appendix 74 -- U.S. Taiwan Policy Review I" (1994), https://www.eapasi.com/uploads/5/5/8/6/55860615/appendix_74_--_u.s._taiwan_policy_review_i_1994_.pdf.



Tsai Ing-wen talking to Donald Trump on the phone in 2016. (Source: Taiwan Presidential Office)

During the last quarter-century, the convergence between the PRC and ROC that some American policymakers hoped would allow an amicable settlement of cross-Straits differences has turned into divergence. As Taiwan's democracy became ever more firmly established, China's government became increasingly autocratic domestically and expansionist internationally. This development, in turn, engendered the possibility that, just as the 1994 review had reinterpreted policy in ways that seemed negative to Taiwan, it would be possible to reinterpret policy in ways favorable to Taiwan.

U.S.-Taiwan Relations under Trump

For those who favor such a reinterpretation, the Trump administration has been a decided improvement over its predecessor. In response to bellicose statements by Beijing with regard to Taiwan, the U.S. has several times sent navy ships through the Taiwan Strait, an action that had been exceedingly rare since U.S.-PRC normalization in 1979. Although international law clearly allows U.S. warships peaceful passage through the Strait, Beijing strenuously objects.

In early 2018, Congress passed and Trump signed PL 115-135, the Taiwan Travel Act (TTA), which states explicitly that "since the enactment of the TRA, relations between the U.S. and Taiwan have suffered from insufficient high-level communication due to the self-imposed restrictions that the United States maintains on high-level visits with Taiwan." The TTA added a sense of Congress statement that such visits should be encouraged and that they should take place with appropriate respect for the dignity of such officials, meaning an end to the humiliating ruling that meetings could not be conducted inside government offices.

As 2018 ended, Trump signed PL 115-409, the Asia Reassurance Initiative Act (ARIA), which states officially for the first time that the U.S. will "faithfully enforce all existing commitments consistent with the TRA, the three Joint Communiqués, and the Six Assurances agreed to by President Ronald Reagan in July 1982" (emphasis added). The ARIA further called for the U.S. to counter efforts to change the status quo, to support the efforts of Taiwan to develop and integrate asymmetric capabilities, and to encourage the travel of high-level officials to

Taiwan in accordance with the TRA. There is no mention of the 1994 policy review's restrictions.

In late March 2019, the head of the American Institute in Taiwan (AIT) visited Taiwan's Ministry of Foreign Affairs for the first time. At a joint press conference, ambassador-equivalent Brent Christensen and Minister of Foreign Affairs Joseph Jaushieh Wu announced the establishment of an annual dialogue mechanism on democratic governance.⁶ Speaking in mandarin, Christensen declared, "We could not ask for a better partner." In the same month, State Department Principal Deputy Assistant Secretary Patrick Murphy told Voice of America that China had been busy changing the status quo in the Taiwan Strait, including imposing military threats against Taiwan, poaching its diplomatic allies, and pressuring other nations to reduce its international space.⁷

While progress unquestionably has been made in undoing the objectionable parts of the 1994 policy review and returning to the original sense of the TRA, so far the revisions have remained largely verbal or on paper. As always, actions speak louder than words—and actions are needed. The informal opening of the new \$255 million AIT office in June 2018 was a symbolic commitment of U.S. support, but, despite clearly expressed views from Congress, no high-level U.S. official attended, likely because of concerns from within the State Department about China's reaction.

What could be done to raise the level of commitment beyond praise for Taiwan's successful democratization, acknowledgement of the need for more people-to-people exchanges, and clichéd assurances about working together to achieve regional peace and prosperity?

- Send high-level personages to the April 10 celebration at the new AIT.

⁶ Stacy Hsu, "Taiwan, US to hold annual dialogue," *Taipei Times*, March 20, 2019, <http://www.taipetimes.com/News/front/archives/2019/03/20/2003711817>.

⁷ "China changing 'status quo,' US official warns," *Taipei Times*, March 24, 2019, <http://www.taipetimes.com/News/front/print/2019/03/24/2003712071>.

- Rename TECRO with a title comparable to AIT: the Taiwan Institute in America. Indeed, Japan instituted just such a change more than two years ago.
- Make sure that the U.S.-Taiwan defense dialogue is meaningful and has operational significance.
- Reiterate that Congress and the president will, in consultation with Taiwan, decide what weapons are to be sold, without reference to the opinions of the Chinese government, and ensuring that Congress exercises the role in arms sale decisions that the TRA grants to it.
- Continue to respond to Beijing's bellicose statements and salami tactics with U.S. policies and actions. Joint U.S.-ROC exercises can be explained, as the Chinese government frequently does, as preparation for humanitarian assistance and disaster relief operations.
- Consider port calls for American navy ships and coast guard vessels at Taiwan ports, and Taiwan's navy and coast guard at U.S. ports.
- In response to bellicose statements or action by the PRC, send a U.S. aircraft carrier through the Strait.
- End references to the Clinton administration policy position that a solution must have the assent of both the PRC and Taiwan. U.S. policy should state only that the solution must be peaceful and have the freely expressed consent of the people of Taiwan.

Taken together, these should provide assurances that, ten years from now, we may gather to commemorate the first half century of the Taiwan Relations Act. 🇺🇸

THE TAIWAN RELATIONS ACT AT 40: REACHING A NEW OPTIMAL EQUILIBRIUM IN U.S.-TAIWAN POLICY

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The Taiwan Relations Act (TRA)—passed by the U.S. Congress in 1979—has provided an enduring framework for U.S.-Taiwan relations. This remarkable legislation mandated special American obligations and commitments to Taiwan that have helped to preserve peace and stability in the Taiwan Strait for the past 40 years. It is also the only legal underpinning of U.S. policy toward Taiwan. Yet, much as strategic changes necessitated adjustments in U.S. policy during the Cold War, fundamental changes in the circumstances of the 21st century, as former Deputy Secretary of State Richard Armitage said at a Global Taiwan Institute and Project 2049 Institute forum, require, at the very least, a “rethink”¹ of the U.S. approach to Taiwan policy

1 Global Taiwan Institute and Project 2049 Institute, Phase Zero: A New Taiwan Policy?, <https://www.youtube.com/watch?v=4f8ROgNUbJs>.

and cross-Strait relations.

To be sure, the U.S.-Taiwan relationship is stronger now than it has ever been since 1979, so “if it ain’t broke, don’t fix it,” right? Wrong. Even though it is not broken, Taiwan policy needs to be recalibrated. While the U.S.-Taiwan relationship is heading in the right direction, the U.S. should start thinking about a destination. Perhaps most importantly, the U.S. needs to shift from a reactive to an affirmative policy to Taiwan.

Recalibrating the Trilateral Relationship

U.S. policy towards Taiwan does not exist in a vacuum. Relations between Washington and Beijing over the last 40 years have had a disproportionate influence in how the United



States conducted (and conducts) its informal relations with Taiwan. The current framework for the trilateral relationship between Washington, Taipei, and Beijing, which includes the TRA, Six Assurances, Three Communiqués, and the U.S. “One China” policy, requires recalibration.²

While a U.S. and Taiwan policy of maintaining the status quo has helped to maintain peace in the Taiwan Strait and remains the best near-term option, it is unsustainable in the long term because China is unceasingly and aggressively seeking to change the status quo through military and non-military means. The massive military buildup across the Taiwan Strait by the People’s Liberation Army (PLA), the Chinese leadership’s continued refusal to renounce the use of force against Taiwan, and the Chinese Communist Party’s (CCP) non-military coercive pressure are destabilizing the Strait and are threatening the peace and security of the Indo-Pacific area.

While the United States has managed to deter Beijing militarily from taking destructive military action against Taiwan over the last four decades,

² It is important to also note that just in the past two years a number of bills to further support and strengthen the U.S.-Taiwan relationship were introduced in Congress, and some signed into law. These bills are: the Taiwan Travel Act, which was signed into law by President Trump on March 16, 2018; the Asia Reassurance Initiative Act which was signed by President Trump in December 2018; and the Taiwan Assurance Act introduced in Congress in March of this year.

because Beijing has been relatively weak, the risks of the U.S. approach inch dangerously close to outweighing its benefits as the PLA rapidly modernizes. Meanwhile, the CCP is intensifying its political infiltration and subversion activities through United Front and other active measures-like campaigns to affect the social and economic systems of Taiwan. As the PLA grows stronger, a perceived lack of commitment that the U.S. will intervene in defense of Taiwan, which is shared in Taiwan and other countries in the region, could weaken morale in Taiwan and further embolden Beijing to use force to resolve the Taiwan issue. Public perceptions and misperceptions toward arms sales and economic ties, as well as the continuation of the U.S. policy of strategic ambiguity have fueled such attitudes.

However, this perceived lack of commitment is unfounded as the U.S. has repeatedly shown, through legislation, arms sales, Global Cooperation and Training Framework (GCTF) initiatives, the free and open Indo-Pacific strategy, and many other projects and activities, that it values Taiwan’s freedom and democracy.

If Washington and Taipei continue their reactive approach toward Beijing’s unilateral challenges to the status quo, it can lead to greater instability in the Taiwan Strait. Greater clarity of U.S. commitments to defend Taiwan, coupled with

demonstrative commitments by Taiwan to its own self-defense, is critical for purposes of deterrence and stability.

A Policy of Soft Balancing

U.S. policy towards Taiwan over the past 40 years has operated on the premise that America's primary interest is in the process—as opposed to the outcome—of resolving differences between the two sides of the Taiwan Strait. There is wide latitude for policymakers within the United States and Taiwan to work within the existing legal and policy framework, but a necessary foundation to ensure the sustainability of peace over time is an affirmative policy of soft balancing by the United States.

By design, U.S. policy was inherently reactive and intentionally ceded the initiative of shaping the ultimate outcome to the two other parties. It was an approach that some senior U.S. policymakers, at the time that the policy was conceived in the 1970s, expected would create a *fait accompli*, and one that would provide Washington with the flexibility to respond to broader geopolitical challenges of the Cold War with the Soviet Union while maintaining stability in the Strait.

Despite some expectations to the contrary, Taiwan thrived in the ensuing four decades. The government liberalized from the top down while an active civil society fervently pushed for political reforms from the bottom up. Taiwan evolved from an authoritarian regime to a vibrant democracy. As a consequence, support for Taiwan and its democracy grew within the United States as well.

Yet, the growing power disparity between Taipei and Beijing and a protracted practice of undue deference by Washington to Beijing's sensitivities has gradually eroded some of the original commitments made under the TRA and President Ronald Reagan's Six Assurances.³ These

³ Passed in 1982, during a House and Senate testimony, then-Assistant Secretary of State for East Asian and Pacific Affairs John H. Holdridge stated on behalf of the Executive Branch (President Reagan) that—

“(1) [W]e did not agree to set a date certain for ending arms sales to Taiwan; (2) [W]e see no mediation role for the United

Assurances include, perhaps most importantly, maintaining the U.S. position of not taking a position on the issue of sovereignty over Taiwan, no prior consultation with Beijing on arms sales to Taiwan, and no attempt to pressure Taiwan to enter into negotiations with the PRC, among other measures.

As the power disparity between Taiwan and China widens, a U.S. policy based purely on ensuring a peaceful process is and will increasingly be under strain, leaving Taiwan more susceptible to coercion and Beijing more emboldened to pressure Taiwan, and increasing the risk of military conflict.

The PRC's coercive pressure campaign is aimed at gradually and unceasingly pushing for its own desired outcome: ending the sovereignty of a democratically elected government and the freedom of its 23 million people by unifying Taiwan into the PRC. All the while, the current approach may be inadvertently drawing the United States towards China's preferred objectives, at the expense of its own values and strategic interests.

Indeed, some American scholars and former policymakers have floated the alarming idea that the U.S. needs to accommodate China by reaching a new *modus vivendi* with Beijing—which would have the U.S. effectively abandon Taiwan.⁴ This flawed view is based on a tendency to construct events in the Taiwan Strait in binary terms—either independence or unification—and for Beijing, the only option is unification, even if it means going to war. But U.S. policy should not

States between Taiwan and the PRC; (3) [N]or will we attempt to exert pressure on Taiwan to enter into negotiations with the PRC; (4) [T]here has been no change in our longstanding position on the issue of sovereignty over Taiwan; (5) We have no plans to seek revisions to the Taiwan Relations Act; and (6) The August 17 Communiqué should not be read to imply that we have agreed to engage in prior consultations with Beijing on arms sales to Taiwan.” From: 114th Congress (2015-2016) “H.Con.Res.88 - Reaffirming the Taiwan Relations Act and the Six Assurances as cornerstones of United States-Taiwan relations,” <https://www.congress.gov/bill/114th-congress/house-concurrent-resolution/88/text>.

⁴ See, e.g., https://carnegiendowment.org/files/CEIP_Swaine_U.S.-Asia_Final.pdf, and https://www.wilsoncenter.org/sites/default/files/isec_a_00199.pdf



accept the assertion that cross-Strait relations pose such a Hobson's choice.

An Affirmative Vision

Despite Washington's and Taipei's pragmatic approach, Beijing's approach is becoming more coercive, unilateral, and increasingly detrimental to U.S. interests.

The U.S. needs to adopt a more affirmative Taiwan policy that not only insists on a peaceful process, but also provides an alternative substantive vision that, at the very least, reflects the objective reality that two legitimate, mutually non-subordinate political entities coexist across the Taiwan Strait.

This would entail a significant, but marginal, change in U.S. policy, and a great deal of uncertainty comes with any change. But the alternatives to such change present equally destabilizing propositions, and fear of even thinking about change could lead to a state of paralysis, which would be seriously disruptive in the Taiwan Strait.

Policy Recommendations

Despite Beijing's efforts to undermine the status quo and achieve the political subordination of Taiwan under its "One China Principle,"

Washington has managed to foster robust U.S.-Taiwan relations. Notwithstanding its past successes, the current policy framework has not kept pace with fundamental changes that have taken place in Taiwan, and Beijing's increasing belligerence towards Taiwan and may not be sustainable. A representation that is more in tune with the reality on the ground in Taiwan—which takes into account its transition from authoritarian regime to democracy—and in China—which takes into account its authoritarianism that has become more aggressive domestically and abroad—would allow for a recalibration of the U.S.-Taiwan relationship that would be more conducive to long-term U.S. interests in the region, and more accurately reflect American principles and values. Towards that end, the governments in Washington and Taipei should consider promoting the following⁵:

(1) Normal, Stable, and Constructive Relations:

The United States should deepen and broaden its engagement with Taiwan and consider ways to move toward a more normal relationship over the longer term. Taiwan is a great democratic success story, a thriving economy, and a global leader in health and science. It stands to contribute greatly as a good citizen of the world. The U.S. should seek to promote opportunities

⁵ These recommendations are based on various ideas put forward during the Global Taiwan Institute and Project 2049 Institute conference "Phase Zero: A New Taiwan Policy?", <https://www.youtube.com/watch?v=4f8ROgNubJs>.

for Taiwan to participate meaningfully in international organizations, and resist pressure to isolate Taiwan from participating in the cooperative work among nations in international organizations.


(2) High-level Exchanges: U.S. officials at the highest levels should engage counterparts in Taiwan on a regular basis in accordance with the Taiwan Travel Act. President Donald Trump and President Tsai Ing-wen should seek the opportunity to meet each other in person. This will invariably cause friction between Washington and Beijing, but treating democratic leaders with dignity and respect is key to a broader strategy. Cabinet-level officials should regularly visit their counterparts in Taiwan to discuss national, departmental, and technical issues of shared interest. Hindering high-level contacts encourages misunderstandings and policy mistakes, especially in times of crisis. The current level and pace of interactions is inadequate for managing the complexities of a relationship that encompasses issues ranging from trade to science and technology, and from environmental protection to defense and security affairs.

(3) Bilateral Trade Agreement: The United States government should negotiate a free trade agreement with Taiwan, with similar or even better terms than the ones it already has with South Korea, Singapore, and Australia. Taiwan is an island nation, heavily dependent upon trade to sustain itself as an economic powerhouse, and it is vulnerable to increasing Chinese economic coercion, especially since just in 2018, 41% of Taiwan's merchandise exports were to mainland China and Hong Kong, according to data released by the Congressional Research Service.⁶ This effort will likely occur over the long term, but it could have important payoffs for American statecraft by integrating trade into the calculation of a comprehensive strategy for great power competition. The U.S. would benefit both economically and strategically from a closer trade relationship with Taiwan.

6 "U.S.-Taiwan Trade Relations," *Congressional Research Service*, March 5, 2019, <https://fas.org/sgp/crs/row/IF10256.pdf>.

(4) Routinize Arms Sales: The United States, as stipulated under the TRA and reinforced by the recently proposed Taiwan Assurance Act of 2019, "conducts regular transfers of defense articles to Taiwan in order to enhance its self-defense capabilities."⁷ Just in September 2018, the U.S. State Department approved a \$330 million military sale to Taiwan.⁸ However, regardless of past and recent practices of arm sales to Taiwan, the United States should routinize the arms sale process for addressing Taiwan's requests for defense articles and services; provide a timely response to requests as well as commercial export licenses; and base arms sales decisions on Taiwan's strategic and operational requirements, which are inherently defensive in nature and serve U.S. interests. In keeping with the terms of the Reagan's Six Assurances, Beijing should not be consulted in advance of arms sales to Taiwan.

(5) People-to-People Exchange: The U.S. State Department should launch a new initiative to enhance people-to-people exchanges with Taiwan, especially in the areas of education and culture. The United States government should support the development of more nonprofit educational organizations that encourage mutual understanding among citizens of the two nations.

Adjusting the U.S. approach toward its Taiwan policy and cross-Strait relations to ensure that the TRA-created framework is able to manage the current and future challenges ahead demands a new approach that fundamentally extends greater legitimacy to democratic Taiwan politically, economically, and militarily. Sustained and high-level discussion is needed now more than ever before between the United States and Taiwan to determine a new optimal equilibrium that best reflects the objective reality in the Strait. 

7 116th Congress (2019-2020), "H.Res.273 - Reaffirming the United States commitment to Taiwan and to the implementation of the Taiwan Relations Act," <https://www.congress.gov/bills/116th-congress/house-resolution/273/text>.

8 Mohammad Zargham, "U.S. approval of \$330 million military sale to Taiwan draws China's ire," Reuters, September 24, 2018, <https://www.reuters.com/article/us-usa-taiwan-military/u-s-approval-of-330-million-military-sale-to-taiwan-draws-chinas-ire-idUSKCN1M42J9>.

THE TAIWAN RELATIONS TURNS 40, SO WHAT NOW?

THOMAS J. SHATTUCK



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April 10 marks the 40th anniversary of the signing of the Taiwan Relations Act (TRA). At the time of its passage in 1979, the law was an emergency consolation prize created by the U.S. Congress for the Republic of China on Taiwan after the Carter administration switched diplomatic recognition to the People's Republic of China (PRC). Now, 40 years later, the TRA is treated as a "sacred" text in U.S.-Taiwan relations because it has allowed for stable and strong relations between the two countries—even if at the unofficial level.

For a nation located at a strategically important point in the Western Pacific that is only 80 miles from the PRC, the TRA's meaning has changed over time as relations among the U.S., Taiwan, and China have gone through ebbs and flows. What has not changed over the course of the 40 years is the symbolic importance of the law. No matter which U.S. political party has been in power in the executive and legislative branches of government, the TRA has served—and still does—as the cornerstone of how the U.S. could interact with and support the government and

people of Taiwan. And now, with China increasing its pressure and coercive tactics as its political, economic, and military strength grows, the TRA still provides the U.S. with a framework for how to support the island-nation of nearly 24 million people.

But after 40 years, the time has come to ask the question: Are symbols and symbolic gestures enough?

Symbolic Signaling

Since Donald Trump took office, the U.S. has undertaken a number of actions meant to demonstrate its support for Taiwan. Many of these actions, while lauded at the time as potentially ushering in a new era of U.S.-Taiwan relations, have now become merely symbolic due to lack of use or initiative.

The 2018 National Defense Authorization Act, the Taiwan Travel Act, and the Asia Reassurance Initiative Act (ARIA) are all newly passed pieces of legislation that allow for closer and more robust relations. At the time of passage

of each law, the general theme in the media (author included) noted how all three showed congressional support for Taiwan—and a sign of stability—during an unpredictable time due to the leadership style of Donald Trump.

The NDAA calls for a number of initiatives to improve the military capabilities of Taiwan and to increase military-to-military exchanges, specifically calling for reciprocal port calls between the two countries' navies. The NDAA states, "It is the sense of Congress that the United States should conduct bilateral naval exercises, to include pre-sail conferences, in the western Pacific Ocean with the Taiwan navy; and consider the advisability and feasibility of reestablishing port of call exchanges between the United States navy and the Taiwan navy." The TTA expands the NDAA's call for military exchanges and authorizes reciprocal visits by high-level officials—not in third-country locations or on the sidelines of international meetings. ARIA—with a section titled "Commitment to Taiwan"—essentially reiterates these calls to action and U.S. support for Taiwan. These three laws articulate a vision of how the U.S. should approach its relations with Taiwan beyond the TRA.

In late 2018, the American Institute in Taiwan (AIT), the de facto embassy for the U.S. in Taiwan, opened a new facility. The cost of the new facility was \$255 million¹—demonstrating quite concretely how much the U.S. values its presence in Taiwan. But the administration chose not to heed the call of the TTA and send a high-level official to Taiwan to celebrate the opening. In April 2019, it was announced that the official opening will occur on May 6, 2019, and AIT released a statement, "We hope that this impressive, modern facility will enhance the work we do and serve as a concrete symbol of our commitment to the U.S.-Taiwan partnership."²

1 Chris Horton, "U.S. Unveils an Office in Taiwan, but Sends No Top Officials," *New York Times*, June 12, 2018, <https://www.nytimes.com/2018/06/12/world/asia/trump-taiwan-ait.html>.

2 American Institute in Taiwan, "AIT Relocation to New Office Complex (NOC) in Neihu," <https://www.ait.org.tw/ait-relocation-to-new-office-complex-noc-in-neihu/>.

Also, since Tsai Ing-wen became president of Taiwan in 2016, the PRC has increased its pressure campaign against Taiwan. One area that the PRC has focused with great success has been preventing Taiwan from participating in meetings hosted by international organizations. Due to Chinese pressure and demands, Taiwan has been excluded from the World Health Assembly, the annual meeting of the World Health Organization which Taiwan had attended since 2008.³ The U.S. has continuously worked to help Taiwan achieve orbserver status, but has failed so far. U.S. support for Taiwan's presence in such organizations is mentioned in the TRA, but the language is not very enthusiastic: "Nothing in this Act 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." This position is laudable and demonstrates to Taiwan and the rest of the world the U.S.'s support, but unless definitive progress is made, these efforts are as fruitful as Sisyphus' daily boulder push.

Another area that the PRC has had some success against Taiwan is in the poaching of Taiwan's few remaining allies (currently numbering 17). Since 2016, El Salvador, Burkina Faso, Dominican Republic, Panama, and Sao Tome and Principe have switched recognition from Taiwan to China. To put on notice any among Taiwan's remaining diplomatic partners that might be wavering, members of Congress have issued harsh statements threatening to cut funding to any future country that seeks to be swayed by China's pocketbook. The Trump administration also recalled U.S. ambassadors from the Dominican Republic, El Salvador, and Panama due to the diplomatic switch.⁴ However, with the unpredictability of the Trump administration and Trump's decision to cut aid to Honduras, El Salvador, and Guatemala over immigration

3 Joseph Yeh, "Taiwan 'unlikely' to be invited to World Health Assembly: MOFA," *Focus Taiwan News Channel*, April 3, 2019, <http://focustaiwan.tw/news/aip/201904030005.aspx>.

4 Eric Beech, "U.S. recalls diplomats in El Salvador, Panama, Dominican Republic over Taiwan," Reuters, September 7, 2018, <https://www.reuters.com/article/us-usa-china-taiwan/u-s-recalls-diplomats-in-el-salvador-panama-dominican-republic-over-taiwan-idUSKCN1LO00N>.



issues,⁵ why should countries, particularly ones in Latin America (ever the target of Trump's tirades), heed such threats regarding relations with Taiwan? Here, too, U.S. moves may be long on noise and symbolism, but short on substance in supporting Taiwan.

Recent U.S. laws, actions, and statements, individually and collectively, point to robust U.S. support for Taiwan and U.S.-Taiwan relations. And relations between the U.S. and Taiwan are perhaps the strongest they have been since 1979. However, symbols and symbolic gestures only go so far when China is out-spending and out-maneuvering the U.S. and Taiwan.

From Symbol to Action

Now, it is not all doom and gloom—the U.S. has taken significant, concrete steps to demonstrate its support of Taiwan, and many of these actions are based in the TRA.

While the U.S. may have failed repeatedly to “send a noteworthy official” to important events in Taiwan, the U.S. has sent an important signal of support through the U.S. military presence

⁵ W.J. Hennigan, “Trump’s Cuts to Central American Aid Won’t Slow Migration,” *Time*, April 5, 2019, <http://time.com/5564653/donald-trump-central-american-aid/>.

at the de facto embassy in Taipei. As AIT spokesperson Amanda Mansour stated, “Since 2005, U.S. government personnel detailed to AIT have included active duty military, including service members from the Army, Navy, Air Force, and Marines.”⁶ The confirmation that all four branches of the military are represented in some capacity in Taipei is noteworthy. There had been rampant speculation for many months that the U.S. military had a presence in Taiwan, given that it is customary for Marines to be posted at U.S. embassies across the world. While there has not been an official announcement about the placement of uniformed Marines at the AIT office, confirmation of the presence of non-uniformed military personnel in the facility as the 40th anniversary of the TRA approached is a significant statement.

In addition, the U.S. has ramped up efforts to combat Chinese actions on the seas. In the last seven months, the U.S. has conducted five Freedom of Navigation Operations (FONOPs) through the Taiwan Strait.⁷ The normal area for

⁶ Joseph Yeh, “U.S. confirms active military personnel posted at AIT since 2005,” *Focus Taiwan News Channel*, April 3, 2019, <http://focustaiwan.tw/news/aip/201904030014.aspx>.

⁷ Ben Werner, “Third Time In Four Months U.S. Warships Transit Tense Taiwan Strait,” *USNI News*, January 24, 2019, <https://news.usni.org/2019/01/24/40579>; Idrees Ali, “U.S. Navy ships pass through strategic Taiwan Strait, riling China,”

FONOPs of late has been the South China Sea, but expanding the operations to the Taiwan Strait sends a message to Beijing not to overstep or test limits in the area, which it has done many times—most recently when People’s Liberation Army Air Force planes flew across the median line of the Taiwan Strait that divides Taiwanese and Chinese air space. That action prompted harsh responses from Taipei and Washington. U.S. National Security Advisor John Bolton tweeted in response, “Chinese military provocations won’t win any hearts or minds in Taiwan, but they will strengthen the resolve of people everywhere who value democracy. The Taiwan Relations Act and our commitment are clear.” Tsai Ing-wen also tweeted, “As Commander-in-Chief, I will resolutely protect #Taiwan’s security & sovereignty. As #China continues to challenge regional security, I want to remind the Beijing authorities: do not deliberately provoke; do not instigate trouble; & do not sabotage the cross-strait status quo.” Taiwan’s air force also responded to the incursion.

One of the key components of the TRA is the sale of arms to Taiwan. As China continues to pressure Taiwan militarily, this component of the TRA has become ever more important. The TRA states, “The United States will make available to Taiwan such defense articles and defense services in such quantity as may be necessary to enable Taiwan to maintain a sufficient self-defense capability.” It further states, “It is the policy of the United States to consider any effort to determine the future of Taiwan by other than peaceful means, including by boycotts or embargoes, a threat to the peace and security of the Western Pacific area and of grave concern to the United States.” The U.S. has followed through on these commitments by selling over \$25 billion of arms since 1979.⁸ Most recently, there are reports

Reuters, February 25, 2019, <https://www.reuters.com/article/us-usa-taiwan/u-s-navy-ships-pass-through-strategic-taiwan-strait-riling-china-idUSKCN1QE20A>; and Ryan Browne, “US sails two ships through Taiwan Strait ahead of trade talks in Beijing,” *CNN*, March 24, 2019, <https://www.cnn.com/2019/03/24/politics/taiwan-strait-us-destroyer-intl/index.html>.

8 Calculations based on arms sales notifications from the Federal Register of the United States.

that the U.S. may sell Taiwan more than 60 F-16 fighter jets,⁹ which would boost Taiwan’s ability to counter Chinese incursions or attacks. The U.S. arms sales, in addition to the development of Taiwan’s own defense industry, bolster Taiwan’s capacity to defend itself against—and deter—Chinese aggression or invasion.

While the U.S. may have “failed” some tests in favor of making symbolic gestures, the above actions demonstrate that it is willing to move from symbol to action when needed.

The Future of U.S.-Taiwan Relations

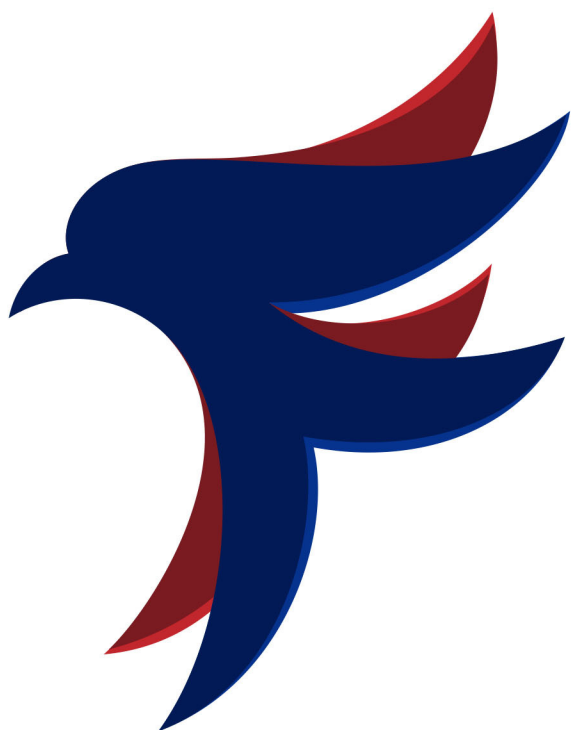
Sailing a carrier group through the Taiwan Strait or selling jets matter because they give Beijing significantly more reason to think that the U.S. would come to the aid of Taiwan in the event of a Chinese invasion or Chinese coercion. A key aim of U.S. policy toward Taiwan should be to keep Taiwan free and autonomous from China. In an interview, Wang Ting-yu, Chair of the Foreign Affairs and National Defense Committee of Taiwan’s Legislative Yuan, noted Taiwan’s strategic importance in any contest for influence in the region and beyond: “If Taiwan can be secured, [then] the South China Sea is secured, Taiwan Strait secured, the East China Sea . . . secured. . . . In regional politics and security issues, once Taiwan is secured, the Indo-Pacific is secured. . . . If you let Taiwan [be] capable in military, in international diplomatic stage, in regional dialogue, Taiwan [can] put the burden on our shoulder.”¹⁰

As April 10, the official 40th anniversary of the TRA arrives, the U.S. will face tests and opportunities: Will Washington send a cabinet-level official to Taiwan to celebrate the occasion? Will a similarly high-ranking official from the Taiwanese government make a trip to Washington? Will the U.S. invite Taiwan to participate in a joint naval

9 Nick Wadhams, Jennifer Jacobs, Jenny Leonard, and Anthony Capaccio, “China Protests Possible Trump Move to Sell F-16s to Taiwan,” *Bloomberg*, March 21, 2019, <https://www.bloomberg.com/news/articles/2019-03-21/trump-aides-said-to-back-selling-f-16-fighter-planes-to-taiwan>.

10 Author interview with Wang Ting-yu, February 26, 2019.

exercise as called for the 2018 NDAA? Will Trump continue to sell Taiwan arms despite his push for a trade deal with China? Will uniformed Marines be posted at the new AIT facility? Having the TRA, TTA, NDAA, and ARIA on the books is an important symbolic gesture, but it is time to seriously consider implementing their calls for more tangible, concrete demonstrations of support. 🇺🇸



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