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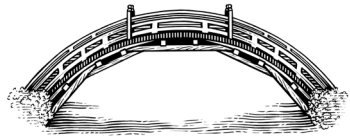
ROUNDTABLE

The Future of the Taiwan Relations Act: Adaptation and Continuity



Scott L. Kastner

Shelley Rigger

Lauren Dickey

Chieh-Ting Yeh

Jacques deLisle

Introduction

On April 10, 2019, the Taiwan Relations Act (TRA) turned 40 years old. Much fanfare has surrounded the anniversary of this unique piece of legislation, which has served as the foundation for U.S. relations with Taiwan since the United States switched diplomatic recognition to the People's Republic of China (PRC) in 1979. Since its creation as a Cold War pact, the TRA has evolved to become the cornerstone of a remarkable partnership—at the time of enactment, few would have guessed the dimensions of the U.S.-Taiwan relationship that it would come to support. Yet with rapid changes in technology, trade and economics, and regional security, and a rising PRC that continues to assert its claim to the island, is the TRA now too weak to serve its enlarged role?

To better support current U.S.-Taiwan relations, Congress has recently supplemented the TRA with legislation such as the Taiwan Travel Act, the Asia Reassurance Initiative Act, and a resolution to reaffirm the United States' commitment to the TRA. In addition to U.S.-provided military assistance, the United States and Taiwan partner to uphold democracy, combat terrorism, provide humanitarian assistance, and advance health and social issues. After four decades, it is thus worth considering where U.S.-Taiwan relations are headed and the implications for the TRA.

This *Asia Policy* roundtable assembles perspectives on how emerging trends in trade, diplomacy, policy, security, democracy, and human rights could affect U.S.-Taiwan relations and, by extension, the TRA and U.S. policy toward Taiwan. It also considers the TRA as the legal basis for the U.S.-Taiwan partnership as well as a potential vehicle for any significant change therein.

Scott Kastner's essay examines trade and economic relations in what he terms a "golden age for the U.S.-Taiwan relationship." He argues that, building on this already strong relationship, the United States and Taiwan should begin negotiating a bilateral free trade agreement to resolve persistent trade disagreements and prevent further marginalization of Taiwan in global trade frameworks. Shelley Rigger's essay addresses the political relationship between Taiwan and the United States. In her view, the TRA is still valuable—although it satisfies no one, the ambiguity and flexibility it provides is a virtue, not a vice. The construction of an alternative architecture for U.S.-Taiwan relations that meets the requirements of the United States, Taiwan, and China is difficult to foresee.

An important component of the TRA has always been the security and defense relationship it establishes between the United States

and Taiwan. While the basis provided by the TRA has remained constant, Lauren Dickey notes that U.S. perceptions of the threat from China have changed in recent years. Her essay seeks to make sense of the change and continuity in U.S.-Taiwan security ties and the role of the TRA in the U.S.-Taiwan-China triangle. Chieh-Ting Yeh reminds us that Taiwan has undergone a significant evolution since the TRA's creation, transforming itself from a repressive authoritarian regime into a liberal democracy that respects human rights. His essay examines the creation of a human rights culture in Taiwan, the challenge China's government poses both to human rights and to media and narrative freedoms, and the TRA as a foundation for deeper cooperation on human rights and civil freedoms between the United States and Taiwan.

Last, Jacques deLisle's essay reflects on the legal and political underpinnings of the TRA in U.S.-Taiwan relations. He argues that the TRA has provided a sustainable and adaptable basis for ongoing U.S.-Taiwan relations, albeit below a true state-to-state level. Though the TRA has faced challenges and exhibited shortcomings, its flexibility makes it resilient and unlikely to be significantly supplemented.

The authors in this roundtable concur that the TRA has endured as the cornerstone of U.S.-Taiwan relations and the United States' Taiwan policy because of its adaptability and versatility over the last 40 years. As deLisle notes, "the TRA's emphasis on process and articulation of general principles have allowed it to accommodate significant change in U.S.-Taiwan relations and U.S. policy toward Taiwan while maintaining overall continuity and consistency." Looking forward, the act will likely continue to play this role even as the bilateral relationship and trilateral relations with China change over time, and even as new U.S. policy measures are passed. Each of the areas examined in this roundtable—economics and trade, politics, security, and human rights cooperation—offers room for U.S.-Taiwan relations to grow within the framework of the TRA. ◈

The U.S.-Taiwan Commercial Relationship: Moving toward a Free Trade Agreement?

Scott L. Kastner

The past few years have been a golden age for the U.S.-Taiwan relationship. Security cooperation between Washington and Taipei has deepened, the U.S. Congress has passed legislation such as the Taiwan Travel Act that codifies closer ties, the American Institute in Taiwan has opened a huge new facility in Taipei, and the United States has approved extended stopover visits by Taiwan's president, including in New York City. Now, many in both Washington and Taipei argue that the two sides should seek similar advances in the bilateral economic relationship by opening negotiations on a U.S.-Taiwan free trade agreement (FTA). Some members of Congress have been outspoken in support of a bilateral FTA, and the Senate version of the Taiwan Assurance Act introduced in 2019 sets this as a goal.[1] Likewise, a growing number of U.S. observers have advocated for a bilateral FTA.[2] As for Taiwan's position on this issue, President Tsai Ing-wen views a U.S.-Taiwan FTA as an important priority.[3]

This essay argues that the United States and Taiwan should begin to negotiate a bilateral FTA. Although U.S.-Taiwan economic relations have been mostly amicable, the relationship has been characterized by a number of persistent disagreements. An FTA would offer the opportunity to resolve these disagreements and would help prevent the marginalization of Taiwan—widely viewed in Washington as an important strategic partner—in a region increasingly characterized by bilateral and multilateral FTAs that Taiwan has been unable to join.

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1 See, for instance, "U.S. Should Stand with Taiwan amid Growing Threats: Senator Gardner," Focus Taiwan, July 20, 2019 ~ http://focustaiwan.tw/news/aipl/201907200007.aspx. The version of the Taiwan Assurance Act that passed the House in 2019 (H.R. 2002) does not mention a bilateral FTA.

2 See, for instance, Daniel Blumenthal and Michael Mazza, "A Golden Opportunity for a U.S.-Taiwan Free Trade Agreement," Project 2049 Institute, February 14, 2019 ~ https://project2049.net/2019/02/14/a-golden-opportunity-for-a-u-s-taiwan-free-trade-agreement; and Ashley J. Tellis, "Sign a Free Trade Agreement with Taiwan," *Wall Street Journal*, December 3, 2018, available at https://carnegieendowment.org/2018/12/03/sign-free-trade-deal-with-taiwan-pub-77862.

3 "Tsai Prioritizes Trade Agreement Talks with U.S.," *Taiwan Today*, March 23, 2017 ~ https://taiwantoday.tw/news.php?unit=2&post=113003.

U.S.-Taiwan Commercial Relations

Despite the island's relatively small population of around 24 million people, Taiwan was the United States' eleventh-largest merchandise trading partner in 2018. Total bilateral trade in goods stood at $76 billion in 2018, with the United States running a bilateral deficit of $16 billion. Although substantial, these numbers represent only 1.8% of total U.S. trade and indeed suggest that Taiwan has become a less important trading partner than it was in the past. During the late 1980s, for instance, Taiwan was the sixth-largest trading partner of the United States, and it stood as the eighth-largest trading partner into the 2000s.[4]

It is worth emphasizing, however, that official trade statistics understate the actual scale of the current U.S.-Taiwan commercial relationship by a considerable amount. Taiwanese manufacturers, since the 1990s, have moved a substantial portion of their production facilities to China, in large part to take advantage of lower labor costs there. Important component parts often originate in Taiwan or elsewhere and are imported into China for assembly. The final products are then exported abroad. Taiwan firms reported export orders from the United States of $146 billion in 2018, which was nearly triple the value of U.S. imports from Taiwan in that year. Many of these goods were assembled in and exported from China, meaning they are counted as Chinese exports to the United States (even when they are manufactured by Taiwanese companies and include, in some cases, substantial inputs originating from Taiwan).[5]

The current U.S.-China trade war has potentially large implications for commercial ties between the United States and Taiwan. The American Chamber of Commerce in Taiwan notes that the trade war is already causing some Taiwanese manufacturers to consider relocating production back to Taiwan.[6] If the conflict continues to escalate, the number of firms considering moving facilities back to the island is likely to grow. Even if

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4 Services trade between the United States and Taiwan totaled a relatively modest $18.5 billion in 2018, representing only 1.3% of total U.S. trade in services. The stock of U.S. FDI in Taiwan is likewise relatively modest, standing at $17 billion as of 2017 and representing only a tiny fraction of total U.S. overseas direct investment. Bilateral trade and investment data is from Wayne M. Morrison, "U.S.-Taiwan Trade Relations," Congressional Research Service, In Focus, IF10256 version 11, March 25, 2019; and "U.S.-Taiwan Trade Facts," Office of the U.S. Trade Representative, https://ustr.gov/countries-regions/china/taiwan. Historical trade data comes from "Foreign Trade," U.S. Census Bureau, Statistics ~ https://www.census.gov/foreign-trade/statistics/historical/index.html. Percentages were calculated by the author using overall trade numbers reported by the U.S. Census Bureau.

5 See Morrison, "U.S.-Taiwan Trade Relations."

6 American Chamber of Commerce in Taiwan, "2019 Taiwan White Paper," *Taiwan Business TOPICS*, June 2019 ~ https://amcham.com.tw/advocacy/white-paper.

a settlement is reached, the Trump administration's erratic approach to U.S.-China trade, coupled with a more generally adversarial relationship that will likely remain uneasy regardless of who wins the U.S. presidential election in 2020, generates considerable uncertainty for Taiwanese companies with significant operations in China. This uncertainty, in turn, will likely push more firms that depend heavily on U.S. exports to move operations out of China—either back to Taiwan or elsewhere.

Managing Disagreements

Given that the U.S.-Taiwan economic relationship is quite extensive, it is not surprisingly sometimes characterized by points of contention. Disagreements have most often centered on economic policies that Washington considers to be illiberal or disadvantageous to U.S. firms. For instance, the United States has long complained that Taiwan can do more to protect intellectual property rights (IPR). Taiwan's agricultural barriers—in particular a ban on pork and some beef products containing the leanness-enhancing additive ractopamine—have also been a persistent source of friction in bilateral relations.[7]

Of course, the United States often follows illiberal economic policies of its own, and President Donald Trump's embrace of protectionism undercuts the legitimacy of U.S. demands for liberalization elsewhere. Renewed U.S. protectionism also has had direct implications for Taiwan. The island, for example, has been unsuccessful in its efforts to be granted an exemption from the Trump administration's steel tariffs, which have led to a significant drop in Taiwan's steel exports to the United States.[8]

In 1994, Washington and Taipei reached a Trade and Investment Framework Agreement (TIFA), the principal channel through which the United States and Taiwan negotiate trade and other economic issues to address their various points of disagreement. The United States has signed TIFAs with dozens of countries and organizations worldwide. These agreements regularize dialogue on economic issues via the creation of TIFA councils that typically hold meetings on an annual basis. In the case of Taiwan, the TIFA council meetings occur under the auspices of the American Institute in Taiwan and the Taipei Economic and Cultural Representative Office in the United States (TECRO). They are normally

7 For a brief overview of these disputes, see Blumenthal and Mazza, "A Golden Opportunity."

8 See, for instance, "No Exception for Taiwan's Steelmakers," *Taipei Times*, August 31, 2018 ~ http://www.taipeitimes.com/News/front/archives/2018/08/31/2003699508.

led by a deputy U.S. trade representative and a vice minister of economic affairs from Taiwan.[9]

In recent years, however, these meetings have occurred fairly sporadically. Washington suspended talks from 2008 to 2012 as a consequence of Taiwan's barriers to beef and pork imports. Council meetings resumed after Taiwan lifted some of its restrictions on beef with traces of ractopamine in 2012, but more recently the talks have stalled again. The last TIFA council meeting occurred in 2016. Initially this hiatus reflected a change in U.S. administrations and the Trump administration's long delay in appointing a new deputy U.S. trade representative. Taiwan has pushed for a resumption of talks since that position was filled in 2018, but to date Washington has demurred (although some reports suggest that talks might resume in late 2019).[10]

Still, despite occasional bilateral frictions and the irregularity of TIFA council meetings in recent years, U.S.-Taiwan economic relations have generally been quite strong. The United States, for instance, has applauded progress on issues such as IPR protection in Taiwan. In 2009, it removed Taiwan from its Special 301 Report watch list (reserved for countries that are viewed as having significant shortfalls in IPR protection).[11] The United States has continued in subsequent TIFA council meetings to commend steps taken in Taiwan to protect IPR, such as giving increased resources to authorities tasked with enforcement.[12] The American Chamber of Commerce in its 2019 Taiwan White Paper highlights a range of positive developments in Taiwan and U.S.-Taiwan economic relations.[13]

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9 For a brief background on the U.S.-Taiwan TIFA, see American Chamber of Commerce in Taiwan, "2019 Taiwan White Paper." Detailed information on other U.S. TIFAs can be found at "Trade & Investment Framework Agreements," Office of the U.S. Trade Representative ~ https://ustr.gov/trade-agreements/trade-investment-framework-agreements.

10 On the sporadic nature of TIFA talks and the reasons for the 2008–12 and current hiatus, see American Chamber of Commerce in Taiwan, "2019 Taiwan White Paper"; and Michael Turton, "Let's Push for the TIFA Talks to Resume with Taiwan," Medium, October 30, 2018 ~ https://medium.com/american-citizens-for-taiwan/lets-push-for-the-tifa-talks-to-resume-with-taiwan-5dcbafabe945.

11 Office of the U.S. Trade Representative, "2009 Special 301 Report," April 30, 2009 ~ https://ustr.gov/sites/default/files/2009%20Special%20301%20Report%20FINAL.pdf.

12 See, for instance, "United States and Taiwan Deepen Dialogue on Trade and Investment Priorities," Office of the U.S. Trade Representative, Press Release, October 2015 ~ https://ustr.gov/about-us/policy-offices/press-office/press-releases/2015/october/united-states-and-taiwan-deepen.

13 American Chamber of Commerce in Taiwan, "2019 Taiwan White Paper."

Is the Present Framework Enough?

The U.S.-Taiwan commercial relationship is on reasonably strong footing. Although disagreements persist—and the dispute over ractopamine continues to be front-and-center in bilateral relations—the degree of acrimony has certainly declined over time. This is especially the case if comparing the current relationship to relations in the 1980s. Taiwan ran much larger bilateral trade surpluses with the United States (as a percentage of the overall U.S. trade deficit), and Washington accused Taiwan of rampant IPR violations and pressured Taipei to allow its currency to rise in value. Although the irregularity of TIFA council meetings remains a concern, relations today are generally strong.

Against this backdrop, there have recently been increased calls—in both Washington and Taipei—for a significant upgrade to the U.S.-Taiwan economic relationship, and in particular for the negotiation of an FTA.[14] These calls are partly in line with broader efforts to enhance the bilateral relationship. Indeed, some proponents of an FTA highlight in particular the strategic benefits of such an agreement—especially the signal of support it would send to Taipei at a time of heightened Chinese assertiveness and pressure on Taiwan. Calls for a U.S.-Taiwan FTA also reflect a growing recognition that the current framework for bilateral economic relations may be insufficient to meet future challenges.

Perhaps most importantly, Taiwan has been unable to participate (with a few exceptions) in bilateral and regional FTAs, largely as a consequence of China's opposition. Taiwan has been forced to sit on the sidelines as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership has entered into force and as the United States negotiates bilateral agreements with Japan and the Philippines (to add to its existing FTA with South Korea). Taiwan's exclusion from the network of regional trade agreements has the potential to undercut the trade-dependent island's long-term economic competitiveness. A bilateral FTA between Taiwan and its second-largest export market would represent a major step toward reversing these trends. Some analysts believe that a U.S.-Taiwan FTA could embolden other countries—such as Japan—to consider similar initiatives.[15]

Moreover, entering into negotiations on an FTA would potentially facilitate a resolution to some of the persistent economic disputes between Taiwan and the United States. Consider, for instance, Taiwan's ban on

[14] See, for example, Blumenthal and Mazza, "A Golden Opportunity."

[15] See, for example, American Chamber of Commerce in Taiwan, "2019 Taiwan White Paper."

ractopamine-laced pork. Progress on this issue is difficult in part because it affects an important domestic industry in Taiwan, but also because it is widely viewed as a safety issue. As such, any administration seeking to lift the ban would potentially pay a significant political price. Lifting the ban would be much easier to sell domestically if it were part of a bilateral FTA with Washington, which Taipei would be able to frame as a major strategic and economic win for the island.

In short, even though economic relations are strong and have for the most part improved over time, the current framework for bilateral economic relations is insufficient to meet future challenges. A bilateral FTA has the potential to help—at least on the margins—alleviate these challenges, while at the same time fostering resolution of some of the thorny issues that continue to plague the economic relationship.

Is a U.S.-Taiwan FTA Feasible?

Even though there are good reasons for Taiwan and the United States to pursue a bilateral FTA, reaching such an agreement is likely to face substantial obstacles. On the U.S. side, it is hardly clear that the Trump administration views a trade agreement with Taiwan as an important priority, especially considering that the TIFA council meetings have been frozen since Trump took office. Meanwhile, Taiwan's presidential elections are approaching in January 2020. Although President Tsai has signaled interest in a bilateral FTA, she faces a tough re-election fight. Whether other candidates (including Kuomintang nominee Han Kuo-yu) would prioritize an FTA if elected is uncertain.

It is worth noting as well that a bilateral FTA could generate new frictions in U.S.-Taiwan relations. If an FTA spurs more Taiwanese firms to relocate end-stage production to Taiwan, for instance, it likely would result in greater bilateral trade imbalances. While in an ideal world this would not affect bilateral relations—and indeed would mostly mean that some U.S. imports from China had been reclassified as imports from Taiwan—in the real world, and especially in the current Trump administration, bilateral deficits are viewed as pernicious and can complicate relations even with close allies like Japan.

Nevertheless, several factors help counteract these headwinds. Perhaps most importantly, given widespread congressional support for Taiwan, a bilateral FTA would stand a good chance of passing Congress, especially if it includes provisions that lead to liberalization of Taiwan's

agricultural imports. Furthermore, many in Washington view a U.S.-Taiwan FTA as advancing U.S. strategic interests. And negotiating an agreement with Taiwan fits the Trump administration's preference for bilateralism over multilateralism.[16] In short, it is in the economic and security interests of both Taiwan and the United States to enter into negotiations for a bilateral FTA. Serious obstacles remain, but an agreement is more feasible today than it has probably ever been. ◈

[16] On this point, see Blumenthal and Mazza, "A Golden Opportunity."

The Taiwan Relations Act: Past, Present, Future

Shelley Rigger

When the United States normalized relations with the People's Republic of China (PRC) in 1979, it agreed to derecognize Taiwan (officially named the Republic of China, or ROC). Beijing made derecognition a precondition for establishing diplomatic ties in an effort to overcome what it saw as a long-standing wrong: the separation of Taiwan from the Chinese mainland. Then, as now, Beijing wanted to incorporate Taiwan into the PRC, and it wanted the United States to get out of its way. Taiwan had been detached from China since 1895, when it became a Japanese colony, but at the end of World War II it was handed over to the Chinese government—at that time, Chiang Kai-shek's Nationalist-led ROC, which had ruled China since 1912. In 1949, Communist forces drove the Nationalist government off the mainland, but they were unable to capture its stronghold, Taiwan. The ROC hung on thanks to its outsized armed forces, its military alliance with the United States, and one hundred miles of choppy water.

The architects of U.S.-PRC normalization understood that without U.S. support, Taiwan would be hard-pressed to withstand Beijing's efforts to absorb it. They did not anticipate that the ROC would last long as a separate, self-governing entity once the United States shifted its recognition to the PRC, and they were willing to accept that outcome. President Richard Nixon's national security adviser Henry Kissinger said as much in a 1971 exchange with Zhou Enlai recounted by Nancy Bernkopf Tucker:

> Zhou Enlai asserted to Kissinger without hesitation that "the U.S. must recognize that the PRC is the sole legitimate government in China and that Taiwan Province is an inalienable part of Chinese territory which must be restored to the motherland." Kissinger replied, "As a student of history, one's prediction would have to be that the political evolution is likely to be in the direction which Prime Minister Zhou Enlai indicated to me." Kissinger continued by assuring Zhou, "We will not stand in the way of basic evolution."[1]

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NOTE ~ Parts of this essay are drawn from the author's online publication "Can the Taiwan Relations Act Thrive in an Era of America First?" Foreign Policy Research Institute, April 8, 2019.

[1] Nancy Bernkopf Tucker, *Strait Talk: United States–Taiwan Relations and the Crisis with China* (Cambridge: Harvard University Press, 2009), 44.

By the time the normalization process was reaching its final stage under President Jimmy Carter, the United States was committed to derecognizing Taiwan and ending the mutual defense treaty. Fortunately for Taiwan, however, the White House did not have the last word. As the process neared completion, there still was one more actor waiting to speak: the U.S. Congress. Congress could not reverse the decision on normalization, but it did what it could to soften the blow. Congress's gift to Taipei was the Taiwan Relations Act (TRA).

The TRA satisfies no one. Beijing sees the ongoing attention to Taiwan's security that is required by U.S. law as a betrayal of U.S. commitments, while Taiwan would much prefer to be treated as a full state. Many Americans, too, wish the United States could take a stronger position one way or the other than the TRA allows. I will argue, however, that the TRA's ambiguity is a virtue, not a vice. Coming up with an alternative that improves on the TRA enough to justify the inevitable backlash from Beijing (which would be directed at Taipei more than Washington) is considerably harder than one might imagine.

The Significance of the TRA

The TRA created an innovative framework in U.S. law and policy that allows the United States to interact with an unrecognized state. Legally, the ROC is dead to the United States; in practice, it is very much alive. The law gives Taiwan a unique legal and political position, with the country being neither formally recognized nor entirely abandoned. Recently, some advocates for a more robust U.S. policy toward Taiwan have been asking how much longer this limbo should continue. They wonder whether the United States should do more to strengthen the island's position in the face of growing pressure from the PRC.[2]

The TRA defines its goals as "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." The act specifies a format for quasi-official diplomatic relations and continued economic ties, and it addresses Taiwan's perilous security situation, calling threats to Taiwan threats to the "interests of the United

2 See, for example, Gary J. Schmitt and Jamie Fly, "The Taiwan Relations Act at 40: It's Time to Deepen Ties," *American Interest*, April 8, 2019 ~ https://www.the-american-interest.com/2019/04/08/the-taiwan-relations-act-at-40-its-time-to-deepen-ties.

States, and...matters of international concern." The legislation maintains that U.S.-PRC relations rest "upon the expectation that the future of Taiwan will be determined by peaceful means." It backs up that expectation with the promise of arms sales and a requirement that the United States maintain the ability to help Taiwan resist coercion.[3]

The genius of the TRA is that it allowed Washington to continue substantive relations with Taipei while building constructive, cooperative relations with Beijing. It did not put Taiwan between the United States and China, nor did it turn Taiwan into an instrument of U.S. policy. When the Cold War ended, Taiwan lost its value as an anti-Communist bastion, but the TRA did not require a strategic justification to bolster Taiwan. The island's democratization in the 1980s and 1990s brought it into even closer alignment with U.S. values. Today, U.S. leaders celebrate Taiwan's political transformation into what President George W. Bush called "a beacon of democracy to Asia and the world."[4] Meanwhile, Taiwan's economy has continued to thrive, owing in large part to the role of Taiwan firms in building mainland China's export manufacturing.

The Arguments for a New Taiwan Policy

Although the TRA has served the United States and Taiwan well for 40 years, times are changing. The PRC's rising economic, political, and military power is creating new challenges for the United States and Taiwan, leading some analysts to wonder whether it is time to bring the ROC back to life.[5]

The argument for rebooting U.S.-Taiwan policy has three main variants. First, some advocates believe that Taiwan is effectively a state, a friendly one at that, and the United States should recognize this reality. Representative Ted Yoho, a Republican from Florida, captured this logic in an op-ed for the *Taipei Times*: "It is time the world began treating Taiwan as it deserves….Taiwan is a nation, and it is time to embrace and recognize this fact."[6] The virtue of this logic is that it treats Taiwan as an end in itself;

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3 The text of the Taiwan Relations Act is available at the website of the American Institute in Taiwan ~ https://www.ait.org.tw/our-relationship/policy-history/key-u-s-foreign-policy-documents-region/taiwan-relations-act.

4 George W. Bush, "Statement on the Presidential Election in Taiwan," White House, Office of the Press Secretary, March 22, 2008 ~ https://georgewbush-whitehouse.archives.gov/news/releases/2008/03/20080322-4.html.

5 See, for example, Ben Lowsen, "Is It Time for the United States to Recognize Taiwan?" *Diplomat*, June 29, 2019 ~ https://thediplomat.com/2019/06/is-it-time-for-the-united-states-to-recognize-taiwan.

6 Ted Yoho, "Recognize Taiwan as the Country It Truly Is," *Taipei Times*, December 11, 2018 ~ http://www.taipeitimes.com/News/editorials/archives/2018/12/11/2003705885/1.

the argument centers on Taiwan, independent of anything happening in mainland China or U.S.-PRC relations. That is admirable but not enough to make up for its signal vice: this argument risks overreaching in a way that endangers Taiwan. The idea that the United States can sweep aside the PRC's preferences on this issue ignores the PRC's promise to use military force to prevent formal ROC independence. Unfortunately, recognition of Taiwan's statehood by the U.S. government might constitute such a declaration in Beijing's estimation. So while Congressman Yoho's moral support is certainly welcome in Taipei, the consequences of the United States acting on his advice might not be.

The PRC's determination to prevent Taiwan from formalizing its separate status (by force if necessary), not to mention its heavy investment in adding teeth to that threat, is a critical variable in the policy calculus that the United States must perform. For many who advocate a change in U.S. policy toward Taiwan, the threat from Beijing's increasing power and ambition is central. After Taiwan elected President Tsai Ing-wen in 2016, Beijing cut communication with Taipei and began a series of moves aimed at intensifying its pressure on the island. The PRC has flaunted its military power, interfered in Taiwan's media, enticed away Taiwan's diplomatic partners, and rolled back economic cooperation.

In the face of these challenges, some Americans argue that Washington should upgrade its relationship with Taipei. Michael Mazza's recent article advocating higher-level interactions between U.S. and Taiwan officials is representative of this view. Mazza questioned the wisdom of the long-standing "strategic ambiguity" policy—a policy that uses uncertainty about Washington's "bottom line" to restrain both Taipei and Beijing. He wrote, "Bringing the U.S.-Taiwan relationship into the sunlight is one way to decrease ambiguity concerning American interest in the island's security and thus deter Beijing from resorting to overt aggression."[7] Mazza is clear, however, that the United States should be careful not to put Taiwan at greater risk. While he advocates making U.S.-Taiwan relations more normal, he explicitly rejects formal normalization of relations.

The third case for a new Taiwan policy puts the PRC at the center. It treats Taiwan as a tool or pawn in a worsening U.S.-PRC relationship. A particularly extreme version of this argument can be found in a comment by freelance national security pundit Brandon Weichert: "What Washington

[7] Michael Mazza, "Moving Toward 'Normalcy' in U.S.-Taiwan Relations and Beijing's Response to Bolton-Lee Meeting," Global Taiwan Institute, Global Taiwan Brief, June 5, 2019 ⇝ http://globaltaiwan.org/2019/06/vol-4,-issue-11/#MichaelMazza06052019.

needs in its ongoing trade war is greater leverage. And that leverage will not be found in the economic realm. True leverage would keep China's leadership off-balance. To that end, the United States should recognize Taiwan's independence."[8] Weichert dismisses the risks of such an action to both the United States and Taiwan. While his position is not one many analysts would embrace, his overall logic is familiar, recalling an old trope: Douglas MacArthur's idea of Taiwan as an "unsinkable aircraft carrier." As China becomes a greater military threat to the United States, the idea that Taiwan might have a military use is coming back, and not just on the fringes.

In July 2016, Peter Navarro, who later became Donald Trump's chief adviser on China-related matters, wrote a ferocious critique of the United States' Taiwan policy in the *National Interest*:

> [I]t's time for America to fully and firmly recommit to an island that is indeed both a beacon of democracy and critical to the U.S. defense strategy in Asia. The chessboard is now clear on the matter of the dangers posed to the region by a rising China, and we need to stop sacrificing friends like Taiwan to placate what is increasingly morphing from a trading partner and strategic rival into a hostile enemy.[9]

While his recommendations were feeble—avoiding anything that might ignite serious conflict with Beijing—Navarro roundly condemned four decades of U.S. policy. Six months after this piece was published, another analyst with a future role (albeit a brief one) in the Trump White House as national security adviser, John Bolton, published an op-ed in the *Wall Street Journal* advocating a significant upgrade in U.S.-Taiwan military cooperation, including arms sales and even stationing U.S. forces on the island.[10] While Bolton said his goal was not to "approximate Douglas MacArthur's image of Taiwan," his wording came close when he wrote, "Taiwan's geographic location is closer to East Asia's mainland and the South China Sea than either Okinawa or Guam, giving U.S. forces greater flexibility for rapid deployment throughout the region should the need arise."

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8 Brandon J. Weichert, "To Beat China, Recognize Taiwan," *American Greatness*, June 10, 2019 ~ https://amgreatness.com/2019/06/10/to-beat-china-recognize-taiwan.

9 Peter Navarro, "American Can't Dump Taiwan," *National Interest*, July 16, 2016 ~ https://nationalinterest.org/feature/america-cant-dump-taiwan-17040.

10 John Bolton, "Revisit the 'One China' Policy," *Wall Street Journal*, January 16, 2017 ~ https://www.wsj.com/articles/revisit-the-one-china-policy-1484611627.

The Outlook for the United States' Taiwan Policy

Voices in the Trump administration such as Navarro's and Bolton's have given rise to both hope and concern that U.S. policy could change in ways that insert Taiwan more explicitly into the emerging strategic competition between Washington and Beijing. In practice, however, U.S. actions under Trump have been more similar to than different from previous administrations, even if some of the rhetoric is new. Arms sales have continued, and the level of government-to-government talks has been elevated. Still, even with several strong advocates for Taiwan in important positions within the administration, the White House continues to adhere to a policy approach refined over four decades. For example, after the White House approved the sale of advanced military aircraft to Taiwan in August 2019, Secretary of State Mike Pompeo pushed back against the idea that the sale represented a change in policy. He maintained that the sales were "deeply consistent with the arrangements, the historical relationship between the United States and China, the Three Communiqués that layer on top of that. Our actions are consistent with past U.S. policy. We are simply following through on the commitments we've made to all of the parties."[11]

The Taiwan issue is not going away. Taiwanese people have no interest in being absorbed into the PRC.[12] The risks of a military conflict are extremely high for the PRC as well as for Taiwan and the United States. And even if Beijing were to attempt a forcible solution, the Hong Kong protests in 2019 show just how difficult it is to impose political settlements on an unwilling population. There is a chance that Taiwan's resistance will erode over time, but neither Beijing nor Washington can count on that result. All three sides can expect to need to manage this issue for many more years.

If the United States' relationship with the PRC continues to deteriorate, the temptation to drag Taiwan into the competition will strengthen, putting Taiwan's leaders in a dilemma. They cannot afford to appear ungrateful for well-intended assistance, but they also cannot move their island away from the Chinese coast. Nor can they change Beijing's goals. It is important, therefore, for U.S. policymakers to be conscious of their own motivations and to ensure that they are not wishing away significant risks to Taiwan to justify actions that serve U.S. interests.

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11 "Secretary of State Michael R. Pompeo on the Story with Martha McCallum of Fox News," U.S. Consulate General of Hong Kong and Macao, August 19, 2019 ~ https://hk.usconsulate.gov/n-2019081901.

12 A time series of surveys on this question can be found at the website of the Election Studies Center at National Chengchi University in Taiwan ~ http://www.esc.nccu.edu.tw.

The TRA did not define Taiwan as an obstacle to China's growth and development; on the contrary, it was a framework under which the United States could maintain substantive relations with Taiwan while building positive relations with Beijing. It put the two relationships on parallel tracks and helped the United States minimize the spillover between the two. Moreover, it is flexible. Different administrations have interpreted the law to allow varying degrees of engagement with Taiwan. If Washington decides that Taiwan's military needs to be stronger, the law not only allows but instructs the executive branch to act on that judgment. If it seems prudent to allow high-level Taiwanese officials to visit the United States, nothing in the TRA forbids that decision. Because it is a law, the TRA also ensures that Congress has a role in overseeing Taiwan policy. It gives the executive discretion but not complete control.

It is possible that the TRA will eventually lose its usefulness as a framework for managing U.S.-Taiwan relations, but that day has not yet arrived. Flexibility within stability is hard to achieve; we should not abandon it lightly. ◈

Change and Continuity in U.S.-Taiwan Security Ties

Lauren Dickey

The Taiwan Strait in 2019 is characterized by a combination of change and continuity. As it has for decades, the Chinese Communist Party (CCP) remains focused on the goal of reunification. However, the growing strength of China's statements concerning Taiwan, along with the appearance of greater resolve among Chinese leaders that reunification is inevitable, is a notable change.[1] On the opposite side of the strait, Taiwan is a vibrant democracy with a sizable economic and political presence in the region. The island is also an important U.S. partner. In Washington, attitudes toward both China and Taiwan have shifted. The U.S. national security community is attuned to the challenges of a "revisionist China" as described in recent key strategy documents, including the effects that Chinese actions may have on the peace and stability of the Taiwan Strait.[2] Perhaps unsurprisingly, adaptation and evolution in U.S.-Taiwan security ties are due in no small part to this shift in U.S. perceptions of China and regional challenges.

This essay seeks to make sense of the change and continuity in U.S.-Taiwan security ties. It begins with an assessment of how the Taiwan Relations Act (TRA) has shaped relations in the security domain. It then turns to a discussion of three current trends in the U.S.-Taiwan defense relationship and what these trends may indicate for the future.

Re-examining the Foundation of U.S.-Taiwan Security Ties

For the last 40 years, the TRA has provided a solid foundation for the development of U.S.-Taiwan security and defense ties. It has offered

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NOTE ~ The views expressed are solely those of the author and not of any organization with which she is affiliated.

1 See, for example, State Council Information Office of the People's Republic of China, *China's National Defense in the New Era* (Beijing, July 2019).

2 White House, *National Security Strategy of the United States of America* (Washington, D.C., December 2017) ~ https://www.whitehouse.gov/wp-content/uploads/2017/12/NSS-Final-12-18-2017-0905.pdf; and U.S. Department of Defense, "Summary of the 2018 National Defense Strategy of the United States of America," January 2018 ~ https://dod.defense.gov/Portals/1/Documents/pubs/2018-National-Defense-Strategy-Summary.pdf.

an enduring framework for relations that can be, and arguably has been, implemented flexibly in response to changing regional security dynamics.[3] The TRA sets out several key stipulations. First, the stability and peace of the Taiwan Strait are identified as a U.S. interest. Any nonpeaceful efforts to determine the future of Taiwan are considered of "grave concern" to the United States and a threat to regional security. Second, the TRA identifies clear parameters to guide the development of the bilateral security relationship and states that it is U.S. policy to "provide Taiwan with arms of a defensive character." More specifically, in the section on implementation, the TRA directs the U.S. government 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" (secs. 2.25, 3.1).

The TRA also provides loose guidance for how the U.S. military may be involved in a Taiwan crisis or conflict. The United States is to maintain the capacity "to resist any resort to force or other forms of coercion that would jeopardize the security, or the social or economic system, of the people on Taiwan." It is not legally bound by the TRA to come to Taiwan's defense in times of crisis or conflict but rather to maintain the military capability to do so if directed by the president and Congress (secs. 2.26, 3.3). Similarly, assertions that the TRA in fact requires the United States sell arms to Taiwan exaggerate the text's legal meaning. When it comes to providing for Taiwan's defense and security, the TRA directs the United States to supply Taiwan with defense articles and services based on U.S. assessments of Taiwan's needs. The statute delegates to the president, Congress, and the Department of Defense the ability to determine what constitute defensive capabilities.

As Richard Bush has noted, the text of the TRA is a legislative commitment that must be backed up by political commitment.[4] Changes in the strategic environment of the Taiwan Strait and the broader Indo-Pacific have led different U.S. administrations to interpret and implement the TRA differently. It is these shifts in implementation that provide insight to current trends in U.S.-Taiwan security ties.

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[3] The TRA is not the only commitment or legislation underpinning the U.S.-Taiwan relationship. For discussion and analysis of key documents guiding relations, see Richard C. Bush, *At Cross-Purposes: U.S.-Taiwan Relations Since 1942* (New York: M.E. Sharpe, 2004), 124–78; and "Background Briefing by Senior Administration Officials on the Visit of President Xi Jinping of the People's Republic of China," White House, Press Briefing, April 4, 2017~ https://www.whitehouse.gov/briefings-statements/background-briefing-senior-administration-officials-visit-president-xi-jinping-peoples-republic-china.

[4] Richard C. Bush, "Thoughts on the Taiwan Relations Act," Brookings Institution, April 21, 2009 ~ https://www.brookings.edu/opinions/thoughts-on-the-taiwan-relations-act.

Trends in U.S.-Taiwan Security and Defense Ties

While U.S. engagement with Taiwan has traditionally received robust bipartisan support in Congress, the TRA's flexibility has meant in practice that different U.S. administrations will take varied approaches in their implementation of U.S. policy toward Taiwan. During both the Obama and Trump administrations, the United States has maintained a focus on U.S. interests in the region through the "rebalance" and "free and open Indo-Pacific" strategies, respectively, but how each administration has gone about implementing supporting policies has differed. U.S.-Taiwan security and defense ties under the Trump administration to date have been characterized by the increased frequency of sales of front-line combat platforms, a more active congressional role in guiding U.S.-Taiwan security ties, and inclusion of Taiwan as a part of the free and open Indo-Pacific strategy.

After taking office, the Trump administration signaled that it intended to take a different approach toward Taiwan from that of the previous administration.[5] In the realms of defense and security, it has increased the rate of weapons sales to Taiwan while continuing to hew to the interpretation of the TRA held by the Obama administration. For example, former secretary of defense James Mattis told the 2017 Shangri-La Dialogue that the "Department of Defense remains steadfastly committed to working with Taiwan and its democratic government to provide…the defense articles necessary, consistent with the obligations set out in our Taiwan Relations Act."[6] Over eight years of the Obama administration, Congress was only notified of three weapons packages for Taiwan with a total value of approximately $14 billion. In contrast, by mid-2019, Congress had received notification of four weapons packages at an estimated total value of $12 billion.

The increased frequency and value of weapons packages is not the only noteworthy shift in U.S. arms sales to Taiwan under the Trump administration. Of equal importance are the types of weapons that are being sold. Sales of M1A2 Abrams tanks and F-16V jets, some of the most capable and highest-profile weapons platforms to be added to Taiwan's arsenal, were rejected by prior administrations. The Obama administration opted to

5 See, for example, Anne Gearan, Philip Rucker, and Simon Denyer, "Trump's Taiwan Phone Call Was Long Planned, Say People Who Were Involved," *Washington Post*, December 4, 2016 ~ https://www.washingtonpost.com/politics/trumps-taiwan-phone-call-was-weeks-in-the-planning-say-people-who-were-involved/2016/12/04/f8be4b0c-ba4e-11e6-94ac-3d324840106c_story.html.

6 Jim Mattis, "Remarks by Secretary Mattis at Shangri-La Dialogue," U.S. Department of Defense, June 3, 2017 ~ https://www.defense.gov/Newsroom/Transcripts/Transcript/Article/1201780/remarks-by-secretary-mattis-at-shangri-la-dialogue.

help Taiwan refurbish its existing F-16s instead of selling it the new, more advanced F-16s.[7] The Bush administration rejected Taiwan's request for new Abrams tanks in 2001, leaving the island with much older M-60A3 tanks.[8]

The Trump administration's decision to support sales of Abrams tanks and F-16Vs will, in particular, aid in modernizing Taiwan's ground forces and combat aircraft fleet, and they potentially offer interoperability between Taiwan, U.S., and Japanese air forces positioned in the region.[9] The administration's decision to go forward with sales of these advanced systems further suggests that it is unafraid of potential blowback from China and seeks to treat U.S.-Taiwan security ties independently of U.S.-China relations.

In addition to changes in U.S. weapons sales to Taiwan, Congress has indicated that it is willing to take a more active role in security ties than in the past, and Taiwan has a lot of support on Capitol Hill.[10] Congressional action on Taiwan has moved beyond simply including vague provisions for closer security cooperation or military exchanges.[11] While recent legislation has sought to strengthen the scale and scope of U.S.-Taiwan security ties, some of the more prominent legislation is merely an expression of congressional sentiment and not binding.

The National Defense Authorization Act (NDAA) for fiscal year (FY) 2019 specified several actions the Department of Defense could take to strengthen the readiness of Taiwan's military forces, although it is not legally bound to do so. The FY2019 NDAA, which includes more provisions for Taiwan than prior iterations, states that it is the "sense of Congress" that the United States strengthen defense and security cooperation with Taiwan by promoting opportunities for practical training and exercises and selling defensive weapons with an emphasis on asymmetric and undersea capabilities.

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7 Mark Landler, "No New F-16's for Taiwan, but U.S. to Upgrade Fleet," *New York Times*, September 18, 2011 ~ https://www.nytimes.com/2011/09/19/world/asia/us-decides-against-selling-f-16s-to-taiwan.html.

8 Shirley A. Kan, "Taiwan: Major U.S. Arms Sales Since 1990," Congressional Research Service, CRS Report for Congress, RL30957, August 29, 2014.

9 Stephen Bryen, "Taiwan's New F-16s Boost Regional Role of U.S.," *Asia Times*, August 19, 2019 ~ https://www.asiatimes.com/2019/08/article/taiwans-new-f-16s-boost-regional-role-of-us.

10 Recent legislation on Taiwan has passed with unanimous support. See, for example, "U.S. House Passes Bills in Support of Taiwan," Voice of America, May 7, 2019 ~ https://www.voanews.com/east-asia/us-house-passes-bills-support-taiwan; and Michael Martina and Patricia Zengerle, "China Angered with U.S.-Taiwan Travel Bill, Adding to Tensions," Reuters, Feburary 28, 2018, https://www.reuters.com/article/us-usa-taiwan-china/china-angered-with-u-s-taiwan-travel-bill-adding-to-tensions-idUSKCN1GD3HI.

11 See, for example, *National Defense Authorization Act for Fiscal Year 2017*, 114th Congress, 2015–16, S. 2943 ~ https://www.congress.gov/bill/114th-congress/senate-bill/2943/text.

Perhaps the most notable piece of recent Taiwan-relevant legislation to pass through Congress is the Asia Reassurance Initiative Act (ARIA), which was signed into law by President Trump in December 2018.[12] ARIA codifies the U.S. political commitment to Taiwan by both reiterating U.S. policy and setting guidance on arms sales and official travel to the island (in accordance with the Taiwan Travel Act, or TTA).[13] The legislation tracks with the provisions of the FY2019 NDAA outlined above, asserting that the president "*should* conduct regular transfers of defense articles to Taiwan" that are "tailored to meet the existing and likely future threats" (emphasis added).[14] While prior legislation—including the TRA itself—has indicated that the United States should make necessary defense articles or services available to Taiwan, an assessment of what platforms or equipment are considered defensive has been left open for interpretation by the legislature. ARIA, like the FY2019 NDAA, breaks from this precedent by specifically identifying "asymmetric…mobile, survivable, and cost-effective capabilities" as necessary components of arms sales to Taiwan.

The emphasis on these types of systems is motivated by both the increasing capabilities of the Chinese military and the public recognition of the U.S. defense community of the heightened risk of a Taiwan Strait contingency.[15] Due to growing public discourse on the operational details of how the Taiwan military would fight, U.S. experts have formulated a plethora of ideas and options for Taiwan to strengthen its existing defenses.[16] These options have shaped U.S. policy prescriptions and defense ties, feeding into legislation like ARIA and shifting U.S. focus away from prestigious platforms in favor of capabilities that would be arguably of the greatest utility in a future conflict. Whether the current administration will in fact sell such systems to Taiwan is a different question—the language of ARIA does not explicitly bind or commit the president to do so.

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12 "Bill Announcement," White House, Briefing, December 31, 2018 ~ https://www.whitehouse.gov/briefings-statements/bill-announcement-12.

13 The TTA stipulates that it "should be the policy of the United States to allow officials at all levels of the government…to travel to Taiwan to meet their Taiwanese counterparts" and vice versa. Taiwan Travel Act, 115th Congress, 2017–2018, H.R. 535 ~ https://www.congress.gov/bill/115th-congress/house-bill/535/text.

14 *Asia Reassurance Initiative Act of 2018*, 115th Congress, 2017–18, S.2736, sec. 209 ~ https://www.congress.gov/bill/115th-congress/senate-bill/2736/text#toc-HBC83E05F3CB54A088207211061CF43FA.

15 See, for example, U.S. Department of Defense, *Annual Report to Congress: Military and Security Developments of the People's Republic of China 2019* (Washington D.C., 2019).

16 See, for example, Michael A. Hunzeker and Alexander Lanoszka, *A Question of Time: Enhancing Taiwan's Conventional Deterrence Posture* (Arlington: George Mason University, 2018); and Jim Thomas, John Stillion, and Iskander Rehman, "Hard ROC 2.0: Taiwan and Deterrence through Protraction," Center for Strategic and Budgetary Assessments, 2014.

Finally, the shift in bilateral security ties is also reflected in Taiwan's inclusion in key U.S. strategy documents on the Indo-Pacific. Taiwan's importance to U.S. interests in the region follows logically from unclassified strategy documents—notably the National Security Strategy and the National Defense Strategy—that explicitly identify China as a "revisionist power" seeking to diminish U.S. influence in the region.[17] Even as the Department of Defense has identified China's destabilizing activities and revisionist objectives, it has also become more outspoken about the necessity of continued quiet engagement with Taiwan and support for the island's security. According to the Department of Defense's "Indo-Pacific Strategy Report," the objective of U.S. defense engagement with Taiwan is "to ensure that Taiwan remains secure, confident, free from coercion, and able to peacefully and productively engage the mainland [China] on its own terms."[18]

Taiwan's inclusion in the U.S. Indo-Pacific strategy is also manifest in U.S. naval operations in the region. Since July 2018, U.S. Navy ships have transited the waters of the Taiwan Strait eleven times, passing through on a near-monthly basis.[19] While publicly available data indicates that the frequency of these transits may not be as high as in prior administrations, it should be noted that many of the previous transits were not announced in the media.[20] The U.S. decision to consistently publicize its transits is a signal of the U.S. commitment to a free and open Indo-Pacific—which includes the waters around Taiwan. Though the media portrayal of these operations has shifted some, U.S. Navy passages through the strait are, as former chief of naval operations Admiral John Richardson has noted, conducted in accordance with international maritime law and "consistent with our interests and our policy" on Taiwan.[21]

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17 White House, *National Security Strategy*; and U.S. Department of Defense, "Summary of the 2018 National Defense Strategy."

18 U.S. Department of Defense, "Indo-Pacific Strategy Report: Preparendess, Partnerships, and Promoting a Networked Region," June 1, 2019, 31.

19 Ben Werner, "USS *Green Bay* Transits Taiwan Strait," USNI News, August 23, 2019 ~ https://news.usni.org/2019/08/23/uss-green-bay-transits-taiwan-strait; and Matthew Strong, "U.S. Navy Guided Missile Cruiser Sails through Taiwan Strait," *Taiwan News*, September 20, 2019, https://www.taiwannews.com.tw/en/news/3781002.

20 John Power, "U.S. Warships Made 92 Trips through the Taiwan Strait since 2007," *South China Morning Post*, May 3, 2019, https://www.scmp.com/week-asia/geopolitics/article/3008621/us-warships-made-92-trips-through-taiwan-strait-2007.

21 Ben Werner, "CNO: Consistency Is Key to Dealing with China," USNI News, February 1, 2019 ~ https://news.usni.org/2019/02/01/cno-consistency-is-key-to-dealing-with-china.

Past Trends Paving the Way for Future Developments

If the past is any indicator of the future, the way forward for U.S.-Taiwan security and defense ties will build on the foundational policies established by the TRA. As ebbs and flows in U.S. engagement with Taiwan over the last several decades have made clear, the TRA is a flexible framework that allows the United States to adapt security and defense support for Taiwan based on perceptions of other strategic changes. In other words, while the foundation of U.S.-Taiwan security and defense ties has gone unchanged, what has changed is U.S. perceptions of the threat from China. Changed perceptions of this threat—not just to Taiwan but to U.S. strategy and interests in the region writ large—affect the scale and scope of the U.S. policy response. For Taiwan, this has meant that the TRA facilitates the current, expanding scope of U.S.-Taiwan security relations. This framework provides the basis for the trends identified above: a shift in the timing and types of weapons sales, increased congressional action on U.S.-Taiwan security ties, and an explicit inclusion of Taiwan in U.S. strategic documents.

These trends may evolve in a number of different directions, particularly following Taiwan's presidential election in January 2020 and prior to U.S. elections in November 2020. The current tenor of weapons sales seems to indicate that this administration seeks to "normalize" defense support to Taiwan. If congressional guidance is heeded by decision-makers, then we should also expect future sales to focus increasingly on asymmetric platforms and capabilities, including missile defense systems and undersea capabilities. As the threat that Taiwan faces is not confined solely to the traditional battlefield, U.S. defense support may need to expand into nontraditional security domains, such as cyberspace.

U.S. defense support for Taiwan should also necessarily consider the softer inputs to the island's military strategy and national defense. Weapons sales that replace older systems with more advanced capabilities are but the first piece of maintaining a capable, reliable force. For Taiwan to sustain these—or future—systems, its military must have adequate training and manpower. The effects of the ongoing transition in Taiwan to an all-volunteer force should be considered alongside future weapons sales decisions, ensuring that Taiwan has a plan for sustainably manning the systems it buys in both peacetime and conflict.

What is likely to remain unchanged in the current U.S. administration is the attitude that China is a revisionist power. The administration's assessment of China has yielded an overtly competitive approach in dealings with Beijing. While Taiwan may not be the beneficiary of increased

U.S.-China competition in all domains, current U.S. policy assessments that emphasize the growing threat of Chinese military capabilities and China's goals of regional hegemony have paved a path for closer U.S.-Taiwan security and defense relations. Whether and how these trends are sustained remains an open question. ◈

The Evolution of Human Rights in Taiwan and Challenges from China

Chieh-Ting Yeh

When the United States ended diplomatic recognition of the Republic of China and Congress passed the Taiwan Relations Act (TRA) in 1979, Taiwan recognized few human rights. The central government was controlled by the Kuomintang (KMT) under the grip of strongman Chiang Ching-kuo. The country had been under martial law for roughly three decades. But since then, Taiwan has made remarkable strides in transforming itself from an authoritarian society into a functioning democracy with the rule of law and respect for human rights. And the United States played a vital role in that transformation.

This essay will examine the evolution of a human rights culture in Taiwan and the role played in it by the United States. It will then address the contemporary challenge across the strait that China poses to human rights at home and to media and narrative freedoms both in Taiwan and around the world. Last, it will look at the TRA as a foundation for deeper human rights cooperation between the United States and Taiwan, and broadly assess some of the ways the United States can support the civil freedoms espoused by the liberal global order.

A Modern Taiwan Founded on Human Rights

The very concept of modern Taiwan is deeply rooted in human rights ideals. In the 1920s and 1930s, as nation-states arose through the newly recognized right of self-determination, the first modern activists in Taiwan organized to petition Japan, its colonial master, for limited self-rule under a new Taiwanese parliament.[1] After World War II, the Taiwanese elite welcomed the takeover by the KMT-led Republic of China, but their hopes for self-rule were soon quashed, and many of these same elites were executed by the KMT in 1947.

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[1] Chieh-Ting Yeh "'Taiwan Independence' Doesn't Mean What You Think," *Foreign Policy*, April 11, 2016.

The 228 Massacre and other highly repressive policies of the KMT regime led Taiwanese intellectuals to flee overseas and take their activism to an international stage.[2] As history turned out, these appeals to the international community were never realized, and Taiwan entered one of the longest periods of martial law in the world. The United States continued to provide aid to the KMT in Taiwan, despite the regime's ruthlessness in dealing with its own people. When the TRA was passed in 1979, it was a measure to continue ties with Taiwan, even as the United States formally recognized the totalitarian Communist regime in Beijing.

Since 1979, human rights have linked the United States and Taiwan on two levels: first, the United States has played a vital role in shaping Taiwan's human rights development through policy and civil society interaction. Second, U.S. democracy has served as an inspiration and a model for activists and policymakers in Taiwan, many of whom studied and worked in the United States.

Yet, even as the TRA passed, pro-democracy activists such as Annette Lu and Shih Ming-teh were arrested later that year, court martialed, and sentenced to prison for organizing a Human Rights Day protest in Kaohsiung. But not long after that, President Chiang Ching-kuo announced he would lift martial law, which ended in 1987. In 1992, the first-ever national legislative elections were held in Taiwan; in 1996, the first-ever presidential election was held; and in 2000, the first-ever peaceful transition of power to an opposition party occurred.

In March 2009, Taiwan ratified the two UN human rights covenants, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (even though Taiwan is not required to, as it is not a UN member). Ten years later, Taiwan became the first country in Asia to legalize same-sex civil unions.

All these achievements had U.S. involvement, often through civil-society relationships. Annette Lu, for example, was named a prisoner of conscience by Amnesty International, and was eventually released with the help of her professor from Harvard, Jerome Cohen.[3] When Chiang announced he would end martial law, it was in an interview with the *Washington Post*.[4]

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2 See, for example, Ching-li Chen, *Liao Wenyi de Lixiangguo* [The Utopia of Liao Wen-Yi] (Tapei: Yushan She, 2014).

3 Farah Stockman, "How a Harvard Rivalry Changed Taiwan," *Boston Globe*, July 3, 2012.

4 Daniel Southerl, "Taiwan President to Propose End to Island's Martial Law," *Washington Post*, October 8, 1986.

In more recent years, marriage equality activists (as well as opponents) in Taiwan often met with American counterparts.

On a higher level, many democracy activists and political leaders in the 1980s and 1990s started out as student organizers while studying in the United States. Organizations such as the Formosan Association for Public Affairs and World United Formosans for Independence began as late-night gatherings in dormitory rooms. These people came to the United States to study unrelated fields such as engineering, but their exposure to American-style freedom and democracy inspired them to organize, and eventually return to Taiwan and start political careers. This link between civil-society actors in the United States and Taiwan persists, and the current crop of new political entrants includes many with U.S. educations.

Taiwan's human rights conditions will continue to consolidate, as long as civil-society ties between the United States and Taiwan keep growing. At the same time, the United States must also keep improving its own human rights environment to serve as an example worthy of emulating.

Human Rights in China

In the larger context, the way in which human rights issues feature in U.S.-Taiwan relations will have a profound impact on U.S.-China relations. Human rights will become more prominent going forward, and Taiwan's human rights trends and example will be pivotal. Even though I do not subscribe to the notion of Taiwan as merely a "Chinese democracy," Taiwan is the closest model of liberal democracy for the Chinese people. How the United States frames that liberal democracy will have significant symbolic and practical implications for China.

The U.S. policy of engagement with China over the past 30 years is now being intensely scrutinized, with Kurt Campbell and Jake Sullivan recently describing it as coming to an "unceremonious end."[5] The engagement policy favored incorporating China into the existing liberal world order and helping it grow economically, with the hopes that China would become a more "responsible stakeholder" internationally while an increasingly prosperous middle class would demand more rights domestically.

Sadly, those hopes have never quite materialized. China's human rights record, even in the 30 years after the 1989 Tiananmen Square massacre,

5 Kurt M. Campbell and Jake Sullivan, "Competition without Catastrophe: How America Can Both Challenge and Coexist with China," *Foreign Affairs*, September/October 2019 ⇝ https://www.foreignaffairs.com/articles/china/competition-with-china-without-catastrophe.

has been trending toward tightening freedoms, deteriorating civil liberties, and more flagrant use of violence against dissidents, all in the service of increasing nationalism and continued Chinese Communist Party rule. As China has grown more prosperous, it has also become more emboldened to flaunt international obligations while militarizing in the region, including frequent excursions and military exercises targeted at Taiwan.[6]

At the time of writing in 2019, the world has been focused on Hong Kong. Peaceful demonstrations over a proposed extradition bill have evolved into weekly mass protests of close to two million people, with riot police using brutal tactics against protesters, including tear gas, rubber bullets, and close-quarter beatings inside metro stations. The specter of a military crackdown looms over the city, as reports and rumors spread of People's Liberation Army troops amassing at the border or possibly entering the city.[7] Hong Kong, once a city better known for its financial markets and gourmet scene, has become a battleground for democracy in a few short months.

Lesser known is the plight of Uighurs in Xinjiang. More than a million people from the Uighur ethnic group have been detained in "re-education" camps, essentially concentration camps where they are forced to violate tenets of their faith and are indoctrinated in loyalty to Xi Jinping and the Chinese Communist Party.[8] Since long before the camps came to light, China has been encouraging ethnic Han people to migrate to the region, fostering essentially a large-scale social re-engineering project unthinkable to modern day democracies.[9] The cultural and religious identities of Tibetans, similarly, are being systematically wiped out by the Chinese Communist Party.[10]

Another area in China where rights have deteriorated recently is the government's use of mass surveillance technology. This adds further repression to a society that is already extremely censored and monitored,

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6 "China Says Sino-British Joint Declaration on Hong Kong No Longer Has Meaning," Reuters, June 30, 2017; "Beijing Rejects Tribunal's Ruling in South China Sea Case," *Guardian*, July 12, 2016; and "China to Conduct Fresh Military Drills Near Taiwan," Agence France-Presse, August 28, 2019.

7 James Griffiths and Barbara Starr, "Chinese Military's Rotation of New Troops to Hong Kong Garrison Raises Alarm," CNN, August 29, 2019.

8 "Up to One Million Detained in China's Mass 'Re-education' Drive," Amnesty International, September 2018 ~ https://www.amnesty.org/en/latest/news/2018/09/china-up-to-one-million-detained.

9 "China's Drive to Settle New Wave of Migrants in Restive Xinjiang," *South China Morning Post*, May 8, 2015.

10 "Relentless: Detention and Prosecution of Tibetans under China's 'Stability Maintenance' Campaign," Human Rights Watch, May 22, 2016 ~ https://www.hrw.org/report/2016/05/22/relentless/detention-and-prosecution-tibetans-under-chinas-stability-maintenance.

and the development of social credit systems greatly adds a new tool for Chinese authorities to target dissenters.[11] Elements of China's surveillance system are already being implemented outside China in other unfree states such as Venezuela.[12] China has also increased arrests of domestic dissenters, as well as foreign nationals, without providing credible criminal charges.[13]

Even more shocking is the recent behavior of groups of overseas Chinese people, oftentimes young foreign students, who have been staging counterprotests against the Hong Kong democracy protests. Chinese nationals have shouted down pro–Hong Kong students in Melbourne, Toronto, Boston, and New Zealand. They have vandalized pro–Hong Kong "Lennon Walls" in New York and other cities.[14] In Toronto and Vancouver, young Chinese nationals plastered their luxury sports cars in Chinese flags and drove their motorcade past pro–Hong Kong rallies, taunting the participants with obscenities.[15]

These instances of regular Chinese nationals displaying an ugly strain of nationalism are too common to be isolated. There is evidence that overseas students are monitored, and some are paid by the local Chinese consulates to attend protests. But even assuming ordinary Chinese nationals are self-motivated to act in these ways, their behavior is understandable in that they have not had experience dealing with opposing opinions peacefully and have been taught to be offended at any disagreement with their views about China.

All these examples illustrate China's deteriorating human rights conditions, despite three decades of positive engagement. As these abuses become better known and affect more people outside China, human rights must play a more prominent role in any interaction between the United States and China.

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11 Louise Matsakis, "How the West Got China's Social Credit System Wrong," *Wired*, July 29, 2019.

12 Angus Berwick, "How ZTE Helps Venezuela Create China-Style Social Control," Reuters, November 14, 2018.

13 "International Day of the Disappeared: CCP Is the Worst Offender of the Year," News Lens, August 30, 2019, https://international.thenewslens.com/article/124112.

14 Elizabeth Kim, "Pro-Hong Kong Wall in Chinatown Gets Vandalized Twice in Less than a Week," Gothamist, August 27, 2019 ~ https://gothamist.com/news/pro-hong-kong-wall-chinatown-gets-vandalized-twice-less-week.

15 Ian Young, "'Worst Fast and Furious Movie Ever': Convoys of Ferrari-Driving Pro-China Patriots Rev Up Protests in Vancouver and Toronto," *South China Morning Post*, August 20, 2019.

Narrative Control and Manipulation

One specific area of concern in China's abuse of human rights is in the realm of media and technology. China has an official policy of projecting its own perspective abroad, called the *dawaixuan* (great foreign propaganda) effort. He Qinglian, a scholar who focuses on China and the media, points out that dawaixuan begun as early as 2009, when the Chinese government allocated 45 billion yuan to "fight with the West for *huayuquan*" (narrative control).[16]

Taiwan, as a society with a high degree of press freedom and the same language as China, is an obvious target for Chinese media influence. Chinese investors with state interests are reportedly buying out Taiwanese media outlets. Once media companies are purchased, new management is installed that carries out internal censorship and propaganda in China's favor. In a *Financial Times* report, reporters from the *Want Want China Times* reveal that their editors are in frequent contact with China's Taiwan Affairs Office, ostensibly over editorial direction and censorship.[17]

China is heavily interested in influencing media narratives in the United States as well. In 2010, CCTV's English-language programming was relaunched into a 24-hour news channel. Other forms of narrative control have included plans to purchase financially struggling U.S. newspapers, such as a proposal to buy the *Los Angeles Times*, discussed as early as 2008.[18] Chinese-language media consumed by the Chinese diaspora community also has been heavily manipulated by China. This has included "co-opt[ing] existing Chinese-language outlets and establish[ing] its own new outlets."[19]

On social media, the effort is even more pronounced. Lilly Min-chen Lee, a Taiwan-based political analyst in Asia-Pacific security and international relations, examined posts from 52 Chinese Facebook fan pages that exhibited suspicious bot-like behavior. Over five days, the pages produced 4,999 posts, about 20 posts per day per page. Of the 4,999 posts,

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16 He Qingyi, "Yi fen wei neng quban de Zhongguo dawaixuan yanjiu baogao" [An Unpublished Research Paper on Chinese Great Foreign Propaganda], Up Media, March 21, 2018 ~ http://www.upmedia.mg/news_info.php?SerialNo=37186.

17 Katharin Hille, "Taiwan Primaries Highlight Fears over China's Political Influence," *Financial Times*, July 16, 2019; Yimou Lee, "Paid 'News': China Using Taiwan Media to Win Hearts and Minds on Island—Sources," Reuters, August 8, 2019; and Reporters Without Borders, "China's Pursuit of a New World Media Order," March 22, 2019 ~ https://rsf.org/en/reports/rsf-report-chinas-pursuit-new-world-media-order.

18 He, "Yi fen wei neng quban de Zhongguo dawaixuan yanjiu baogao."

19 Larry Diamond and Orville Schell, eds., "Chinese Influence and American Interests: Promoting Constructive Vigilance," Hoover Institution, 2018.

39% were about China, and 27% were about the United States.[20] Suspicious online activity on Facebook may have also contributed to the unlikely election win by Kaohsiung's mayor Han Kuo-yu in November last year.[21] In August 2019, Twitter and Facebook announced measures against accounts that are sponsored by the Chinese government, with Twitter removing nearly 1,000 accounts and suspending nearly 200,000 accounts specifically attacking Hong Kong protesters.[22] But activity within China's own social media services such as WeChat is still flourishing. A Reddit-style Chinese message board called Diba serves as a platform for "patriotic youth,"[23] and netizens from Diba were responsible for a coordinated attack on Taiwanese news sites and Facebook accounts in 2016, a few days after the presidential elections in Taiwan.[24] The *People's Daily* and *Global Times*, both Chinese Communist Party mouthpieces, signaled government consent for the attacks.[25] Overseas, online media outlets specifically targeting young Chinese nationals are peddling articles that are fueled by patriotic propaganda. The *College Daily*, for example, targets overseas students and has more than 1.6 million followers on WeChat. The founder, Lin Guoyu, describes his publication as "post-truth."[26]

Going Forward

Since the United States normalized relations with the People's Republic of China and passed the TRA 40 years ago, Taiwan's human rights conditions have improved drastically, while those of China have deteriorated, despite U.S. efforts to incorporate China into the global system

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20 Lilly Min-chen Lee (unpublished presentation).

21 Paul Huang, "Chinese Cyber-Operatives Boosted Taiwan's Insurgent Candidate," *Foreign Policy*, June 26, 2019 ~ https://foreignpolicy.com/2019/06/26/chinese-cyber-operatives-boosted-taiwans-insurgent-candidate.

22 "Twitter and Facebook Crack Down on Accounts Linked to Chinese Campaign against Hong Kong," *Guardian*, August 19, 2019 ~ https://www.theguardian.com/technology/2019/aug/19/twitter-china-hong-kong-accounts.

23 Robyn Dixon, "We Tried to Contact China Users Blocked by Twitter and Facebook. Here's Who Wrote Back," *Los Angeles Times*, August 22, 2019 ~ https://www.latimes.com/world-nation/story/2019-08-22/anti-hong-kong-users-blocked-by-twitter-and-facebook-say-theyre-chinese-patriots-not-propagandists.

24 Chen Tingjun, "'Diba' kuaishan naoju de muhou jiaoli" [The Political Struggle behind the "Diba" Online Flash Mob], *Business Today* (Taiwan), April 2, 2016 ~ https://www.businesstoday.com.tw/article/category/80392/post/201602040028/%E3%80%8C%E5%B8%9D%E5%90%A7%E3%80%8D%E5%BF%AB%E9%96%83%E9%AC%A7%E5%8A%87%E7%9A%84%E5%B9%95%E5%BE%8C%E8%A7%92%E5%8A%9B.

25 Ibid.

26 Han Zhang, "The 'Post-Truth' Publication Where Chinese Students in America Get Their News," *New Yorker*, August 19, 2019.

of trade and governance. Furthermore, China is now emboldened to defend its abuses internationally and is exporting its excuses through a massive media campaign abroad.

The strategy going forward is clear. Raising overall human rights standards globally means being adamant about stopping China's abuses toward its own people and stopping both the influence of its rights-abusing policies and the media manipulation to spread its preferred nationalist narrative around the world. Central to that strategy is to uphold and protect Taiwan as a human rights counterweight to China. Taiwan faces the constant threat of war from China, but even without formal hostilities, it is already on the front line of China's disinformation campaigns to sow chaos and instability. Only by being free from Chinese control and aggression can Taiwan continue to be a model of liberal democracy for China.

Finally, the United States must regain moral legitimacy globally as a human rights leader by addressing criticism of its own treatment of minorities, the disadvantaged, and immigrants at home, as well as by restoring public faith in the media and its centers of knowledge. There are two reasons: not only do countries like Taiwan take cues from the United States in conducting their own governance, but the United States will not be able to create a global coalition of human rights advocates against abusers such as China if its democracy is a hypocrisy.

With regard to Taiwan, the text of the TRA gives broad authority for the United States to make human rights a tenet of U.S.-Taiwan relations:

> Nothing contained in this Act shall contravene the interest of the United States in human rights, especially with respect to the human rights of all the approximately eighteen million inhabitants of Taiwan. The preservation and enhancement of the human rights of all the people on Taiwan are hereby reaffirmed as objectives of the United States (sec. 2(c)).

While the legal authority of the TRA is broad, new legislation specifically addressing Taiwan's human rights conditions would send a strong signal to Taiwan, as well as China, that in the upcoming era of U.S. policy, human rights will carry much more weight. Enacting into law the Hong Kong Human Rights and Democracy Act as soon as possible will create a more complete package of policies directed at human rights abuses by China. The process of a new amendment or bill will also focus greater public discourse on the subject, especially the new challenges in media, technology, and narrative manipulation.

With respect to China's manipulation of narratives, in the short term, groups in the United States and Taiwan could build closer working

relationships and collaborate on identifying and managing fake news and misinformation. Civil-society and human rights groups such as Reporters Without Borders, Human Rights Watch, and Amnesty International should also continue to call out abusive behavior by China and pro-China elements in Taiwan and the United States.

In the longer term, the American public should not think merely in terms of election meddling but instead about "post-truth" movements as a comprehensive push to delegitimize objective facts and civil discourse—all basic building blocks for liberal democracy to exist. In addition, more should be done in education. Just as it is important that students are taught from an early age to distinguish fact from opinion and to read and think critically, children today should be better equipped with updated training in technology and media consumption as part of the civics curriculum.

Ultimately, the TRA is meant to be a consolation prize. As Keep Taiwan Free leader Jenny Wang wrote:

> Taiwan's trajectory with their strong commitment to human rights alone should serve as enough reason to revise the TRA to reflect such accordingly; there should be a stronger emphasis on our shared values. Relegating Taiwan to a diplomatic twilight-zone is not the right path forward. If Taiwan does not receive more support and respect from the international community, Taiwan will very soon be swallowed by China—which will only further strengthen and galvanize the current authoritarian regime.[27]

The people of Taiwan deserve to be recognized by the nations of the world. As long as Taiwan is still considered to be an unresolved Chinese territory or "renegade province" by the rest of the world, Taiwan stands alone facing an ever more menacing China. Safeguarding Taiwan not only helps consolidate Taiwan's human rights achievements further, but it is a pivotal piece in efforts to finally start addressing China's abuses for good. ◈

[27] Jenny Wang, "40 Years of Diverging Trajectories: Examining the Taiwan Relations Act and Human Rights," Ketagalan Media, April 1, 2019 ~ http://www.ketagalanmedia.com/2019/04/01/40-years-diverging-trajectories-examining-taiwan-relations-act-human-rights.

The Taiwan Relations Act at 40: A Troubled but Durable Legal Framework for U.S. Policy

Jacques deLisle

Four decades after its enactment, the Taiwan Relations Act (TRA) remains a relatively effective and distinctly legal framework for U.S. policy toward Taiwan, cross-strait relations, and, in turn, U.S.-China relations. Adopted amid the normalization of relations between the United States and the People's Republic of China (PRC), and reflecting Washington's acquiescence in severing diplomatic relations and terminating a mutual defense treaty with the Republic of China (ROC) in Taiwan, the TRA mitigated the consequences for Taiwan of a new era in U.S.-PRC relations.

The TRA has provided a sustainable and adaptable basis for ongoing, although diminished, U.S.-Taiwan relations. Although the TRA is a law, its contributions have been largely political. The TRA has faced challenges and shown shortcomings, which have worsened as it moves toward the half-century mark. Yet it is unlikely to be supplanted or significantly supplemented. Attempts to supersede or greatly alter the TRA could undermine its persisting virtues. The remaining sections of this essay address each of these claims in turn.

A Second-Best Substitute for Diplomatic and Security Ties

The TRA has provided "second-best" substitutes for what Taiwan lost when the United States severed formal ties in 1979. It offers an incomplete stand-in for the mutual defense agreement, committing the United States to sell "arms of a defensive character" based "solely" on judgments about Taiwan's needs and to maintain the United States' own capacity to resist force or coercion (implicitly by Beijing) that would jeopardize the security of the people of Taiwan (secs. 2(b), 3). Broader policy language in the TRA—that peace, security, and stability in the region are U.S. interests, and that the United States insists that the future of Taiwan be decided by peaceful means (sec. 2(b))—has bolstered the narrow and largely discretionary arms sales pledge and embedded U.S. regional security policy in formal legislative language. The TRA's interaction with international legal principles retains a

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foundational element and legitimizing precondition of the former alliance: it is lawful to provide weapons to the government of another state and to use defensive force on its behalf, but it is not (except under rare circumstances) permissible to do so for a long-ousted national government or a would-be secessionist province.

The TRA provides an incomplete alternative to diplomatic relations and associated legal rights and responsibilities. It mandates that Taiwan be treated under 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 ties. Specific commitments include Taiwan and the United States maintaining quasi-embassies and quasi-consulates in one another's territory, Taiwan having sovereign immunity in U.S. courts, and Taiwan retaining the capacity to be party to international agreements with the United States (secs. 4–11). The TRA also backhandedly supports preserving, incompletely, Taiwan's status in the international system, declaring that the TRA is not to be "construed as a basis for supporting the exclusion or expulsion of Taiwan from continued membership" in any international organization—as had occurred, with dramatic effect on the ROC's international stature, at the United Nations in 1971 (sec. 4(d)). With its mandate that Taiwan enjoy such status in U.S. law and policy, the TRA made an early and lasting contribution to what has become Taiwan's long-running pursuit of security through acquiring or retaining as many attributes of sovereign statehood as possible, including strong informal relations with states and membership or participation in international organizations.

The TRA has been uniquely important in entrenching U.S. policy toward Taiwan. Unlike the other "sacred texts" of the United States' Taiwan and cross-strait policies (the Three Communiqués and, on some accounts, the Reagan-era Six Assurances), the TRA is a U.S. law. It binds the president and executive branch subordinates, who cannot lawfully disregard or change the TRA as they could the Three Communiqués or lesser policy statements. From Washington's perspective, the communiqués are mere foreign policy commitments, not legally binding treaties.

The TRA is an unusual exercise of congressional power to set and embed foreign policy. By constitutional allocation of powers and long-standing practice, the president is relatively dominant in foreign affairs, and Congress often shirks its limited responsibilities through silence, acquiescence, or granting the executive sweeping discretion. In enacting the TRA, Congress used its authority over foreign policy more assertively. Although the provisions mandating quasi-substitutes for diplomatic relations and security

ties, as well as the requirements for presidential reporting and congressional review and oversight, reach only a limited range of issues and leave the president considerable discretion, they signal relatively strong congressional intent to monitor and constrain the executive branch on Taiwan policy.

The Political Functions of a Resilient Law

Whatever one makes of the importance of its distinctive legal status, and notwithstanding how little it actually requires, the TRA has been politically important. Along with the Three Communiqués but with more significance, the TRA has been a lodestar and safe harbor for U.S. presidents and senior officials who have suggested, or seemed to suggest, significant change in U.S. policy. From the Clinton administration's invitation permitting Lee Teng-hui to deliver a Taiwan-boosting speech at Cornell University to President Bill Clinton's seemingly pro-China "three no's"; from President George W. 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"; from President-elect Trump's congratulatory phone call with Taiwan president Tsai Ing-wen and his statement (later reversed) that he regarded the one-China policy as expendable to his administration's adoption of positions widely regarded as strongly supportive of Taiwan and antagonistic toward the PRC—on these and similar occasions, U.S. officials have dashed hopes and assuaged fears of major policy shifts by denying that there would be any change to U.S. policies that remained firmly anchored in the TRA and the Three Communiqués.[1] The TRA—through its stable content and its formal stature in the U.S. legal and constitutional system—has enabled U.S. officials to play a two-level game, with the law limiting their latitude to make policy changes sought by Beijing or Taipei, or seemingly those signaled by U.S. presidents, cabinet secretaries, and other officials.

[1] The U.S. "three no's" are no support for Taiwan independence; no support for a two-China or one-China, one-Taiwan policy; and no support for Taiwan's membership in states-only international organizations. Lee Teng-hui, "Taiwan Today: Always in My Heart" (speech at Cornell University, June 9, 1995); "Remarks by the President and First Lady in Discussion on Shaping China for the 21st Century," White House, Office of the Press Secretary, Press Release, June 30, 1998; David E. Sanger, "U.S. Would Defend Taiwan, Bush Says," *New York Times*, April 26, 2001; Joseph Kahn, "China Praises Powell for Warning Taiwan on Independence," *New York Times*, October 27, 2004; Damian Paletta, Carol E. Lee, and Andrew Browne, "Trump Spoke with Taiwan President in Break with Decades of U.S. Policy," *Wall Street Journal*, December 2, 2016; Donald J. Trump, "Did China Ask Us If It Was OK to Devalue Their Currency?" Facebook, December 4, 2016 ~ https://www.facebook.com/DonaldTrump/posts/10158229642705725; and Dean P. Chen, "The Trump Administration's One-China Policy: Tilting toward Taiwan in an Era of U.S.-PRC Rivalry?" *Asian Politics and Policy* 11, no. 2 (2019): 250–78.

Ironically, one source of the TRA's potency in defining U.S. policy has made the TRA less provocative to Beijing and less damaging to U.S.-China relations. Beijing finds the TRA offensive but less unacceptable than other possible modes of expressing similar policies and commitments. Its provisions according Taiwan and the ROC state-like and government-like status and quasi-diplomatic relations address only U.S. law; they stake out no U.S. position on Taiwan's international legal status. Beijing can, and does, dismiss the arms sales provision as domestic law that impermissibly violates what China views as Washington's binding international legal commitments in the Three Communiqués.

The TRA has endured as a central feature—and the principal legal element—of U.S.-Taiwan relations and Washington's Taiwan policy not just because of its fixity but also because of its adaptability. The TRA's emphasis on process and articulation of general principles have allowed it to accommodate significant change in U.S.-Taiwan relations and U.S. policy toward Taiwan while maintaining overall continuity and consistency. For example, the declaration of U.S. interest in the human rights of the people of Taiwan initially reflected a Carter-era element of foreign policy that was a rebuke to the authoritarian regime in Taipei and a signal of limits to U.S. support. As Taiwan became a liberal democracy during the 1980s and 1990s, however, this TRA-embodied principle resonated with evolving reasons for preserving U.S. support for Taiwan and its pursuit of international stature and security. Amid the global wave of democratization and re-emphasis on "values" in U.S. foreign policy that crested in the early post–Cold War years, the TRA's human rights provision addressed and applauded one of Taiwan's strengths. For another example, the TRA's oblique position on Taiwan's participation in international organizations and agreements has been capacious enough to fit both with Washington's acquiescence in Taiwan's long-running exclusion—at Beijing's behest—from many international organizations and most new multilateral treaties, and also with U.S. support for Taiwan's efforts (which achieved limited and reversible success) to participate in UN-affiliated entities, such as the World Health Assembly and the International Civil Aviation Organization Assembly.

More fundamentally, the TRA's complicated framing of U.S. security interests (maintaining regional peace and security) and commitments (limited to supporting Taiwan's defense and freedom from coerced unification) has accommodated the shifting stances associated with Washington's policy of "strategic ambiguity." Despite its name, the policy

has been relatively clear. The United States seeks to deter both Beijing from forcing a change in the status quo and Taipei from crossing China's redlines, which include but are not limited to a formal declaration of independence. Washington, therefore, has sat in judgment on which side is "at fault" for crises in cross-strait relations and has leaned away from the side it has deemed responsible: Beijing, in the mid-1990s missile crisis that sought to influence Taiwan's first democratic presidential election; Taiwan, when President Chen Shui-bian proffered referenda that came perilously close to implying formal assertions of independent statehood, or at least appeared to imperil the U.S.-favored cross-strait status quo; and Beijing, when the PRC refused to engage with President Tsai because she would not supplement support for the status quo and stable relations with a pledge to continue her predecessor's acceptance of a one-China principle and the 1992 Consensus.

Is the TRA Inadequate and Obsolete?

The TRA, along with the policies it reflects and entrenches, has faced criticism for being out of date and ill-suited to changing realities. The TRA stood in the way of periodic calls for the United States to "abandon" Taiwan.[2] From this perspective, Taiwan appeared to be the most likely cause of an avoidable (potentially military) conflict in a relatively good, or at least non-adversarial, U.S.-China relationship, and U.S. international security interests would be better served by removing the risk created by U.S. commitments to Taiwan. As U.S.-China relations have soured and the view that China is a strategic competitor or adversary has taken hold in Washington in the last decade, the TRA has faced a very different criticism—one long pressed by Taiwan's more ardent supporters in the United States.[3] In this view, the TRA is inadequate or obsolete because it fails to mandate a more alliance-like relationship with a Taiwan that shares U.S. interests and values and that is a strategic asset in the United States'

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2 See, for example, Bruce Gilley, "Not So Dire Straits: How the Finlandization of Taiwan Benefits U.S. Security," *Foreign Affairs*, January/February 2010, 44–56, 58–60; Charles Glaser, "Will China's Rise Lead to War? Why Realism Does Not Mean Pessimism," *Foreign Affairs*, March–April 2011, 80–91; and John J. Mearsheimer, "Say Goodbye to Taiwan," *National Interest*, March–April 2014 ~ http://nationalinterest.org/article/say-goodbye-taiwan-9931.

3 See, for example, Vincent Wei-cheng Wang, "The Taiwan Relations Act at 40: New Dynamics of an Enduring Framework," Foreign Policy Research Institute, April 8, 2019 ~ https://www.fpri.org/article/2019/04/the-taiwan-relations-act-at-40-new-dynamics-of-an-enduring-framework; Gary J. Schmitt and Jamie M. Fly, "The Taiwan Relations Act at 40: It's Time to Deepen Ties," *American Interest*, April 8, 2019 ~ http://www.aei.org/publication/the-taiwan-relations-act-at-40-its-time-to-deepen-ties; and Shelley Rigger, "Why Giving Up Taiwan Will Not Help Us with China," American Enterprise Institute, November 29, 2011 ~ http://www.aei.org/publication/why-giving-up-taiwan-will-not-help-us-with-china.

rivalry with China. Proponents of this view argue that even if the United States were to "abandon" Taiwan, it would not resolve the fundamental conflicts between Washington and Beijing.

The TRA largely omits important economic dimensions of U.S.-Taiwan relations in an era of globalization and increased political and strategic significance of economic interests. Other laws have been adequate to address most legal issues in U.S.-Taiwan economic relations and Taiwan-related aspects of U.S. international economic legal relations. The TRA's brief references to maintaining commercial relations (secs. 2(b), 12), and a broad imperative to treat Taiwan and the ROC as if they were a "normal" state and government arguably help. Taiwan's participation in international economic relations has been a relatively manageable issue. Beijing has been willing to accept Taiwan's presence in many economic—as opposed to political and sovereignty-implicating—institutions and agreements.

Questions about the TRA's adequacy and vitality increasingly stem from changing circumstances in Taiwan, China, and the United States. The TRA and the policies it reflects and reinforces assume that relatively limited U.S. commitments to Taiwan can deter China from acting to change the status quo. This premise has become less certain as China has become much more powerful, both absolutely and relative to the United States, and more assertive and less sensitive to foreign criticism, especially on "core interests" such as Taiwan. Facing Tsai and a steadily mounting distinct Taiwanese identity, China under Xi Jinping may be moving toward a consistently tougher posture on Taiwan. The TRA's assumptions become less tenable if China becomes less tolerant of an open-ended continuation of the long-standing cross-strait status quo, more rigid in its model of "one country, two systems" (first applied in Hong Kong), more worried about "creeping" Taiwanese independence, and more confident in its ability to dictate terms for unification.[4]

The TRA implicitly envisions a Taiwan with political characteristics and vulnerabilities that differ from today's Taiwan. Dual deterrence and strategic ambiguity—bolstered by arms sales and the prospect of U.S. intervention—worked reasonably well when the imagined threats to U.S. interests in regional peace and security, and the cross-strait status quo,

[4] See, for example, Jean-Pierre Cabestan, "Beijing's Policy towards President Tsai Ying-wen and the Future of Cross-Strait Relations," *Journal of Diplomacy and International Relations* 18, no. 1 (2017): 54–71; and Richard C. Bush, "8 Key Things to Notice from Xi Jinping's New Year's Speech on Taiwan," Brookings Institution, Order from Chaos web log, January 7, 2019 ~ https://www.brookings.edu/blog/order-from-chaos/2019/01/07/8-key-things-to-notice-from-xi-jinpings-new-year-speech-on-taiwan.

were either Chinese military coercion or a Taiwanese president who (like Chen) tested the limits of both Beijing's and Washington's tolerance by pushing toward formal independence and unambiguous state status. What transgresses the TRA's stated rejection of coerced change in Taiwan and how to resist such measures from Beijing have become much more complicated and contestable questions. With Taiwan heavily economically dependent on and integrated with the mainland, what uses by Beijing of economic leverage to political ends constitute coercion and require strong U.S. responses? With mounting suspicions and charges that the Chinese state and state-linked actors are surreptitiously interfering in Taiwan's elections,[5] will there come a point when votes that produce more China-friendly leaders and policies might face credible criticism for being inconsistent with the TRA's initially meek but now notable commitment to human rights (including democracy) and the TRA's underarticulated criteria for legitimate change in the cross-strait status quo?

The TRA assumes that the United States has the will and capacity to make good on the law's pledges. This might not have been a major concern in the period of vast disparities in power between the United States and China during the Cold War and the early post–Cold War era of U.S. international dominance. But, as the gap between the United States and China has narrowed and doubts about Washington's commitments have grown (especially with the Obama administration's truncated pivot to Asia and Trump's "America first" foreign policy), contradictions between the TRA's assumptions and contemporary reality could become unsustainable. TRA premises and promises would be exposed as illusory (undermining the law's singular place in U.S. policy) or would need to be formally retrenched.

New Challenges for an Enduring Framework

Whatever its inadequacies, the TRA has endured, without major amendment or significant supplementation, as the principal legal mechanism addressing U.S.-Taiwan relations. This, too, may have begun to change recently, with the passage of the National Defense Authorization Acts of 2018 and 2019, the Taiwan Travel Act, and the Asia Reassurance

[5] See, for example, Josh Rogin, "China's Interference in the 2018 Elections Succeeded—in Taiwan," *Washington Post*, December 18, 2018.

Initiative Act.[6] In addition to reaffirming U.S. support for Taiwan, the TRA, and established policies, these laws mandate detailed consideration of Taiwan's defense needs and urge—but do not purport to order—the president to take relatively modest steps that would enhance ties with Taiwan: allowing reciprocal port calls and higher-level official visits, and offering greater defense cooperation and more predictable arms sales. The enactment of these laws, after many years of broadly analogous bills that failed, confirms that Congress is unlikely to address the TRA's shortcomings or to offer much more—or less—robust U.S. support for Taiwan.

The recent laws, even more than the TRA, are more significant for their political signaling than their legal effects. And their political impact may be less than—and even contrary to—their proponents' hopes. Their passage may convey declining congressional confidence in the adequacy of TRA-centered commitments to Taiwan, especially under an iconoclastic and mercurial president. Yet the adoption of such laws could erode the TRA's special role—its unique status and unchanging content—in underpinning U.S. Taiwan policies that have been adequate for Taiwan's security, tolerable to China, and consistent with U.S. interests and values. While we cannot say that the TRA "ain't broke," it remains serviceable. And attempts to "fix it" are likely infeasible and might make matters worse. ◈

6 Provisions concerning Taiwan have appeared in earlier National Defense Authorization Acts, but they had more modest content and lacked the context of the Taiwan Travel Act and Asia Reassurance Initiative Act.