THE U.S. FACTOR IN CHINA'S REUNIFICATION: THE TAIWAN RELATIONS ACT AND BEYOND

by

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The U.S. Factor in China's Reunification: The Taiwan Relations Act and Beyond.

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ABSTRACT

This thesis examines the "U.S. factor" in China's quest for its reunification of Taiwan with the motherland. A period between 1979 and 1984 in Sino-American relations has been chosen, and within that period, the U.S. Taiwan Relations Act has been selected to analyse this factor. How did the Taiwan Relations Act come into being? What was the rationalization behind this act? Why did the U.S. opt for such an act at the time it recognized the government of the People's Republic of China as the "sole legal government of China," and acknowledged the Chinese position that "there is but one China and Taiwan is a part of China?" And to what extent will this act affect China's reunification?

The thesis traces the introduction and retention of the U.S. ambiguities on the legal status of Taiwan which allowed the U.S. to enact the present Taiwan Relations Act. It probes the "legal rationale" behind this act. The thesis asserts that it is this rationale that creates what is so often called the U.S. "moral commitment" to "not let America's friends down." The bottom line of the Taiwan Relations Act is an "ideological commitment" to Taiwan. This commitment is often expressed in "moral terms" which is created by the "legal rationalization" of acts that are basically "political." This determines the extent to which the U.S. supports Taiwan and the Taiwan Relations Act affects China's reunification. An examination of the Sino-U.S.
encounters after the Taiwan Relations Act indicated that the U.S. is now holding on to its "linkage policy" on the one hand and "neutrality" on the other. This policy is an extension of the U.S. "ideological commitment" to Taiwan.

The thesis is mainly based on the essential raw materials related to the subject, including both the U.S. and Chinese official and semi-official documents, numerous works and articles by U.S. China specialists and China's U.S. experts. Unlike most of the works done on this subject within China, it takes issue with those officially or unofficially held views that the United States has recognized the "one China principle;" that "the Taiwan issue has been resolved;" and that "the return of Taiwan to the motherland is no longer a question which China and the U.S. need to discuss but a matter of what policy China would adopt toward Taiwan."
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DEDICATION

For Yunmei and Yingying
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CHAPTER I
INTRODUCTION

One of China's three major tasks in the 1980s and beyond is the reunification of Taiwan with the motherland. The realization of this goal depends both on internal and external conditions. Whether the internal conditions for China's reunification exist does not fall into the scope of this study. The scope of this study is the external causes or the conditions for China's reunification of Taiwan with the motherland.

For almost three decades, the United States had been the major external obstacle to China's reunification. In 1979, it recognized the government of the People's Republic of China as the sole legal government of China and acknowledged the Chinese position that "there is but one China and Taiwan is a part of China." Does this indicate that the U.S. is no longer a major factor in the Taiwan issue? This study will examine the question concentrating on the U.S. Taiwan Relations Act.

The manner in which this act was proposed and passed was unprecedented in U.S. history. Never before has the U.S., while conferring diplomatic recognition upon one country at the same time proposed and devised a "legal arrangement" governing its relations with part of that recognized country. And neither has any other country devised such a "legal arrangement" in its relations with Taiwan after it ceased diplomatic recognition of that "government."
The fact that this act became effective on January 1, 1979, the same date as of the normalization communique, was not coincidental. Nor was the date fixed to avoid the "hiatus" that might occur pending the enactment of legislation on the subject. The real significance of the timing may lie in the contemporary practice of the United States relating to the relationship between the domestic and international law.

The contents of the Taiwan Relations Act were no less important or significant. It established an American Institute in Taiwan, a "surrogate embassy" or the "functional equivalent of an embassy" to carry on "substantial relations" with Taiwan. It also granted Taiwan nearly all rights accorded other "nations", including diplomatic privileges and immunities for its "unofficial officials" and legal standing in U.S. courts. Above all these were the security assurances written into that act. These assurances went "well beyond" those contained in the Mutual Defense Treaty of 1954 between the U.S. and Taiwan. The Act assured Taiwan that any effort to determine its future by "other than peaceful means" would be considered "a threat to the peace and security of the Western Pacific and of grave concern to the United States." The United States would provide Taiwan with such defense articles and services in such quantity as may be "necessary" to enable Taiwan to maintain a "sufficient" self-defense capability. All these provisions of the Act were justified by the U.S. treatment of Taiwan as if it were a nation or state for purposes of U.S. domestic law, while not taking a
position on the status of Taiwan in international law. In other words, the status of Taiwan would still "remain undetermined."

No appraisal of the Taiwan Relations Act would be adequate if it is viewed simply as a domestic act by the Congress of the United States. The fact is that this act actually originated from the Carter Administration's "request for legislation" and was later signed into law by the President. Any misunderstanding on this issue will reveal a lack of understanding of the American political system. Nor will it be adequate if the Act is viewed in isolation. The United States policy toward Taiwan should be viewed in connection with American policy toward the People's Republic of China, if not in the larger context of policy toward Asia as a whole.

How did the Taiwan Relations Act come into being? What was the legal rationale behind this act? Why did the United States opt for such an act at the time it exchanged diplomatic relations with the People's Republic of China? To what extent will this act affect China's reunification, if not her general international relations? These are the questions addressed in this study.

Chapter I examines the legislative process and the contents of the Taiwan Relations Act. Chapter II analyses the Chinese reaction and American response. Chapter III focuses on U.S. legal ambiguity and political reality. The Taiwan Relations Act and the evolution of China's reunification policy is discussed.
in Chapter IV. Finally, a concluding chapter provides summaries, reflections, and offers an evaluation of its academic significance.

This study covers the period 1979 to 1984. The objective of the thesis is to determine the extent to which the U.S. supports Taiwan and the extent to which the Taiwan Relations Act affects China's reunification. This is conducted through identification of the "actuals" based on a study of the essential primary materials in and related to the Taiwan Relations Act. The theoretical tool used throughout the thesis to analyse this U.S. factor is a relatively new, but increasingly popular concept of linkage in the subfield of political science in international politics.

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1 According to Quincy Wright, the field of international relations might be best understood if approached through the following four basic intellectual perspectives: (1) the actual, (2) the possible, (3) the probable, and (4) the desirable. By actual, he means "what was or what is known through the method of description." The usage of the term actual in this thesis carries Quincy Wright's definition. See James E. Dougherty and Robert L. Pfaltzgraff, Jr., Contending Theories of International Relations: A Comprehensive Study, Second Edition, Harper & Row, Publishers, New York, 1981, P.23.
Chapter II

The Taiwan Relations Act: Legislative Process and Content

Analysis

Legislative Process

The Setting

On December 15, 1978, the governments of the People's Republic of China and the United States of America simultaneously announced to the world that the two countries "have agreed to recognize each other and to establish diplomatic relations as of January 1, 1979." In the Joint Communique on the establishment of diplomatic relations, the United States recognized the government of the People's Republic of China as the "sole legal government of China." It also "acknowledged" the "Chinese position that there is but one China and Taiwan is part of China." 1

Consequent to this recognition, the United States notified Taiwan that it was "terminating diplomatic relations" with Taiwan and that the Mutual Defense Treaty with the island was "being terminated in accordance with the provisions of the treaty." The United States also stated that it would be "withdrawing its remaining military personnel from Taiwan within

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four months."²

Within this context, the United States announced that it would maintain "cultural, commercial, and other unofficial relations" with the "people of Taiwan" in the future.³

The eventual normalization of relations between China and the United States, notwithstanding the fact that it was based on "creative ambiguity" on the American side,⁴ was celebrated in Beijing not only as a "historical event" in Sino-U.S. relations, but also as a "diplomatic victory" in China's foreign affairs. The Chinese Government believed that the question of Taiwan which used to be the "crucial issue obstructing the normalization of relations between the two countries," now was being resolved,⁵ and that the return of Taiwan to the motherland, the accomplishment of the reunification of the country could be put "on agenda."⁶

⁶ See Deng Xiaoping's address on January 1, 1979 at a meeting of the national committee of the Chinese People's Political Consultative Conference held to discuss the message of the Standing Committee of the National People's Congress to compatriots in Taiwan. Beijing Review, No.1, January 5, 1979, P.4.
Pursuant to this, the Standing Committee of the National People's Congress, adopted on December 26, 1978 and issued on January 1, 1979, a New Year "Message to Compatriots in Taiwan." The message urged the Taiwan authorities to set up "an early date" for the "three exchanges," and signaled an important readjustment in China's policy toward Taiwan. The bombing of Jinmen (Quemoy) and other islands would be stopped as from January 1, 1979; "present realities" in Taiwan would be "taken into account;" the "status quo" on the island and the "opinion of people in all walks of life there" would be "respected;" and "reasonable policies and measures" would be adopted so as "not to cause the people of Taiwan any losses" in accomplishing the great course of reunifying itself with the motherland. The message was said to be the "first step" of the Chinese government's peace initiatives toward Taiwan since the announcement of the normalization of Sino-U.S. relations. And understandably, it would be followed by "many others," leading ultimately to talks with the Taiwan authorities and particularly with Mr. Chiang Chingkuo, the son of the late Chiang Kai-shek.

There seemed no question that it was the normalization that ignited China's optimism over the prospect of its reunification. However, normalization, in the U.S. consideration, had in it a

7 Beijing Review, No.1, January 5, 1979, PP. 15-16.
8 Ibid.
legal design for its relations with Taiwan concealed. This chapter will examine this legal process followed by a content analysis of the legal document which came out of this process.

The Consideration of the Carter Administration

While the Chinese were in the process of moderating and reshaping their Taiwan policy to achieve the "return," not "liberation" of Taiwan to the motherland hopefully "within a few years time," the United States was also moving quickly to "readjust" its Taiwan policy and particularly its "laws and regulations" to permit the maintenance of cultural, commercial and "other" relations in the "new circumstances" that would exist after the normalization.  

The first move that the Carter Administration made was to assure that more than 55 treaties and other international agreements and arrangements between the United States and Taiwan in force at the time of normalization would remain in force beginning January 1, 1979. The only exception was the Mutual Defense Treaty and related agreements. To achieve this, Deputy Secretary of State Warren Christopher was first sent to Taiwan seeking confirmation from the authorities there. Then on December 30, 1978, a few days after the Chinese adoption of their New Year message to Taiwan, President Carter issued a memorandum "on relations with the people on Taiwan," for all

departments and agencies.\(^{11}\) Section (c) of the memorandum directed that

> Whenever any law, regulation, or order of the United States refers to a country, nation, state, government, or similar entity, departments and agencies shall construe those terms and apply those laws, regulations, or orders to include Taiwan.\(^{12}\)

The memorandum indicated that an "unofficial instrumentality" would be designed to conduct future U.S. relations with the people of Taiwan. It also indicated that the Carter Administration would submit to the Congress a "request for legislation" to put the future U.S.-Taiwan relations" on a permanent basis."\(^{13}\) Both of these last two considerations soon materialized. On January 16, 1979, an American Institute in Taiwan, a non-profit District of Columbia corporation was established. And finally on January 26, 1979, President Carter formally transmitted to the Congress a "Bill" to "promote the foreign policy of the United States through the maintenance of commercial, cultural, and other relations with the people on Taiwan on an unofficial basis and for other purposes."\(^{14}\) The


\(^{12}\) Ibid.

\(^{13}\)Ibid.

\(^{14}\) The "Bill" was referred to in the Senate as S.245, and in the House as H.R.1614. For the text of the proposed legislation, see U.S. Department of State Bulletin, March, 1979, PP.46-47; also see Taiwan Enabling Act, Report of the Committee on Foreign Relations, United States Senate, Together With Additional Views on S.245, 96th Congress, 1st Session, 1979, PP.61-64. Hereafter cited as Taiwan Enabling Act.
Most important sections of the proposed bill were section 102 and section 103. They were actually drawn from Section (c) of the December 30 memorandum. A "Section-By-Section Analysis" of the bill, submitted by the State Department explained to the Congress that these two sections were intended to confirm continued eligibility of the people of Taiwan under such important legislation as the Arms Export Control Act, Atomic Energy Act of 1954, and others. 

By implication, the Carter Administration was according the "people of Taiwan" a de facto recognition as a state, and such a treatment would justify the continued U.S. arms sales to Taiwan as implied in the so-called "other relations."

Most sections of the proposed bill dealt with the American Institute in Taiwan, its nature, funding, staffing and administrative relationships. As these sections claimed, the institute would be "cooperation" in form, "non-profit," "non-governmental," and "private" in nature. But somehow contradictory to the claim, this institute would be funded by the appropriations to the Secretary of State, staffed by men and women who would temporarily separate from their government service, and would be performing the functions normally performed by an embassy. The Administration contended that the bill it submitted contained all the arrangements necessary to enable the United States to conduct relations with Taiwan on an

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15 For the text of the Section-By-Section Analysis of the proposed Act, see U.S. Department of State Bulletin, March 1979, on PP.47-48. Also see Taiwan Enabling Act, PP.64-68.
"unofficial basis."

**Congressional Reaction**

Congressional reaction to Carter's proposed bill was both immediate and emotional as the 96th congress convened its first session. Members of all political persuasions, despite the fact that conservatives did not oppose the diplomatic recognition of the People's Republic of China, and liberals generally welcomed Carter's decision as "good law, good policy"; but they were all upset that Carter had acted so "secretly" with "only the briefest notice" to the congressional leaders, and "no opportunity for congressional consultation." To them, this inevitably raised serious concerns about the role of congress in foreign policy making in general, and "adequacy" of the terms agreed to between the President and the People's Republic of China in particular.

Conservative critics charged that the Carter Administration, by breaking ties with Taiwan and canceling the American Mutual Defense Treaty with that "nation," had actually "given in" to all Beijing's demands and "betrayed" a longstanding American ally. They threatened to introduce a joint resolution in Congress condemning Carter's action and holding up repeal of the defense treaty. They also attempted to launch a national letter-writing and advertising campaign against Carter's new

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China decision. Senator Barry Goldwater and twenty-four other conservatives immediately filed suit in the U.S. federal court, charging that Carter had acted "unconstitutionally" in ending the Taiwan defense treaty.\(^{18}\)

While the outspoken conservatives acted so emotionally, the liberals on the other hand focused on the "deficiencies" of the Carter's proposed bill to maintain future relations with Taiwan. To them, the bill mainly dealt with measures required for sustaining the relationship with Taiwan on an unofficial basis, and refrained from an explicit statement on "another reality," namely the importance the United States must attach to the future security and well-being of the people of Taiwan, with whom the United States shared an "exceptional relationship" that required "special security assurances" which other Pacific nations would not deserve.\(^{19}\) Neither was the bill clear on the "shape and substance" of the United States future relations with Taiwan, and the "legal framework" necessary to carry out these relations.\(^{20}\) The absence of these indicated that this proposed legislation was "poorly and hastily drafted" and "woefully inadequate" from the perspectives of the U.S. interests.\(^{21}\) To compensate for these "deficiencies," a statement by the Congress.

\(^{18}\) Action by Conservatives, C.Q. Almanac, 1979, P.103.

\(^{19}\) Taiwan: Hearings Before the Committee on Foreign Relations, United States Senate, 96th Congress, 1st Session, 1979, P.1. Hereafter cited as Taiwan Hearings.

\(^{20}\) See Foreign Affairs, Fall, 1981, P.56.

\(^{21}\) Congressional Quarterly Weekly Report, March 3, 1979, P.351; Taiwan, P.11.
of American policy seemed both irresistible and inevitable.

Congressional Action

As the Congress moved to the ensuing long process of congressional hearings and debates, in which the entire spectrum of issues were heard, deliberated and debated, it immediately faced numerous problems caused by such a policy statement as in the case of Taiwan. Quite aside from the possibility that Congress might be divided on what to state and how to frame the statement, the fact that there were no such legal precedents was itself more of a challenge than a stumbling block. An even greater challenge was the dilemma posed by the Carter Administration's proposed arrangement within which the Taiwan regime would no longer be legally viewed in the United States as the government of a recognized state, but rather implicitly as a de facto regime on a territory whose legal status remained ambiguous. It soon became clear to the Congress that, in order to compensate for the deficiencies contained in the Carter Administration's proposed arrangement, a "new approach" had to be worked out to pave the way for a statement of American policy. That "new approach" soon emerged as the Senate Foreign Relations Committee completed its seven days of hearings and executive sessions on February 22, 1979, and was clearly reflected in its report entitled the Taiwan Enabling Act on March 1, 1979. According to the report:

The Administration has stated that it recognizes the People's Republic of China as the sole legal government of China. It has also acknowledged the Chinese position
that Taiwan is a part of China, but the United States has not itself agreed to this position. The bill submitted by the Administration takes no position on the status of Taiwan under international law, but does regard Taiwan as a country for purposes of U.S. domestic law. The bill assumes that any benefits to be conferred on Taiwan by statute may be conferred without regard to Taiwan's international identity. The legal scholars consulted by the committee agreed with this view. Most of these scholars thought it would be unwise to try to define Taiwan's international legal status. They said that the best approach would be to spell out the specific manner in which relations with Taiwan will be maintained by the United States.22

The report admitted that the proposed changes and amendments to the Carter Administration's bill "basically followed this approach."

This could be seen in many of the changes and additions made by the committee to the legislation originally proposed by the Carter Administration with respect to the American Institute in Taiwan. Basically, these changes, such as the reporting of agreements concluded through the institute, consultation on the appointment of its trustees and officers, annual review of its operating budget, exchange of extensive privileges and immunities to be granted to the members of both the American Institute in Taiwan and Taiwan's counterpart instrumentality in the United States, were all made to improve the functions normally performed by a government which were now to be performed in this case by the American Institute in Taiwan. The envisioned Taiwan Relations Act was apparently along this approach.

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22 Taiwan Enabling Act, 96th Congress, 1st Session, 1979, P.7.
What dominated the congressional debate was the concern over the future security of Taiwan and particularly the possibility of an "invasion or blockade" by the People's Republic of China after the termination of the Mutual Defense Treaty, and what the United States could do to defend Taiwan. The draft bill submitted by the Carter Administration was silent and contained no reference in this regard. Most Congressmen considered this a "major flaw."

Republicans generally advocated that United States should "formally commit itself to the protection of Taiwan in the event of an attack by mainland China." They wanted wording similar to that in the U.S.-Taiwan defense treaty in the Taiwan Relations Act. This could be seen in one proposed amendment, in which a key section was "substantially drawn from that defense treaty." The amendment said that an attack against Taiwan would be "a common danger to the peace and security of the people of Taiwan and the United States in the Western Pacific." Some Congressmen advocated that it should be stipulated in explicit terms that if China resorted to force over Taiwan, the United States should immediately retaliate by withdrawing its diplomatic recognition of and stopping all its economic

24 Ibid.
exchanges with China. Others demanded that the U.S. government seek written assurances from the Chinese government that it would not attack Taiwan. Still others proposed that the provisions for continued selling of weapons to Taiwan should explicitly include large scale of weapons "incorporating the highest available technology."

Democrats mostly were not as critical of the People's Republic as their Republican colleagues. But they were no less supportive of Taiwan. They generally held that Carter's statement at the time of the establishment of Sino-U.S. diplomatic relations that the United States "continues to have an interest in the peaceful solution of the Taiwan issue" was "inadequate," and that provisions "ensuring Taiwan's security" should be included in the act. The language approved by most members was designed to make clear that the long United States-Taiwanese association would make it extremely difficult for the United States not to respond firmly to hostile activity directed against Taiwan. A United States failure to respond firmly would have grave consequences for America's international standing, and would seriously weaken the confidence of America's other allies in the reliability of United States protection. The

26 Ibid., PP.112-113; Congressional Quarterly Weekly Report, March 17, 1979, P.496.
27 Congressional Quarterly Weekly Report, March 10, 1979, P.431.
28 C.Q. Almanac, 1979, P.105.
Congress was attempting to communicate to the Chinese that it was determined not to allow the use of force in any effort to resolve the issue of Taiwan. Or in other words, any effort by the People's Republic of China to resolve the issue of Taiwan by other than peaceful means would be considered a threat to the peace and security of the Western Pacific area and of grave concern to the United States. This position was predominant during the course of congressional debate. Only a few Congressmen expressed the view that there was no need for any congressional statement on Taiwan's security. They questioned the appropriateness of the United States' declaration that it would not "tolerate China's resort to force" against Taiwan which it had acknowledged as "part of China" and with which the United States was terminating its mutual defense treaty.

In sum, as Frank Church, then Chairman of the Senate Foreign Relations Committee, put it:

As far as the future security and well-being of the people of Taiwan are concerned, I think we all are in common agreement.

This indicated that the debate in the Congress was essentially not about whether or not to make a statement guaranteeing Taiwan's security, but about "how strong and how formal that

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29 Taiwan Enabling Act, 96th Congress, 1st Session, 1979, P.10; see comment by Senator Deconcini, in Taiwan Hearings, Senate, 96th Congress, 1st Session, 1979, P.415.

30 C.Q. Almanac, P.105, also see comments by Senators Muskie and Biden in Taiwan Hearings, Senate, 96th Congress, 1st Session, 1979.

31 Ibid.
commitment to defend Taiwan should be." Or to put it another way, "how to best frame the assurances."

It soon became clear that what was being attempted in Congress was the creation of a functional substitute for the mutual defense treaty that would be terminated in December 1979, and to preserve the "essentials of America's existing relations with Taiwan."

The essence of this "new approach" was explicit. As Congressman Dam Mica of the House Committee on Foreign Affairs, commented on the envisioned Taiwan Relations Act, the U.S. was just "going by the back door" to achieve what it used to do "(in) the front door."

Content Analysis

The above presented a brief background on the legislative history of the Taiwan Relations Act. As with any act, the intent of the Congress in passing the Taiwan Relations Act was gleaned from the statutory language, the committee reports, and floor debates within the Senate and the House. The following part of

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33 See comments by Senator Church in Taiwan Hearings, Senate, 96th Congress, 1st Session, 1979, P.70.

34 Taiwan Legislation, Hearings Before the Committee on Foreign Affairs, House of Representatives, 96th Congress, 1st Session, February 7, 1979, P.22. Hereafter cited as the Taiwan Legislation.
this chapter will analyse the important characteristics of this act. A comparative method will be attempted to study the act, together with Carter's draft bill, the related U.S. official documents, and the U.S-Taiwan Mutual Defense Treaty of 1954.35

Characterization of Future U.S.-Taiwan Relations

The first material analyzed will be the basic descriptions used by the Carter Administration in various statements during the period between the announcement of normalization of Sino-U.S. relations and the enactment of the Taiwan Relations Act.

In the Joint Communique on the Establishment of Diplomatic Relations between the United States of America and the People's Republic of China, the United States, having recognized the government of the People's Republic of China as the sole legal government of China, stated that within this context, the "people of the United States" would maintain cultural, commercial, and other "unofficial relations" with the "people of Taiwan."36

In the Text of U.S. Statement, December 15, 1978, accompanying President Carter's address to the nation, which announced the establishment of Sino-U.S. diplomatic relations,

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and in the Memorandum from President Carter on relations with the people of Taiwan issued on December 30, 1978, the United States stated that, in the future, the American people and the people on Taiwan would maintain commercial, cultural, and other relations "without official government representation and without diplomatic relations."37

In the bill and its section-by-section analysis submitted to the Congress on January 26, 1979, the Carter Administration stated that the purpose of the bill was to promote the foreign policy of the United States through the maintenance of commercial, cultural, and other relations with the people on Taiwan "on an unofficial basis," and for other purposes.38

To summarize, the basic descriptions used by the Carter Administration of the future U.S. relationship with Taiwan took three forms: "unofficial;" "without government representation and without diplomatic relations;" and "on an unofficial basis." Descriptions varied, but all reflected the "non-existence of a government to government relationship." Consistent with this, the term the "people of Taiwan" was repeatedly used by the Carter Administration in all the above statements and especially in its proposed legislation.


38 Taiwan Enabling Act, United States Senate, 96th Congress, 1st Session, 1979, PP.61-68.
Unfortunately, the wording "unofficial" used by the Carter Administration as a basic description of U.S. future relations with Taiwan disappeared in the carefully drafted Taiwan Relations Act. Section 2, which constitutes the most important part of the act as it deals with congressional "findings" and declaration of its "policy," will be of great significance to illustrate this subtlety. Its paragraph(a) finds that the enactment of this Act is necessary:

- to help maintain peace, 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 (note the word "unofficial" is omitted here) between the people of the United States and the people on Taiwan.

Paragraph (b) states that it is the "policy" of the United States:

- to preserve and promote extensive, close, and friendly commercial, cultural, and other relations (again the wording "unofficial" is missing.) between the people of the United States and the people on Taiwan.  

The disappearance of a very important adjective "unofficial" throughout the Taiwan Relations Act was hardly accidental. As Senator Javits, who participated in the Congressional deliberations that led to the act later confessed, though not so frankly,

the Administration's proposal called for the use of the word 'unofficial' as a basic description, but this was strongly objected to by key members of the House and its Foreign Affairs Committee. In the end, any adjective was

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It is important to note that consequent to this deliberate omission, the term the "people of Taiwan" or the "people on Taiwan" as used in the Carter Administration's bill was mostly replaced by terms such as "Taiwan" and the "governing authorities on Taiwan." The question arose: "if future U.S. relationship with Taiwan could not be characterized as 'unofficial,' then what kind of relations did the United States want with 'Taiwan' or the 'governing authorities on Taiwan?" In this respect, it would be quite illuminating as we now look at how the framers of the Taiwan Relations Act applied the "back-door-approach" in spelling out the specific manner in which substantial relations with Taiwan were to be maintained.

De Facto Treatment Of Taiwan

1. Terms and Definitions

As indicated above, the Carter Administration's characterization of future U.S. relations with Taiwan was "unofficial." In line with this description, the Carter Administration consistently subscribed to the term the "people of Taiwan" to reflect this "non-governmental" relationship. The "people of Taiwan" as defined in Carter's proposed bill,

\textsuperscript{40}\textsuperscript{Congress and Foreign Relations: The Taiwan Relations Act, by Senator Jacob K. Javits, Foreign Affairs, Fall, 1981, P.58.\textsuperscript{40}} Senator Javits gives the impression that it was the House and its Foreign Affairs Committee that objected the description. This is entirely misleading. During the Senate mark-out session on the Taiwan Relations Act, it was he himself and others who suggested that the wording "unofficial" be struck out.
encompassed both "the authorities and inhabitants on the islands Taiwan and the Pescadores." 41

As also noted above, the term the "people of Taiwan" was mostly replaced by the term "Taiwan" or the "governing authorities on Taiwan" in the Taiwan Relations Act. In its Section 15(2), the term "Taiwan" is defined as including not only the islands of Taiwan and Pescadores, the people on those islands, corporations and other entities and associations created or organized under the laws applied on those islands, but also the "governing authorities on Taiwan recognized by the United States as the Republic of China prior to January 1, 1979" and any successor governing authorities. 42

The differences between these definitions were evident, though not fundamental. The definition of the Taiwan Relations Act was more explicit on several aspects to define Taiwan a de facto state. First, it agreed with the Carter Administration's definition that geographically Taiwan included the islands of Taiwan and Pescadores. Secondly, it added "governing" before "authorities." Thirdly, it specified the inhabitants on those islands as the "people, corporations, and other entities and associations created or organized under the laws applied on those islands." Fourthly, it made clear that the "governing authorities on Taiwan" were the ones that were "recognized by

41 For this definition, see Taiwan Enabling Act, United States Senate, 96th Congress, 1st Session, 1979, P.65.

42 Taiwan Relations Act, United States Code, 1982 edition, Title 22, PP.667-668.
the United States as the Republic of China" prior to January 1, 1979. Taken together, the United States defined Taiwan as a "population" controlled by a "governing authority" living in a "territory" defined by the United States. It is doubtful that the framers of the Taiwan Relations Act made these definitions without a de facto concept of Taiwan as a state in mind.

2. Treatment

Temporarily leaving this doubt aside, it would be very important to examine the treatment of "Taiwan" or the "governing authorities on Taiwan" in the Taiwan Relations Act. In this regard, Section 4 of this act will be of special significance because it covers the continuing application to Taiwan of U.S. domestic laws in the same manner as it was before January 1, 1979. This means, in its paragraph (a):

The absence of diplomatic relations or recognition shall not affect the application of the laws of the United States with respect to Taiwan, and the laws of the United States shall apply with respect to Taiwan in the manner that the laws of the United States applied respect to Taiwan prior to January 1, 1979.\(^3\)

The message is very clear. As far as the laws of the United States with respect to Taiwan are concerned, these laws will apply to Taiwan "as if derecognition had not occurred."\(^4\) In another word, for purposes of U.S. domestic law, Taiwan will be

\(^3\)The Taiwan Relations Act, United States Code, 1982 Edition, Title 22, P.663.

treated "as if it were a state." This interpretation has its confirmation in paragraph (b) which states:

Whenever the laws of the United States refer or relate to foreign countries, nations, states, governments, or similar entities, such terms shall include and such laws shall apply with respect to Taiwan.\(^5\)

The subsequent provisions of Section 4 thus specified, what the Carter Administration's bill did not, all the important areas of U.S. domestic laws which would apply with respect to Taiwan. For example:

the continued ownership of property acquired by Taiwan before December 31, 1978, including its embassy and chancery property in Washington, D.C., its bank accounts and other assets in the United States;\(^6\)

a separate immigration quota for Taiwan for purposes of the Immigration and Nationality Act;\(^7\)

the capability of Taiwan to sue and be sued in courts in the United States;\(^8\)

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By specifying all these important areas of U.S. domestic laws, with respect to Taiwan, and by approving the continuation in force of all existing treaties and other international agreements entered into by the United States and Taiwan prior to January 1, 1979, Section 4 has not only treated Taiwan "as if it were a state," but has actually restored to Taiwan de facto

\(^{45}\) Ibid., Section 4, (b)(1), PP.664.

\(^{46}\) Ibid., Section 4, (b)(3)(a) and (B), P.664.

\(^{47}\) Ibid., Section 4, (b)(6), P.664.

\(^{48}\) Ibid., Section 4, (b)(7), P.664. According to U.S. practice, unrecognized states and governments cannot sue and be sued in U.S. courts.
status. Hence, the last subsection of Section 4 provided explicit U.S. support for Taiwan's "continued membership in any international financial institution or any other international organization."\textsuperscript{49}

Does this constitute a position on the part of the United States Congress regarding the international status of Taiwan on which the Carter Administration's proposed bill has not taken? Senator Javits answered this in his article which appeared on the Fall issue of the prestigious \textit{Foreign Affairs} magazine.

We could no longer operate under the fiction that the government in Taipei was the government of all China, but neither could we ignore the fact...although Beijing was now the de jure or legally recognized government of China as far as the United States was concerned, the authorities in Taipei were clearly the real or de facto government on Taiwan. Traditional international law on questions of sovereignty and recognition is in many ways a relic of past centuries, when relations between nations were far more formal and episodic than they have become in recent decades. The law is often too limited and inflexible to accommodate the range of different state and non-state entities that today make up the world community.\textsuperscript{50}

3. The American Institute In Taiwan

As Taiwan is treated as a real de facto state, many changes and additions were made to the provisions contained in Carter's proposed bill concerning the American Institute in Taiwan, a supposedly private corporation, organized under the nonprofit Corporation Act of the District of Columbia. The most important

\textsuperscript{49} Ibid., Section 4 (d), P.664.

\textsuperscript{50} Congress and Foreign Relations: The Taiwan Relations Act, by Senator Jacob K. Javits, \textit{Foreign Affairs}, Fall, 1981, PP.56,57.
changes and additions are:

to authorize institute employees on Taiwan to perform the
services "customarily performed by American consular
officers" for U.S. citizens on Taiwan;⁵¹

to require the reporting to congress any agreement the
institute and the governing authorities on Taiwan or the
instrumentality established by Taiwan, except those "the
immediate public disclosure of which would be prejudicial to
the national security of the United States," and these
secret agreements will be transmitted to the Committee on
Foreign Relations of the Senate and the Committee on Foreign
Affairs of the House;⁵²

to require that "agreements and transactions made or to
be made by or through the institute shall be subject to the
same congressional notification, review, and approval
requirements and procedures as if such agreements and
transactions were made by or through the agency of the
United States government on behalf of which the institute is
acting;"⁵³

and to provide that the Committee on Foreign Affairs of
the House and the Senate Foreign Relations Committee and

⁵¹See The Taiwan Relations Act, Section 7 (a), United States
Code 1982 Edition, Title 22, P.665; also see Congressional
Quarterly Weekly Report, April 7, 1979, P.652.

⁵²The Taiwan Relations Act, Section 12 (a) and (b), United

⁵³Ibid., Section 12 (c), P.667.
other appropriate committees of congress would monitor the implementation and operation of both the Taiwan Relations Act and the American Institute in Taiwan. \(^{54}\)

Besides, the Taiwan Relations Act also authorized the President to grant Taiwan representatives in the United States those diplomatic privileges and immunities "as may be necessary for the effective performance of their functions," provided that employees of the American Institute in Taiwan are granted comparable privileges and immunities. \(^{55}\)

In the end, what was left in the so-called "privately incorporated nature" of the American Institute in Taiwan was private only in name, and the substance or public functions formerly performed by the American embassy in Taiwan were kept intact.

**New Security Commitment Beyond The Old**

The earlier commitment of the United States to Taiwan was officially contained in its Mutual Defense Treaty with the island. The heart of that treaty was Article V, which covered the scope of the United States commitment. In the first paragraph of Article V, each party recognized that:

- an armed attack in the West Pacific Area directed against the territories of either of the parties would be dangerous to its own peace and security and declares that it would act to meet the common danger in

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\(^{54}\)Ibid., Section 14 (a) and (b), P.667.

\(^{55}\)Ibid., Section 10, (c), P.666.
accordance with its constitutional processes.\textsuperscript{56}

In order to clear up any doubt on the nature of the U.S. commitment under this article, the Senate Foreign Relations Committee considered carefully the wording of Article V and issued the following statement:

It is the understanding of the Senate that the obligation of the parties under Article V apply only in the event of external armed attack...\textsuperscript{57}

Is there any new security commitment made in the Taiwan Relations Act? If there is, how does it compare with that of the Mutual Defense Treaty? After stating that peace and stability in the Western Pacific is "in the political, security, and economic interests of the United States," and represents "matters of international concern," the Taiwan Relations Act makes clear that the United States decision to establish diplomatic relations with the People's Republic of China rests on the expectation that the "future of Taiwan will be determined by peaceful means;" any effort to determine the future of Taiwan by "other than peaceful means," including by "boycotts or embargoes," would be considered a "threat to the peace and security of the Western Pacific area and of grave concern to the United States." Therefore, the United States would provide Taiwan with "arms of a defensive character," "in such quantity

\textsuperscript{56}See Mutual Defense Treaty between the United States and Taiwan, signed at Washington, December 2, 1954, American Foreign Policy 1950-1955, Volume I, Department of State, PP.945-947.

\textsuperscript{57}Report of the Senate Committee on Foreign Relations, February 8, 1955, American Foreign Policy 1950-1955, PP.957-965.
as may be necessary to enable Taiwan to maintain a sufficient self-defense capability." As for "how much" is sufficient for Taiwan to maintain a self-defense capability, it will "solely" be the "judgement of the President and the Congress" of the United States. The Taiwan Relations Act also makes clear that the mere provision of "arms of a defensive character" is not enough 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." To achieve this, the United States should maintain its capability to take "appropriate action" in accordance with the constitutional processes, in response to any such danger. 58

There seems little question that a new commitment was made in the Taiwan Relations Act. The question is how far did the Taiwan Relations Act go beyond the Mutual Defense Treaty in its scope of commitment. We find Senator Javits's comment very worth quoting at length:

While we did not seek to reconstruct a defense agreement with Taiwan, we did insist on making perfectly clear the assumptions and expectations of the United States regarding the future of the society there. In certain respects, the assurances written into that legislation go well beyond anything we have put into our defense treaties. The latter generally refer to assistance in resisting "armed attack" only. But I was particularly concerned with other dangers which in fact seemed more realistic than outright invasion from across the straits. The language finally adopted in the House-Senate Conference, therefore, referred to U.S. concern for activities which jeopardized not only the security, but also "the social or economic systems, of

the People on Taiwan."  

The Taiwan Relations Act, with the above identified three important characteristics, constituted "vast improvements" over not only the bill proposed by the Carter Administration, but also the former U.S.-Taiwan Mutual Defense Treaty, since the U.S. concern is now being extended beyond the military security extending to the "social or economic systems of the people of Taiwan." Upon signing the Taiwan Relations Act, President Carter remarked, this legislation would enable the American people and the people on Taiwan to maintain commercial, cultural, and other relations "without official government representation and without diplomatic relations." He said this act "is consistent with the understanding" the U.S. reached in normalizing relations with the government of the People's Republic of China. It reflected U.S. recognition of that government as the "sole legal government of China." 60 Whether the Chinese would think of the Taiwan Relations Act as President Carter indicated will be discussed next.


CHAPTER III

CHINESE REACTION AND AMERICAN RESPONSE

Chinese Reaction

The Chinese were surprised and very much upset by the scope and form of the new American commitments to Taiwan made immediately after normalization in the Taiwan Relations Act. They expected much less explicit or far-reaching U.S. legislative commitments, although they did not anticipate that the United States would handle the transition to nonofficial relations with Taiwan in the same quiet way that Japan had in 1972. It might have been expected that the Chinese reaction to the Taiwan Relations Act would be very strong. However, it was remarkably quiet. Just prior to the passage of the Taiwan Relations Act, Huang Hua, the Chinese Minister of Foreign Affairs, told U.S. Ambassador Woodcock on March 16 that on a number of points, the Chinese government regarded the bill due to be passed by both houses of the Congress as contravening the China-U.S. agreement on establishing diplomatic relations. The American side had explicitly undertaken to maintain only unofficial relations with Taiwan and acknowledged that the return of Taiwan to China was a matter within Chinese sovereignty. The bills in Congress contravened these principles and if passed and signed into law, they would do harm to the new relationship between China and the U.S.¹

¹ Huang Hua Reiterates China's View, Beijing Review, No.13,
On April 28, 1979, more than two weeks after President Carter signed the Taiwan Relations Act into law, the Chinese Foreign Ministry officially notified the American government, of China's opposition to the conduct of U.S.-Taiwan relations in the light of the Taiwan Relations Act. The note then identified "a number of points" that did not conform to the principles of the communique on the normalization of diplomatic relations, and hoped that the American government would abide by the principle of the communique with the overall situation in mind, and not do anything to adversely affect the two country's relations.

Apparently, the initial Chinese reactions to the Taiwan Relations Act were no more than formal statements of principle. The Chinese press covered few criticism of the Taiwan Relations Act, to say nothing of any serious study of it, throughout 1979 and 1980. One of the easily available reasons for this may be due to private and public assurances from the Carter Administration that the Taiwan relations would be interpreted in a way consistent with the U.S.-China normalization agreement.

As the dust of the U.S. 1980 Presidential election began to settle with candidate Reagan's clarification of his policy toward the Far East in an important campaign statement on August 25, 1980, in Los Angeles, the Chinese came to realize the potential significance of the Taiwan Relations Act in the U.S. China policy. A series of serious and organized studies on the

'(cont'd) March 30, 1979, P.8.

2 In his policy statement, Reagan set forth five principles
U.S. Taiwan Relations Act appeared either in the form of "special commentary" or in the form of scholarly research papers in the Chinese media. The most important of these were ironically an introduction to the U.S. Taiwan Relations Act to answer readers' enquiries; "On Sino-U.S. Relations" by Huan Xiang, then the Vice President of the Chinese Academy of Social Sciences; "On the U.S. Taiwan Relations Act" by Zhuang Qubing and his two colleagues from the Institute of International Studies, and "Where Does the Crux of the Sino-U.S. Relationship Lie?" by a "special commentator;" and "U.S. Policy Towards Taiwan (1949-50)" by Zi Zhongyun of the same Beijing located Institute of International Studies. Taken together, these and other studies constituted the Chinese perspectives on the U.S. Taiwan Relations Act.

**General Objections**

The Chinese objections to the Taiwan Relations Act covered many of its provisions and particularly Section 2(b), which defined U.S. policy in the Western Pacific as:

- to declare that peace and stability in the area are in the political, security, and economic interests of the United States, and are matters of international concern;

- to make clear that the United States decision to

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which his administration would follow when in office. In the fourth principle, Reagan stated that "the United States relations with Taiwan will develop in accordance with the law of the land, the Taiwan Relations Act." And he promised the "strict observance of these five principles" as they would be "in the best interest of the United States, the People's Republic of China, and the people of Taiwan." See Ronald Reagan On U.S. Policy Toward Asia and the Pacific, Press Release, Los Angeles, California, August 25, 1980.

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establish diplomatic relations with the People's Republic of China rests upon the expectation that the future of Taiwan will be determined by peaceful means;

to consider any effort to determine the future of Taiwan by other than peaceful means, including by boycotts or embargoes, a threat to the peace and security of the Western Pacific area and of grave concern to the United States;

to provide Taiwan with arms of a defensive character; and

to maintain the capacity of the United States to resist any resort to force or other forms of coercion that would jeopardize the security, or the social or economic system, of the people on Taiwan.

Also strongly objected to was Section 3 which gave specific instructions on the implementation of the above policy.

The United States will make available to Taiwan such defense articles and defense services in such quantity as may be necessary to enable Taiwan to maintain a sufficient self-defense capability.

The President and the Congress shall determine the nature and quantity of such defense articles and defense services based solely on their judgment of the needs of Taiwan, in accordance with procedures established by law.

The President is directed to inform the Congress promptly of any threat to the security or the social or economic system of the people on Taiwan and any danger to the interests of the United States arising therefrom. The President and Congress shall determine, in accordance with constitutional process, appropriate action by the United States in response to any such danger.

Among other provisions of the act that met with China's strong objection was Section 4, which not only stipulated the "manner" in which the laws of the United States would apply with respect to Taiwan as they did prior to January 1, 1979, but also specified the "scope" of the application of the United States
Besides the Chinese also expressed their displeasure with Section 12 and Section 14, respectively dealing with "reporting requirements" of the American Institute in Taiwan and "congressional oversight" of this private non-governmental institute.³

Perspectives On A Critical Issue

While the Chinese objections to the Taiwan Relations Act covered many of its provisions, the basis of their objections could generally be summed up in an unequivocal term that the Taiwan Relations Act violated the U.S.-China communique on normalization and constituted intervention in China's internal affairs. A "critical issue" concerning U.S. violation of the U.S.-China communique on normalization and intervention in China's internal affairs was the "question of U.S. arms sales to Taiwan." ⁴ It was on this issue that the Chinese focused their perspectives.


The principles of the U.S-China communiques, as summed up by the Chinese, included the "one China principle" and the "Five Principles of Peaceful Coexistence." These two are interrelated and can not be separated. The latter, well known principles consisted of "mutual respect for sovereignty and territorial integrity, mutual nonaggression, non-interference in each other's internal affairs, equality and mutual benefit, and peaceful coexistence." Of these five, the Chinese regarded the principle of sovereignty and territorial integrity, namely the Chinese sovereignty over Taiwan as the "central one." The basic position of the Chinese government on this issue had remained consistent ever since 1949 that "Taiwan is a province of China which has long been returned to the motherland." By "has long been returned to the motherland," the Chinese referred to the Cairo Declaration of 1943, in which "all the territories Japan has stolen from the Chinese, such as Manchuria, Formosa and the Pescadores," were declared to "be returned to China," and the subsequent Potsdam Declaration of 1945 which "carried out" the "terms of the Cairo Declaration." China held the United States responsible for its sudden change of positions on the Chinese sovereignty over Taiwan upon the outbreak of the Korean War, but

5 Communiques here refer to the Shanghai Communique of 1972, and the Joint Communique on the establishment of diplomatic relations between China and the United States, January 1, 1979.

6 For the Cairo Declaration of 1943 and the Potsdam Declaration of 1945, see Digest of International Law, Prepared and under the direction of Marjore M. Whiteman, Assistant Legal Advisor, the Department of State. Vol.3, released October, 1964, PP.484-485.
waited patiently ever since for the United States to reverse its position. The day came on February 27, 1972, when U.S. President Richard Nixon and Chinese Prime Minister Zhou Enlai issued their Shanghai Communique. In the communique, the United States "acknowledges that all Chinese on either side of the Taiwan Strait maintain there is but one China and that Taiwan is part of China." The United States government "does not challenge that position." Although wrapped with such vague phrases as "the United States acknowledges," "all Chinese on either side of the Taiwan Strait maintain," and the United States "does not challenge," the Chinese understanding of this statement was that the United States "hesitantly conceded that there is but one China and that Taiwan is part of China," while it did not make clear "who represents China."  

To the Chinese, this picture was cleared then on December 15, 1978, when China and the United States made public their decision to establish diplomatic relations as of January 1, 1979. In the joint communique, the United States "recognizes" the government of the People's Republic of China as the "sole legal" government of China. Within this context, the "people of the United States" would maintain cultural, commercial, and other "unofficial" relations with the "people of Taiwan." The United States also directly "acknowledges the Chinese position" that

7 The Shanghai Communique, Peking Review, No.9, 1972, PP.4-5.

"there is but one China and Taiwan is part of China," deleting the whole sentence in the Shanghai Communique that "the United States does not challenge that position." ⁹

This shortened expression was certainly read as a "strengthened" statement on the part of the United States. Taken together with the American "recognition" of the government of the People's Republic of China as the "sole legal" government of China, the Chinese unilaterally interpreted and phrased their understanding of the joint communique as such: the United States recognizes that there is only one China; Taiwan is part of China; and the government of the People's Republic of China is the sole legal government of China. This set-phrasing could be seen in various reports, research papers, and statements by government officials. In a nutshell, the Taiwan issue "has been resolved," the status of Taiwan or the return of Taiwan to the motherland was a matter "within the scope of China's sovereignty," no longer a question which China and the United States "need to discuss but a matter of what policy China would adopt toward Taiwan." ¹⁰

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Chinese logic has it that since the United States recognized that there is only one China and Taiwan is part of China, any arms sales to Taiwan would violate the "one China principle" of the U.S.-China communique. Any violation of this kind is a violation of the sovereignty and the territorial integrity, the "central issue" of the five principles of peaceful coexistence, which international law would hardly justify.

1. The Principle of International Law

The law, as understood by the Chinese, referred to the principle of "non-intervention" of one state in the internal affairs of another state. This principle is enshrined in the United Nations Charter, which states that "nothing contained in the present Charter shall authorize the U.N. to intervene in matters which are essentially within the domestic jurisdiction of any state." 11 It is embodied in the "Declaration On Inadmissibility of Intervention In Domestic Affairs of States and Protection of their Independence and Sovereignty," which was approved by the General Assembly of the United Nations in 1965. According to this declaration, "no state... shall interfere in civil strife in another state."12 It is also explicitly written in the "Declaration on Principles of International Law


12 Chapter IV, Declaration On Inadmissibility Of Intervention In Domestic Affairs Of States And Protection Of Their Independence And Sovereignty, Year Book Of The United Nations, 1965, P.95.
Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations" adopted at the General Assembly of the United Nations as recent as 1970. The declaration pointed out, "any attempt aimed at the partial or total disruption of the national unity and territorial integrity of a state or a country or at its political independence is incompatible with the purposes and principles of the Charter." "Every state has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife."\(^{13}\)

Any careful reader must have noticed that the above cited references contained very significant terms such as "domestic jurisdiction" and "civil strife." Although these terms have been used by China ever since 1949 as the basis of its protest against repeated U.S. interference in China's internal affairs, now they assume a new importance in the Chinese argument. With the United States explicit recognition that "there is only one China and Taiwan is part of China," which constituted the U.S. recognition that Taiwan issue is an issue within the Chinese "domestic jurisdiction" or within the category of the "civil strife" or "civil war," no longer an "international conflict," the Chinese are now on stronger grounds to charge that the United States arms sales to Taiwan contravene the basic

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\(^{13}\) Chapter II, Principles Of International Law Concerning Friendly Relations And Co-operation Among States, Ibid., PP.790, 792.
principle of international law.'

2. American Practice of the Principle

As the Chinese perceived U.S. arms sales to Taiwan from the perspective of international law, they also looked at this issue from the perspective of U.S. practice of the law relating to the principle of "non-intervention." The often-cited case by the authoritative Chinese commentaries was the British arms sales to the Confederate States during the period of American Civil War, and the subsequent Alabama Arbitration in which the U.S. forced the British government to pay for damages inflicted upon the North because of its not exercising "due diligence" to prevent the sale of weapons by the private British merchants. The Chinese asked, while in those days, the United States firmly opposed other countries' arms sales to the Confederate States, because it interfered in its internal affairs, how then could the U.S. sell arms to Taiwan today, a part of China recognized by the United States diplomatically without interfering in China's internal affairs?

14 With the unanticipated announcement by President Truman upon the outbreak of the Korean War that the status of Taiwan was yet to be determined, what had been a "civil war" between the Chinese Communist Party and Nationalist Party became an "international conflict."

According to the late Professor Chen Tiqiang of the Institute of Diplomacy and Beijing University, the above cited case was not the only one that could indicate the U.S. acceptance of this international principle. As early as 1842, then U.S. Secretary of State Webster, in a letter of January 29, wrote, international law "requires the strict application of the doctrine of non-intervention of any with the domestic concerns of the state."  

On April 28, 1938, then U.S. acting Secretary of State Wells also wrote, "it should be borne in mind that in the same degree that we would refuse to permit any interference by foreigners in our domestic concerns, it is not appropriate or proper that we should seek to determine or influence the circumstances of domestic problems in a foreign country by taking any official actions with relations thereto, however peaceful, friendly, or well-intentioned." Secretary Wells particularly noticed Article 8 of the Montevideo Convention of 1933 among the American Republics, which declared that "no state has the right to intervene in the internal or external affairs of another."  

Professor Chen also quoted Professor Henkin of Columbia University, a contemporary American international law writer, as saying, "customary international law prohibits intervention generally. By treaty and in various declarations and resolutions

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16 See Radio Beijing's interview with Professor Chen Tiqiang on Beijing Review, February 8, 1982, P.12. Professor Chen was then the Vice President of the Chinese Society of International Law.

17 Ibid.
of international bodies, nations have unanimously and repeatedly accepted absolute prohibition on 'intervention' in the affairs of other states. 

Having repudiated the U.S. arms sales to Taiwan legalized by the Taiwan Relations Act as against the basic principles of the U.S.-China communiques, the fundamental norms of international relations relating to the "non-intervention" principle, and the U.S. practice of that principle, the Chinese demanded on many occasions that the Taiwan Relations Act either be "completely repealed" or be "revised."

The U.S. congress clearly had no intention of doing either. As the Chinese came to know that they could do nothing about that, and as the Americans began selling arms to Taiwan and justifying their sales as consistent with American law of the land, namely the Taiwan Relations Act, the Chinese again raised another fundamental question in international law, the relationship between domestic law and international agreement.

International Agreement And Domestic Law

The Chinese were very much frustrated that the U.S. officials were citing the Taiwan Relations Act from time to time both in public and in private, to justify themselves first for their agreement signed by the American Institute in Taiwan and the Taiwan Co-ordination Council for North American Affairs to grant each other "diplomatic privileges and immunities" only

Ibid.
enjoyed by official missions and their staff in international relations, and now for their arms sales to Taiwan.\textsuperscript{19} They were frustrated because the Taiwan Relations Act "is nothing but a domestic act of the United States which can in no way serve as a legal basis for handling U.S.-Chinese relations."\textsuperscript{20} The legal basis could only be the U.S.-China communiques signed by the Chinese and U.S. governments. As for the communiques, the Chinese never had even a slightest doubt about their binding nature as "international agreements." They were statements in writing endorsed by the two governments that accorded not merely general principles but agreements on specific questions that incorporated definite rules of conduct.\textsuperscript{21} They were reported to and approved by the Standing Committee of the National People's Congress according to the Chinese constitutional process, and listed in the official treaty series published by the Ministry of Foreign Affairs. Similarly the Chinese had no doubt that these agreements "are governed by international law."\textsuperscript{22} According to international law as specified in the 1969 Vienna Convention on the Law of Treaties, "a party may not invoke the


\textsuperscript{20} Ibid.


\textsuperscript{22} According to the Article 2 of the Vienna Convention, "treaty" means an international agreement concluded between states in written form and governed by international law. For the text of the Vienna Convention, see \textit{American Journal of International Law}, No.4, 1969, PP.875-84.
provisions of its internal law as justification for its failure to perform a treaty." The Chinese noted that the United States was a signatory to this convention. As this was the case, the Chinese asked, how could the United States justify itself by unilaterally passing a Taiwan Relations Act on China's territory immediately after signing a diplomatic agreement with the People's Republic of China and impose it on the Sino-U.S. relations to negate its international commitments without contravening the provisions of the Vienna Convention of 1969?

The principle of the supremacy of international law over national law was also addressed by a Chinese expert on international law, Professor Chen Tigiang of the Chinese Society of International Law. According to Professor Chen, "there is not the slightest doubt on this point among various nations and international lawyers." He quoted Advisory Opinion No.17 of the Permanent Court of International Justice that "it is a generally accepted principle of international law that in the relations between powers who are contracting parties to a treaty, the provisions of municipal law cannot prevail those of

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24 On Sino-U.S. Relations, by Huan Xiang, then Vice President of the Chinese Academy of Social Sciences, Foreign Affairs, Fall, 1981, P.45.

25 U.S. Arms Sales To Taiwan Violates International Law, an interview with Professor Chen Tigiang by Radio Beijing, see Beijing Review, February 8, 1982, P.13.
the treaties."²⁶ With regard to the U.S. practice of this principle, Professor Chen pointed out that as early as 1887, Secretary of State Bayard declared, "it is only necessary to say, that if a government could set up its own municipal laws as the final test of its international rights and obligations, then the rules of international law would be but the shadow of a name and would afford no protection either to states or to individuals. It has been constantly maintained and also admitted by the government of the United States that a government cannot appeal to its municipal regulations as an answer to demands for the fulfilment of international duties."²⁷

It is somewhat disappointing that the most recent case of the U.S. practice of the principle cited by Professor Chen was no later than 1923. However, like many other Chinese scholars who wrote on the U.S. Taiwan Relations Act, he did his very best to present the Chinese position from the perspectives of international law. The Chinese perspective on the relationship between domestic law and international agreement apparently flows from their unilateral understanding that the U.S.-China communiques are an "international agreement;" which is governed by "international law;" and according to international law, domestic laws should in no way stand above any agreements

²⁶ Ibid.

²⁷ The Legal Status of Taiwan, by Professor Chen Tiqiang, in The Future of Taiwan, edited by Dr. F. Quei Quo and Fusan, Zhao, Beijing: China YouYi Publishing Company, August, 1983, PP.263-264.
reached between states; nor should they be used to govern relations between states. The Chinese belief in the supremacy of international law over domestic law hence justified their other demand that the United States "strictly abide by the agreement" on the establishment of diplomatic relations between the two countries, and "fully implement" the principles laid down in this and the previous Shanghai Communique.

The Chinese seem to have in mind the power and flexibilities of the U.S. President and his executive branch in formulating and implementing U.S. foreign policy. They also seem to have considered that a significant way out of the present dilemma in Sino-U.S. relations caused by the Taiwan Relations Act will be pressuring an American President and his executive branch to fully implement the principles of the communiques in defiance of the Taiwan Relations Act. However, given the prevailing view within the U.S. government that the U.S.-China communiques were based on "creative ambiguity," how would the U.S. government implement the communiques in the manner the Chinese demanded remains to be seen.

American Response

While the Carter Administration's response to the Chinese reactions was highly hypocritical, the attitude of the new Reagan Administration toward the communiques and the Taiwan Relations Act was clear in no uncertain terms. When asked to
clarify the new administration's China policy during his interview by Time magazine, Secretary of State Alexander Haig answered:

I think this is clearly and definitively outlined in President Reagan's August 25 statement. He...visualizes adherence to the communique associated with the normalization agreement with Peking. And he (also) visualizes a nonofficial status with the people of Taiwan, based on adherence to American law established in the Taiwan Relations Act. We do not view these—the communique and the act— as mutually exclusive.

It was not all that clear whether this statement was made in reference to China's increasingly strong demand that the U.S. "strictly abide by the joint communiques," in defiance of the Taiwan Relations Act. It was clear, however, that the new Administration viewed this Taiwan Relations Act as "consistent" with the communiques, and as such, they would "strictly observe the Taiwan Relations Act." From the perspective of the new Administration, the importance of this legislation, now the law of the land, could not be superseded or set aside by reference to any preceding communiques. These communiques, were merely executive communications that for the most part were unilateral declarative statements. But the Taiwan Relations Act is U.S. law, agreed to, and voted for by the elected representatives of the American people, and signed by the President of the United States. In President Reagan's words, not to carry out the law of the land "would be a dereliction of my duty as President." So,

he pledged to strictly observe it, without accepting the "interference of any foreign power" in the process of implementing this act. Apparently, Reagan was referring to the PRC's demand that the Taiwan Relations Act be either repealed or revised.29

For the new Reagan Administration, the need to implement the Taiwan Relations Act was clear. The law of the land, the Taiwan Relations Act, would be the policy of the Administration. The essence of this policy is that any effort to determine the future of Taiwan by other than peaceful means would be considered a "threat to peace" and of "grave concern" to the United States. To implement this policy, this Administration would, as spelled out in the Taiwan Relations Act, provide "defensive" weapons to Taiwan, as the only fundamental means to "resist any resort to force or other forms of coercion" which would threaten the security or the social or economic systems of Taiwan.30 On the issue of arms sales to Taiwan, no fundamental change would be possible. This seemed to be a "holding principle" implied in the communiques and explicitly established in the Taiwan Relations Act, it was a principle neither the present Administration nor the succeeding administrations could possibly change. Two interrelated events during the first two years of the Reagan Administration seemed to have facilitated this view: the FX decision and its subsequent communique of


30 Ibid.
August 17, 1982, on the U.S. arms sales to Taiwan.

FX Decision

If the period 1981-1982 was one of bitter contention in Sino-American relations over U.S. arms sales to Taiwan, the bone of this contention was the FX sale. The term FX referred to two export versions of high quality American fighter aircraft: the F-5G, manufactured by Northrop, and the F-16/79 by General Dynamics. Midway through the Carter Administration, Taipei requested permission from the United States to purchase any combination of these two planes to replace its F-5-E, which had for some years been coproduced on Taiwan. The intention of Taipei's request at this time was unknown. It could hardly be justified by its defense needs given the fact that the F-5-E that it already possessed could "outperform Peking's best fighters today in important respects." Both of the requested planes were "advanced fighters," "superior to fighters Peking possesses or likely to have soon," which could extend the effective range of Taiwan's air force over coastal areas of the Chinese mainland. Taipei's request was not without political intention. The least thing they could ask is that the United States implements the act faithfully. The Carter


32 Ibid., on PP.2-3.

33 Ibid., on PP.21-22.
Administration, knowing the sensitivity of the request, and its potential implications on the already severe problems at home and unprecedented crisis abroad, apparently made a decision not to move on the issue until after the coming general election.

As expected, by the time Reagan Administration came to office, the replacement fighter issue had become a political "time bomb" which threatened to derail U.S.-China relations. Beijing pressed increasingly hard on the new Administration to "strictly abide by the communiques" in defiance of the Taiwan Relations Act and to terminate the FX sale to Taiwan. Beijing's pressure was "essentially political." In principle, though, it was opposed to all U.S. arms sales to Taiwan since these sales violated the agreements on which normalization was based. However, Beijing probably could live with continued U.S. arms sales to Taiwan so long as they did not exceed the sophistication or volume of arms then sold by Washington to Taiwan (between $500 million to $600 million in 1980). The fact that Beijing could not live with the new and more sophisticated weapons such as FX fighters was not that these fighters constituted any serious military threat from Taiwan. The Chinese press seemed even not to have covered this concern. Rather, the Chinese concern was that not to respond firmly on this FX issue would only encourage more U.S. arms sales to Taiwan, which in turn would strengthen the resolve of Taiwan authorities against Beijing's recent diplomatic efforts to start negotiation toward a peaceful reunification, one of the three major national tasks
in the 1980s. Along with this was Beijing's uncertainty over the "direction of Washington's overall China policy" in the period ahead. In all these respects, the FX issue was a "crucial litmus test," a test on how far the United States would go in its support of Taiwan and encouragement of trends toward a permanent separation of the island from the mainland. It was also a political and symbolic test on the Chinese leadership. Any sign of hesitation on the issue would be interpreted by the other as "weakness" and the "willingness" to swallow the bitter fruit in exchange for American technology.

Taiwan also intensified its pressure on the new Administration to implement the Taiwan Relations Act and approve as soon as possible the pending replacement fighters it requested. From Taiwan's perspective, the FX sale was also a "litmus test" of political and symbolic importance. It would test American credibility to stand by its "old friends," especially after the U.S. derecognition of its "government."

Additional fuel added to the fire was the Netherlands' final decision to go ahead with its sale of two submarines to Taiwan, reportedly not without American consent and support. This was perhaps a "stone" thrown by the Americans to "test water." As the Chinese downgraded the level of its relations with the Dutch government from the ambassadorial to the charge d'affairs level, Americans still wondered whether the Chinese were simply playing the old trick of "killing the chicken to frighten the monkey." Intense debate was going on within the U.S. government on
whether the Chinese would take the next step and "kill the monkey." If so, what would be the consequences on the carefully built Sino-U.S. strategic relations, which had taken many years of laborious efforts, and which this Administration regarded as "fundamental" and "imperative." The Chinese government, through its leaders' statements on various occasions, and its media, made its message very clear: for the U.S. to pick up the "sesame seeds" (arms sales) would only sacrifice the "watermelon" (strategic relations). The U.S. clearly did not want to pick up the former to lose the latter, or vice versa. They wanted both. Consensus seemed to be that a "conceivable way" had to be worked out of the present dilemma.

It would require a clear decision not to authorize the sale to Taiwan at present of the FX, either the F-5-G or F-16/79, but instead to consider steps simply to authorize selective modifications of the F-5-E in order to make it a somewhat better defensive aircraft, without in any way upgrading its range or other offensive capabilities. 34

On January 11, 1982, the State Department announced:

Concerned agencies of the U.S. Government, including the Department of State and Defense and other national security elements, have been addressing the question of Taiwan's defense needs over a period of many months and have taken into consideration the many factors which bear on the judgement which must be made in implementing this policy...

A judgement has...been reached by the concerned agencies on the question of replacement aircraft for Taiwan. The conclusion is that no sale of advanced fighter aircraft to Taiwan is required because no military need for such aircraft exists. Taiwan's defense needs can be met as they arise, and for the foreseeable future, by replacing

aging aircraft now in the Taiwan inventory with comparable aircraft and by extension of the F-5E coproduction line in Taiwan.\textsuperscript{35}

On the surface, the FX decision looked like a concession on the part of the United states. But in fact the U.S. conceded nothing to the People's Republic. Taiwan perhaps got what it actually wanted, the extension of the F-5E coproduction line, and more important, the new Administration's message to act according to the "established policy," the arms sales to Taiwan, as stipulated in the Taiwan Relations Act.

The following month after the U.S. FX decision marked the tenth anniversary of the Shanghai Communique which was supposed to be celebrated in Beijing. But for obvious reasons, nothing of the kind happened. In its place were the intensive negotiations between Beijing and Washington to try to resolve the arms sales issue. These were the negotiations which led to the August 17 Communique of the same year, a communique exclusively devoted to the unsettled question in the course of negotiations between the two countries on establishing diplomatic relations, namely, the U.S. arms sales to Taiwan. Whether this communique would be able to resolve the arms sales issue may first be judged literally.

\textsuperscript{35} No Sale of Advanced Aircraft to Taiwan, Department of State Bulletin, February, 1982, P.39. The F-5E coproduction line in Taiwan was supposed to shut down in September, 1982.
The August 17 Communique

The communique, referred to as Shanghai II, was the outcome of repeated negotiations between China and the United States over a period of "ten months." It is perhaps not uncommon in diplomatic history that ten months of such intensive negotiations were required to produce a communique like this consisting of nine small paragraphs. This in itself illustrates the stake both sides had in the issue. In this respect, an examination of how the communique addressed the issue seems imperative.

Paragraph six of the communique which contained the United States statement is the most important. The United States government states in that paragraph the following four points:

1. It does not seek to carry out a long-term policy of arms sales to Taiwan;
2. Its arms sales to Taiwan will not exceed either in qualitative or in quantitative terms, the level of those supplied in recent years since the establishment of diplomatic relations between the United States and China;
3. It intends gradually to reduce its sale of arms to Taiwan;
4. This will lead, over a period of time, to a final solution.\(^3\)\(^6\)

But this statement of U.S. policy in paragraph six is prefaced by a phrase "having in mind the foregoing statements of both sides," namely paragraphs four and five. In paragraph four,

The Chinese government reiterates that the question of Taiwan is China's internal affair. The message to Compatriots in Taiwan issued by China on January 1, 1979

promulgated a fundamental policy of striving for peaceful reunification of the motherland. The Nine-Point Proposal put forward by China on September 30, 1981 represented a further major effort under this fundamental policy to strive for a peaceful solution to the Taiwan question.\footnote{37}{Ibid.}

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

The United States Government understands and appreciates the Chinese policy of striving for a peaceful resolution of the Taiwan question as indicated in China's Message to Compatriots in Taiwan issued on January 1, 1979, and the Nine-Point proposal put forward by China on September 30, 1981. The new situation which has emerged with regard to the Taiwan question also provides favourable conditions for the settlement of United States-China differences over United States arms sales to Taiwan.\footnote{38}{Ibid.}

What does paragraph six mean in connection with these foregoing two paragraphs?

**PRC Interpretations**

The Chinese government interpreted it "has laid down the steps by which the question of U.S. arms sales to Taiwan should be settled..." The U.S. side has committed that,

as the first step, its arms sales to Taiwan will not exceed in qualitative or in quantitative terms, the level of those supplied in recent years since the establishment of diplomatic relations between the two

\footnote{37}{Ibid.}
\footnote{38}{Ibid.}
countries, and that they will be gradually reduced, leading to a final resolution of this issue over a period of time. The final resolution referred to here certainly implies that the U.S. arms sales to Taiwan must be completely terminated over a period of time.\textsuperscript{39}

From the Chinese perspective, these steps were laid down in compliance with the "principles" of respect for each other's sovereignty and territorial integrity and non-interference in each other's internal affairs as embodied in the Shanghai Communiqué and the Joint Communiqué on the establishment of diplomatic relations between China and the United States. Both sides emphatically stated that these "principles" continued to govern all aspects of their relations. "That is to say, that the question of arms sales to Taiwan must be settled on these principles," not on the provisions of the Taiwan Relations Act, which this communiqué "has nothing to do with." Apparently, the Chinese government was referring to the possible U.S. linkage of the present communiqué to the Taiwan Relations Act.\textsuperscript{40}

With regard to the "fundamental policy" referred to in paragraph four, the Chinese interpretation was that it was made "for the purpose of further demonstrating the sincere desire of the Chinese government and people to strive for a peaceful solution to the Taiwan question. On this issue, which is purely China's internal affair, no misinterpretation or foreign interference is permissible." This interpretation first warned


\textsuperscript{40}Ibid.
"misinterpretation" that "fundamental policy" would be taken for granted as the Chinese "commitment to the peaceful resolution" of the Taiwan problem. It was then directed against any relationship between that policy and U.S. arms sales to Taiwan, since the latter is an issue which "affects China's sovereignty."

Generally speaking, China took a more cautious view that the communiqué only marked a "beginning" of the settlement of the arms sales issue. However, privately, not without people in Beijing took comfort in the U.S. promise to reduce gradually and ultimately terminate the arms sales to Taiwan, and especially U.S. pledge not to "infringe on China's territorial sovereignty" or to "pursue a two-China policy," the first time in an official accord, with the People's Republic of China that such language was used. As it did previously after the signing of a communiqué, China once again called on the United States to implement in earnest "the relevant provisions" of the August 17 Communiqué.

U.S. Interpretations

Not surprisingly, the U.S. completely contradicted the PRC's interpretation with an entirely different set of interpretations to the communiqué. From Washington's perspective, while the communiqué reaffirmed the "fundamental principles" guiding U.S.-China relations, it laid down no such agreed "principles and steps" the Chinese referred with regard to the U.S. arms sales
to Taiwan. On this issue, the document simply "preserved principles on both sides." 41 On the U.S. side, the guiding principle "is now and will continue to be that embodied in the Taiwan Relations Act: the maintenance of a self-defense capability sufficient to meet the military needs of Taiwan, but with the understanding that China's maintenance of a peaceful approach to the Taiwan question will permit gradual reductions in arms sales," a clear indication of a linkage between the two. 42 Guided by this principle of linkage, the U.S. stressed at the outset of the negotiations that "as a matter of fact and law, any adjustment in its arms sales to Taiwan had to be premised on a continuation of China's peaceful policy." 43 According to the U.S. interpretations, the communique reflected this fundamental point.

The U.S. statement concerning future arms sales to Taiwan (paragraph 6) is based on China's statement as to its fundamental peaceful policy for seeking a resolution to the Taiwan question and on the "new situation" created by those statements (paragraph 5). This situation is new because, for the first time, China has described its peaceful policy in the term I have outlined...Having in mind this policy, and the consequent reduction in military threat to Taiwan, we have stated our intention to reduce arms sales to Taiwan gradually, and said that in quantity and quality, we would not go beyond levels established since normalization. This follows from a literal reading of

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43 Ibid.
the communique. While we have no reason to believe that China's policy will change, an inescapable corollary to these mutually interdependent policies is that should that happen, we will reassess ours.

Holdridge's explanation carried something more than general linkage of the two. While it specifically linked the qualitative and quantitative limitations and the gradual reductions in paragraph 6 with China's maintenance of a peaceful approach to reunification, it left open two questions: first, U.S. interpretation of the terms "final solution over a period of time" in paragraph 6, and second, U.S. reassessment of its policy "should China's change." With respect to the first question, some in the U.S. like Congressman Stephen Solarz interpreted it to mean either a "final solution of the arms sales issue" or a "final solution of differences between Taiwan and the mainland." Holdridge neither rejected nor accepted these interpretations. He simply didn't take any position. Nevertheless, he noted that "over a period of time" meant "no specific time frame to reduce arms sales." 45

With regard to the second question, one interpretation was that if one day the PRC stepped up its hostilities, the United States would increase arms sales to counter the threat.46 Another interpretation implied that "if China upgrades its own

44 Ibid.
46 Ibid., on P.209.
armament, more advanced weapons will be sold to Taiwan." 47

Then what did the U.S. offer to Beijing on the arms sales issue in the communique? Reagan later expressed this view. "there has been no retreat by me, no change whatsoever, we will continue to arm Taiwan." "We did not give an inch." "Arms sales will continue in accordance with the act, and with the full expectation that the approach of the Chinese government to the resolution of the Taiwan issue will continue to be peaceful..." This "set forth clearly in the communique, is fully consistent with the Taiwan Relations Act." 48 The President vowed that he would never "waver from this fundamental position." The Administration also made it "abundantly clear" that it intends to implement this policy in accordance with its understanding of it. By "policy," it meant this "statement of policy" or the communique. This nature of the communique was later clarified by State Department Legal Advisor Davis Robinson before the Senate Committee on the Judiciary on September 27, 1982. Robinson emphasized that the communique

is not an international agreement and thus imposes no obligations on either party under international law. Its status under domestic law is that of a statement by the President of a policy which he intends to pursue...The Taiwan Relations Act is and will remain in the law of the land unless amended by Congress. Nothing in the Joint Communique obligates the President to act in a manner contrary to the act or, conversely, disables him


from fulfilling his responsibilities under it...\textsuperscript{49}

In sum, "a policy statement can not change a public law." \textsuperscript{50} And the public law, the Taiwan Relations Act, will remain the guide for U.S. policy toward Taiwan.

The August 17 communique is the third communique in Sino-U.S. relations since 1972, but the first since the Taiwan Relations Act. This communique might, in the eyes of some, be an "adroitly ambiguous document," but it might not look that way. In full implementation of the Taiwan Relations Act, it has clearly established a "holding principle" for future U.S. relations with China, a principle that ties future U.S. arms sales to Taiwan to the continuation and progress of China's "fundamental peaceful" approach toward reunification. Unless this is resolved, no change will be realistically expected in the U.S. position regarding the sovereignty over Taiwan. Meanwhile, U.S. policy will be holding firmly this "last defense line" of Taiwan, and specifically "six-not-points," while at the same time, be prepared to accept "any solution arrived at peacefully by the Chinese themselves," be it "a viable independent state, accepted as such by Beijing," one that is

\textsuperscript{49} Prepared Statement of Davis R. Robinson, Legal Advisor, Department of State, given before U.S. Senate, Committee on the Judiciary, Subcommittee on Separation of Powers, September 27, 1982, PP.1-2, ms.

"fully incorporated into China in a way acceptable to the Taiwanese," or "some degree of autonomy reassociated with the mainland." 51

51 On July 14, 1982, one month before the August 17 Communiqué, the United States notified Taiwan through "appropriate channels" of six things it would not accede to in any agreement with mainland China. The six things were:

1. The United States would not agree to setting a date for ending arms sales to Taiwan;
2. American officials would not agree to prior consultation with Peking on arms sales to Taiwan;
3. The United States would not play a mediation role between Taipei and Peking;
4. America would not revise the Taiwan Relations Act;
5. The United States has not changed its position regarding the sovereignty of Taiwan;
6. Washington would not pressure Taiwan to enter into negotiations with Peking.

CHAPTER IV
LEGAL AMBIGUITY AND POLITICAL REALITY

The U.S. Legal Ambiguities

Experts concerned may agree that Washington's refusal to accept Beijing's claim to the title of Taiwan has also been accompanied by its ability to maintain an ambiguous position on the status of the island. As Gene T. Hsiao well commented:

On the surface, the point of contention was focused on the arms sales issue; at the bottom, the question has revolved around the conflict between Beijing's claim to the title of Taiwan and Washington's refusal to accept it, an old territorial dispute taking on a new form in the Taiwan Relations Act.\(^1\)

This chapter will trace the evolution of the official U.S. position on the subject, and probe the political reality behind these ambiguities.

Original Position

Among the documents which deal with the status of Taiwan, the one that received most attention was the statement made by President Harry Truman on January 5, 1950, a statement which was broadly believed to be in response to the domestic controversy then brewing over the "loss of China," and one that reflected the "sum total of the activities, thoughts, and speeches of the

American people." In that statement on the "United States policy respecting the status of Formosa (Taiwan)," the President solemnly stated that:

The United States Government always stood for good faith in international relations. Traditional United States policy toward China, as exemplified in the open-door policy, called for international respect for the territorial integrity of China. This principle was recently reaffirmed in the United Nations General Assembly resolution of December 8, 1949, which in part, called on all states

To refrain from (a) seeking to acquire spheres of influence or to create foreign controlled regimes within the territory of China; (b) seeking to obtain special rights or privileges within the territory of China.²

A specific application of the foregoing principles is seen in the present situation with respect to Formosa. In the joint declaration at Cairo on December 1, 1943, the President of the United States, the British Prime Minister, and the President of China stated that it was their purpose that territories Japan had stolen from China, such as Formosa, should be restored to the Republic of China.³ The United States was a signatory to the Potsdam declaration of July 26, 1945, which declared that the terms of the Cairo declaration should be carried out. ⁴ The provisions of this declaration were

² For the full text of the Resolution of the General Assembly, December 8, 1949, see Recent American Foreign Policy, Basic Documents: 1941-1951, Francis O. Wilcox, Chief of Staff, Senate Committee on Foreign Relations; and Thorsten V. Kalijarvi, Staff Associate, Senate Committee on Foreign Relations, Westport, Connecticut: Greenwood Press Publishers, 1972, on PP.499-500.

³ According to the original wording of the Cairo Declaration, it is their purpose...that all the territories Japan had stolen from the Chinese, such as Manchuria, Formosa, and the Pescadores, "shall" be restored to the Republic of China. By replacing "shall" with "should," President Truman was actually according much more explicity on the meaning of the Cairo Declaration which was later interpreted intentionally otherwise. For the text of the Cairo Declaration, see Digest of International Law, Marjorie M. Whiteman, Assistant Legal Advisor, the Department of State, Vol.3, released October, 1964, PP.478-479.

⁴ Again the President changed "shall" into "should" when he was quoting point 8 of the Potsdam Declaration which was framed as
accepted by Japan at the time of its surrender. In keeping with these declarations, Formosa was surrendered to Generalissimo Chiang Kai-shek, and for the past 4 years, the United States and the other Allied Powers have accepted the exercise of Chinese authority over the island.

The United States has no predatory designs on Formosa or on any other Chinese territory. The United States has no desire to obtain special rights, privileges or to establish military bases on Formosa at this time. Nor does it have any intention of utilizing its armed forces to interfere in the present situation. The United States Government will not pursue a course which will lead to involvement in the civil conflict in China...

In essence, what Truman stated was that Taiwan had already become Chinese territory in keeping with the Cairo and Potsdam declarations, and that the fighting between the Chinese Communists and Nationalists was a civil war in which U.S. forces would not be used.

That afternoon, Secretary of State Acheson held a news conference "at the request and at the direction of the President" to elaborate on the President's policy statement made...

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"(cont'd) the terms of the Cairo Declaration "shall" be carried out. For the Potsdam Declaration, see Ibid., on PP.484-485.

On September 2, 1945, Japanese Foreign Minister Shigemitsu and General Yoshijiro Umezu of the Japanese Imperial General Staff signed at the Tokyo Bay the formal surrender instrument, of which Japan "accepted the provisions set forth in the declaration issued by the heads of the Governments of the United States, China and Great Britain on 26 July 1945 at the Potsdam..." and "undertook for the Emperor, the Japanese Government and their successors to carry out the provisions of the Potsdam Declaration in good faith." For the Formal Surrender Instrument of September 2, 1945, see Ibid, on PP.486-487.

that morning. The remarks by the Secretary at the conference are well worth quoting at great length. He said:

It is important that our position in regard to China should never be subject to the slightest doubt or the slightest question.

Now, what has that position been? In the middle of the war, the President of the United States, the Prime Minister of Great Britain, and the President of China agreed at Cairo that among the areas stolen from China by Japan was Formosa and Formosa should go back to China.

As the President pointed out this morning, that statement was incorporated in the declaration at Potsdam and that declaration at Potsdam was conveyed to the Japanese as one of the terms of their surrender, and was accepted by them, and the surrender was made on that basis.

Shortly after that, the Island of Formosa was turned over to the Chinese in accordance with the declarations made and with the conditions of the surrender.

The Chinese have administered Formosa for 4 years. Neither the United states nor any other ally ever questioned that authority and that occupation. When Formosa was made a province of China, nobody raised any lawyers' doubts about that. That was regarded as in accordance with the commitments.

Now, in the opinion of some, the situation is changed. They believe that the forces now in control of mainland of China, the forces which undoubtedly will soon be recognized by some other countries, are not friendly to us, and therefore they want to say, "well, we have to wait for a treaty." We did not wait for a treaty on Korea. We did not wait for a treaty on the Kuriles. We did not wait for a treaty on the islands over which we have trusteeship. Whatever may be the legal situation, the United States of America, Mr. Truman said this morning, is not going to quibble on any lawyers' words about the integrity of its position. That is where we stand.

Therefore, the President says, we are not going to use our forces in connection with the present situation in Formosa. We are not going to attempt to seize the Island. We are not going to get involved militarily in any way on the Island of Formosa. So far as I know, no responsible person in the Government, no military man
has ever believed that we should involve our forces in the island.\textsuperscript{7}

 Barely one month later, the Department of State again reaffirmed the above stated "fundamental policies" of the Truman Administration in its replies to a series of questions contained in the House Resolution 452 relating to the foreign policy of the United States in the Far East. The questions were not new. Some of which actually had been either directly or indirectly answered by Acheson at his news conference. However, what added to the importance of these questions was the subtle way they were posed and the explicitness with which they were discussed.

Have the following been considered by the Executive as alternatives to the policy enunciated in said statement?

1. Insistence on the execution of the terms of the Cairo Declaration, which provided for the return of Formosa to the Republic of China.

Comment: This cannot properly be answered an alternative to the policy enunciated by the President. The President's statement of January 5, 1950 contained a reaffirmation of the Cairo Declaration on the part of the United States in respect to the disposition of Formosa. Formosa has been administered since 1945 by China, the surrender of Japanese forces on Formosa having been made to the Generalissimo Chiang Kai-shek.

2. Consideration of Formosa as a possession of Japan to be administered by the victor powers until eventual disposition under a peace settlement with Japan.

3. A plebiscite in Formosa, under the auspices of the Far Eastern Commission or a special commission of the U.N. to determine whether the inhabitants desire (a) to continue as a province of and the seat of the government of the Republic of China; (b) to be placed under a

\textsuperscript{7} Elaboration of Policy Respecting the Status of Formosa (Taiwan): Remarks by the Secretary of State at a Special News Conference, January 5, 1950, American Foreign Policy, Basic Documents, 1950-1955, Vol.2, Department of State, New York, 1971, PP.2449-2451.
United Nations trusteeship; or (c) to become an independent nation.

Comment: These alternatives were considered. As has been noted under (1) above, Formosa has been administered by China since 1945, when Japanese forces on the island surrendered to Generalissimo Chiang Kai-shek. It was incorporated into China as a province...The allied Powers associated in the war against Japan have not questioned these steps. The United States Government has not questioned these steps because they were clearly in line with its commitments made at Cairo and reaffirmed at Potsdam. In other words, the Allied Powers including the United States have for the past 4 years treated Formosa as a part of China.8

Based on this firm and "unquestioned" premise that "Taiwan has already become part of China," the State Department specifically rejected the possibility of holding a plebiscite on Taiwan under any auspices and by whatever means. The comment went on:

For the United States Government at this date, to seek to establish a non-Chinese administration on Formosa...would be almost universally interpreted in mainland China, and widely interpreted throughout Asia as an attempt by this Government to separate Formosa from China in violation of its pledges and contrary to its longstanding policy of respecting the territorial integrity of China. The important point from the standpoint of our interests in Asia, including mainland China, is not the technical justifications which we might urge for taking such steps but rather the way such action on our part would be viewed by the people of Asia. In this connection, we do not wish to create a Formosa irredenta issue about which the Chinese Communists could rally support within China and with which they could divert attention from Soviet action in the North. We must not place ourselves in the unenviable position of the U.S.S.R. with regard to the integrity of China and must remain free to take the position that anyone who violates the integrity of China is the enemy.

Introduction of Ambiguities

Events in the several months following President Truman's 1950 statement provided a dramatic introduction of ambiguities in the U.S. position on the status of Taiwan. Two days after the Korean War, on January 27, 1950, President Truman made a 180-degree turn in his firm policy of "respect for the territorial integrity of China," and "non-interference in China's civil war" when he delivered his important statement ordering the Seventh Fleet to the Taiwan Strait. Politically, this surprising conduct was justified by his firm belief that "communism has passed beyond the use of subversion to conquer independent nations and will now use armed invasion and war." The attack of North Korea against the South, Truman argued, was only the first in a series of moves by the new Chinese government to build a communist empire in East Asia, just as the Soviet Union had done in Eastern and Central Europe. If this spread of communism was not stopped, Taiwan would fall into the hands of "communist forces," and this would pose a "direct threat to the security of the Pacific area and to the United States forces performing their lawful and necessary functions in that area." Legally, his action was rationalized by his introduction of ambiguities on the status of Taiwan. "The determination of the future status of Formosa must await the restoration of security in the Pacific, a peace treaty with

\[\text{Ibid.}\]
Japan, or consideration by the United Nations."¹⁰

The following years witnessed a series of efforts by the United States to erect a "legal superstructure" to legalize these newly introduced legal ambiguities on the status of Taiwan. The 1951 San Francisco Treaty of Peace with Japan was supposed to limit Japanese sovereignty according to the Potsdam Declaration, and specify precisely the ultimate disposition of each of the ex-Japanese territories as some of the Allied Powers expected.¹¹ However, the final version merely stated that "Japan renounces all right, title, and claim to Formosa and the Pescadores."¹² The Senate Foreign Relations Committee,


¹¹ During the negotiation of the Treaty, there was disagreement among participants as to who actually was in a capacity to represent the government of China. The United States initially planned to invite Taiwan to the peace conference. But this was strongly objected to by the United Kingdom and other countries that recognized the People's Republic of China as the legitimate government of China. As a result, a compromise was reached between the U.S. and the United Kingdom on the question of Chinese participation in the peace conference. According to this compromise, neither Taiwan nor the PRC would be invited to the conference, after the conclusion of this multilateral peace treaty, Japan would conclude a bilateral peace treaty with Taiwan or the PRC. See Background Papers on Taiwan, in the United States Relations with the People's Republic of China. Hearings Before the Committee on Foreign Relations, United States Senate, 92th Congress, 1st Session, on S.J. Res.48, S.Res. 18, S.Res. 37, S.Res. 82, and S.Res. 139, June 24, 25, 28, and 29 and July 20, 1971, U.S. Government Printing Office, Washington, 1972, P.377. Hereafter cited as the United States Relations with the People's Republic of China. Also see China and the Taiwan Issue, edited by Hungdah Chiu, Praeger, 1979, P.155.

¹² For the Treaty of Peace, September 8, 1951, see American Foreign Policy, 1950-1955, Vol.I, Basic Documents, Department of
commenting on the peace treaty, expressed the view in its report dated February 14, 1952, that "it is important to remember that article 2 is a renunciatory article and makes no provision for the power or powers which are to succeed Japan in the possession of and sovereignty over the ceded territory." 13 Thus, the future status of Taiwan and Pescadores was not considered to have been determined by the peace treaty.

Consistent with the compromise between the United States and the Great Britain reached during the negotiation of the peace treaty with Japan, and later written into Article 26 of the treaty, that Japan would conclude a bilateral treaty with any state which "signed or adhered to the United Nations Declaration of January 1, 1942, and which is at war with Japan," a peace treaty between Japan and Taiwan was only a matter of time. The question was whether this treaty could clear the status of Taiwan which was left ambiguous in the just concluded San Francisco Treaty. From the very beginning when this treaty was conceived by the United States, it seemed quite unlikely that this would be the U. S. intention. The word from the United States to both Japan and Taiwan prior to the treaty was simple and clear, namely that any "possible implication of the wording that after the conclusion of the treaty, Taiwan had legally

12(cont'd) State, P.1426.

become a part of Chinese territory should be avoided."14 The subsequent treaty of peace between Japan and Taiwan signed on April 28, 1952, simply reflected this arrangement. The treaty "recognized" that all pre-1941 treaties, conventions and agreements concluded between China and Japan had become "null and void" as a consequence of war. By implication, it should have rendered invalid the 1895 Sino-Japanese Treaty of Shimoneseki which ceded Taiwan to Japan. However, it did not clarify the question of sovereignty over Taiwan in retaining the same language of the San Francisco Treaty that "Japan has renounced all right, title and claim to Taiwan and Pescadores." 15

The introduction of ambiguities in the U.S. position on the status of Taiwan was completed when the U.S. signed a Mutual Defense Treaty with the "Republic of China" on December 2, 1954, then recognized by the United States as the "lawful government of all China," to deter armed attack directed against the "territories of either of the parties." However, article 6 of the treaty provided that the terms "territorial" and "territory" meant in respect of the "Republic of China, Taiwan and Pescadores." 16 Despite the inclusion of this provision in the

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14 China and the Taiwan Issue, edited by Hungdah Chiu, Praeger, 1979, P.156.


16 See Article 5 and 6, the Mutual Defense Treaty between the United States and the Republic of China, signed at Washington, December 2, 1954, Remaking China Policy, by Richard Moorsteen
treaty, the question of the title over Taiwan or the status of Taiwan "is for all practical purposes unchanged and unaltered by this treaty." 17

The understanding of the Senate was that "nothing in the treaty shall be construed as affecting or modifying the legal status of sovereignty of the territories to which it applies." 18

The following years witnessed no change at all in the U.S. position. Until April, 1971, a State Department spokesman still recalled President Truman's self-proclaimed alternative conditions that the determination of the future status of Taiwan "must await the restoration of security in the Pacific, a peace treaty with Japan or consideration of the United Nations," and reaffirmed that "the Nixon Administration also follows this policy." 19


19 U.S. Department of State's Statement on the Status of Taiwan, April 28, 1971, China and Question of Taiwan: Documents and Analysis, edited by Hungdah Chiu, PP.340-341.
Challenges to the Ambiguities

The advent of the 1970s brought forth some dramatic changes in international relations that would render invalid most of President Truman's unilaterally imposed conditions to satisfy the determination of the future status of Taiwan. Prominent among these was a U.N. Resolution 2758, adopted by the General Assembly on October 25, 1971. The resolution recognized that "the representatives of the Government of the People's Republic of China are the only lawful representatives of China to the United Nations and that the People's Republic of China is one of the five permanent members of the Security Council," and decided "to restore all its rights to the People's Republic of China and recognize the representatives of its Government as the only legitimate representatives of China to the United Nations, and to expel forthwith the representatives of Chiang Kai-shek from the place which they unlawfully occupy at the United Nations and in all the organizations related to it." 20

The significance of this long-awaited consideration of the United Nations on the representation of China could be judged from the following aspects. First, with regard to the United States, it had long been maintained that the future status of Taiwan was to "await the consideration of the United Nations." As recently as April 28, 1971, barely six months before the passage of U.N. resolution 2758, a United States government

spokesman reaffirmed the U.S. position that sovereignty over Taiwan and the Pescadores was "an unsettled question subject to future international resolution." 21 It's very important to note that the timing of the statement was not unrelated to the expected U.N. resolution. Actually, the purpose of the statement was said to enable the U.S. to "lay the legal basis for admitting Peking to the U.N. while retaining a seat in the General Assembly for Taiwan." 22 Apparently, the "legal basis" was laid for the "dual representation." However, it could hardly be misunderstood that the United States was sending the message that the expected future international resolution, which later came out as U.N. Resolution 2758, would "settle" the "unsettled question" with respect to the "sovereignty over Taiwan." As expected, a U.N. resolution was approved. The representatives of the government of the People's Republic of China were recognized as the "only lawful" representatives of China to the United Nations, and the representatives of Chiang Kai-shek were "expelled" from the place which they "unlawfully" occupy at the United Nations.

Secondly, although some may argue that assent to the admission of the government of the People's Republic of China as the only lawful government of China within the world organization does not necessarily imply recognition of the PRC

21 U.S. Department of State's Statement on the Status of Taiwan, April 28, 1971, China and Question of Taiwan, Documents and Analysis, edited by Hungdah Chiu, PP.340-341.

government by those U.N. states which voted for the admission (this was true, many of the countries that voted for the PRC did not have diplomatic relations with it), a U.N. Resolution 396 approved by the General Assembly on December 14, 1950 also implied that "a purely nominal authority, albeit continuing to be recognized as a state by a number, or majority, of the members of the United Nations, is not entitled to represent the state in question."\(^{23}\) In this context, the U.N. resolution 2758 was at least an extremely important document which reflected world opinion on the representativeness and legitimacy of "the two authorities claiming to be the government entitled to represent a member state in the United Nations."

Another event of special importance that happened in the 1970s that contributed to the demise of another condition set up by Truman to determine the future status of Taiwan was the normalization of diplomatic relations between China and Japan. In the Joint Statement of the Government of the People's Republic of China and the Government of Japan, Japan reaffirmed its position that in seeking to realize the normalization of relations with China, it proceeded from the stand of "fully understanding the three principles for the restoration of diplomatic relations put forward by the Government of the

People's Republic of China." Hence the Government of Japan "recognizes the Government of the People's Republic of China as the sole legal government of China." It "fully understands and respects" the stand of the Government of China that "Taiwan is an inalienable part of the territory of the People's Republic of China." However this was not, according to some scholars, a direct acceptance of Beijing's claim of sovereignty over Taiwan, Japan's promise to "adhere to its stand of complying with Article 8 of the Potsdam Proclamation" no doubt meant that it agreed to "carry out" the terms of the Cairo Declaration that "all the territories Japan has stolen from the Chinese, such as Manchuria, Formosa (Taiwan) and Pescadores, shall be restored to the Republic of China." The only doubt was that when Japan signed the San Francisco Treaty, it was manipulated by the United States, and simply renounced all right, title and claim to Taiwan, including Pescadores, without specifying to whom it was renounced. Thus the status of Taiwan was still left "undetermined" pending another peace treaty with the People's Republic of China. This was satisfied on August 12, 1978, when a Treaty of Peace and Friendship was signed between the People's Republic of China and Japan. The treaty, confirmed that the joint statement of 1972 "constitutes the basis of the

24 The three principles were understood to be: there is only one China, and the government of the People's Republic of China is the sole legitimate government representing the Chinese people; Taiwan is a province of China and an inalienable part of the Chinese territory; the Japan-Chiang Peace Treaty is illegal and must be abrogated. For reference, see the Sino-Japanese Rapprochement: A Relationship of Ambivalence by Gene T. Hsiao, The China Quarterly, Vol. 57, January/March, 1974, P. 103.
relationship of peace and friendship' between the two countries and that the principles enunciated in the joint statement should be strictly observed,' thus meeting President Truman's second of the three conditions for the determination of the status of Taiwan.  

Creative Ambiguities

The decade of the 1970s recorded not only challenges to the United States' long-held ambiguities on the status of Taiwan, but also a long "normalization process" which resulted in both normalization and "creative ambiguities" on the status of Taiwan. These creative ambiguities were first reflected in the Shanghai Communique of February, 1972. History must judge the strategic significance of the Shanghai Communique, of which the fundamental objective was "not territorial but geopolitical." But clearly it created the thorniest dilemmas by laying aside or postponing the most "crucial issue" then facing these two great nations with ambiguities that both sides still cannot resolve. The "carefully crafted" paragraph that recorded these creative ambiguities in the Shanghai Communique was:

The United States acknowledges that all Chinese on either side of the Taiwan Strait maintain there is but one China and that Taiwan is a part of China. The United States does not challenge that position. It reaffirms

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its interest in a peaceful settlement of the Taiwan question by the Chinese themselves...²⁷

To illustrate the ambivalence of the American wording, one simply has to point out that the United States, by "acknowledging that all Chinese on either side of the Taiwan Strait maintain that there is but one China and that Taiwan is a part of China," said no more than what Beijing and Taipei had been saying. The question was what the United States meant by "not challenging that position." Did that represent a change from the position that the status of Taiwan was undetermined? Most observers interpreted this to mean that the United States neither accepted nor rejected Beijing's or Taipei's one China assertion. The United States remained neutral. Recognizing that a dispute existed, the United States decided not to take sides. Some differed. They interpreted this as meaning a "considerable advance" on the position taken up by the U.S. government since the outbreak of the Korean War, a position that "Taiwan is not part of China," and the status of Taiwan "must await determination." ²⁸ Some in the State Department, like Assistant Secretary of State Marshall Green in charge of East Asian Affairs, argued that this meant "no change." ²⁹

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²⁷ Shanghai Communiqué, February 28, 1972; Peking Review, November 9, 1972, PP.4-5.
²⁹ Normalization of Relations with the People's Republic of China; Practical Implications. Hearings Before the Subcommittee on Asian and Pacific affairs of the Committee on International Relations, 95th Congress, 1st Session, September 20, 21, 28, 29; October 11, and 13, 1977, U.S. Government Printing Office,
However, judged from the context in which this statement was made in response to the Chinese demands that U.S. renounce any interest in policies of "two Chinas," "one China, two governments," "one China, one Taiwan," "an independent Taiwan," or the position that "Taiwan's status is undetermined;" and examined in conjunction with various authoritative statements both before and during the 1972 negotiation that led to the Shanghai Communique,\(^3\) one could say that a change was made in the U.S. position, but only to the extent that:

It eliminated the specter, introduced upon the outbreak of the Korean conflict, that Washington might seek permanently to separate Taiwan from China by failing to fulfil the Cairo Declaration's pledge. To be sure, at Shanghai, the United States did not fulfil that pledge by formally confirming Taiwan's reincorporation into China, nor did it return all the way to its pre-Korean position, but it did renew the hope that the pledge would be fulfilled at some future date.\(^3\)

This interpretation seemed to accord with the political strategy adopted by President Nixon in drafting the Shanghai Communique. That strategy was articulated in a 1971 book by

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\(^{29}\)(cont'd) Washington, 1977, P.116. Also see China and the Taiwan Issue, edited by Hungdah Chiu, on P.180.


\(^{31}\) Remarks by Jerome Alan Cohen, Associate Dean, Professor of law and Director of East Asian Legal Studies, Harvard Law School, at the session convened on April 28, 1978, by American Society of International Law, on Legal Implications of Recognition of the People's Republic of China, American Society of International Law, April 28, 1978, P.245.
Richard Moorsteen and Morton Abramowitz, *One China, But Not Now.* It sought to initiate movement toward normalization not by withdrawing U.S. recognition from Taiwan and terminating the defense treaty, but by offering Beijing the prospect of renewed American respect for China's territorial integrity as time ripened friendship between Washington and Beijing. 32

History frustrated the movement toward normalization of relations between the two countries. However, relations between the two were finally normalized seven years later. Theoretically, normalization based on Washington's acceptance of Beijing's three preconditions should have "renewed American respect for China's territorial integrity." But reality suggested otherwise. In the Shanghai Communique, the United States only "avoided challenging Peking's claim that Taiwan is legally part of China." This time, Washington would also "avoid committing itself to the position that Taiwan is already part of China." 33 Normalization, in Washington's vocabulary, would not automatically constitute U.S. recognition that "Taiwan is PRC's territory," "not only because the island clearly is not under Peking's control, but also because continuation of even de facto relations with Taiwan would be challenged if the United States


were to accept, under existing circumstances, that Taiwan is already a part of China legally." 34 Based on these considerations, the United States, while recognizing the Government of the People's Republic of China as the "sole legal Government of China," in the December 1978 joint communique, also retained the "creative ambiguities" on China's sovereignty over Taiwan by "reaffirming" the relevant principle of the Shanghai Communique:

The Government of the United States of America acknowledges the Chinese position that there is but one China and Taiwan is part of China.35

The question immediately arose over whether the shortened passage meant that the United States had accepted or moved closer to Beijing's claim over the title of Taiwan. Senator Kennedy, writing for the American Bar Association Journal, said:

the recent Joint Communique did nothing to clarify the United States view of the legal status of the island, which the Shanghai Communique left artfully obscure. In the new communique, the United States simply "acknowledges the Chinese position that...Taiwan is part of China." This creative ambiguity in our legal position leaves open what actions we might take to assure the peaceful future of Taiwan...36

American "China hand" Doak Barnett, appearing before the Senate Foreign Relations Committee, in February 1979, also expressed the same view.

34 Ibid.


We have never explicitly stated that the U.S. position is that Taiwan is a part of China. Taipei and Peking do, but we have never explicitly stated that.

We stated in the Shanghai Communique that we do not challenge the Chinese view, and we have stated most recently that we acknowledge the Chinese position. But...we have avoided explicitly taking a position of our own on the legal issue.\(^{37}\)

The authoritative view could be clarified in the following dialogue between Senator Richard Stone of the Senate Foreign Relations Committee and Herbert J. Hansell, legal advisor of the Department of State:

Senator Stone: Mr. Hansell, under the Joint Communique, and based upon the policy of the administration, have we recognized Taiwan legally as a de jure province of China, the People's Republic of China?

Mr. Hansell: As Mr. Christopher mentioned this morning, we have acknowledged the Chinese position, which is taken of course by Chinese on both sides, that Taiwan is a province of China.

Senator Stone: Do we recognize Taiwan as a province of China for legal purposes?

Mr. Hansell: We have not taken a position on that.\(^{38}\)

The Legal Nature of the Communiques

Like the status of Taiwan which is so far left ambiguous in the communiques, the status of the communiques themselves have never been clarified. During the years since the Shanghai Communique was issued, there was considerable disagreement over whether the communique was an official document binding the

\(^{37}\) Taiwan Hearings, United States Senate, 96th Congress, 1st Session, 1979, P.611.

\(^{38}\) Ibid., on P.88.
United States. Some held that the communique was no more than a "joint statement of views, including conflicting views, of the United States and China," or "a press release" issued by a past U.S. administration. As such, it was not binding on the United States. Others noted that as the communique was sufficiently specific in its terms, and as it in fact provided the fundamental basis of the China policy of every U.S. administration since 1972, it ought to be considered an "executive compact." They pointed out that since 1974, the United States Court of Appeals for the District of Columbia had recognized that an executive compact had legal impact, and that therefore the communique, as such, should be binding on the United States.

The Nixon Administration seems to have avoided these "black and white" views. On the one hand, it did view, at least once, the communique as a binding instrument. On the other, it recorded the communique in the Public Papers of the Presidents as "Joint Statement Following Discussions with Leaders of the


40 See Ibid., American Society of International Law, on P.265.

41 Ibid., P.256.
People's Republic of China." More subtle was that the U.S. government did not list the communique in the U.S. Treaties In Force. This government document "contains a list of treaties and other international agreements to which the United States has become a party." The term "treaties" in restricted usage in the United States "signifies international agreements made by the President by and with the advise and consent of the Senate, two-thirds of the Senators present concurring." It was doubtful that within this context, the U.S. would put the Shanghai Communique into this category. However, this publication, in addition to listing such "treaties," also "lists agreements in force between the United States and foreign countries which have been made by the Executive (a) pursuant to or in accordance with existing legislation or a treaty, (b) subject to Congressional approval or implementation, or (c) under and in accordance with the President's constitutional power."  

The U.S. failed to include the Shanghai Communique in the above publication. This at least indicated its reluctance or unwillingness to treat the communique even as an "executive agreement."

If the Shanghai Communique could not satisfy the above American practice with regard to international law, then the

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43 See Forward to the U.S. Treaties In Force compiled by the Treaty Affairs Staff, Office of the Legal Advisor, Department of State.
December 15, 1978 Joint Communique that established diplomatic relations between the two countries certainly could. First and most important, it was made in accordance with the regulations of the Department of State. The regulations provided that an executive agreement may be entered into if it falls within one or more of the following categories:

1. Agreements which are made pursuant to or in accordance with existing legislation or a treaty in force with respect to the United States;
2. Agreements which are made subject to Congressional approval or implementation;
3. Agreements which are made and in accordance with the President's constitutional powers.\(^44\)

The December 1978 joint communique clearly falls within the third category with regard to the President's constitutional power. In his memorandum on relations with the people of Taiwan, December 30, 1978, President Carter stated:

As President of the United States, I have constitutional responsibility for the conduct of foreign relations of the nation. The United States has announced that on January 1, 1979, it is recognizing the government of the People's Republic of China as the sole legal government of China and is terminating diplomatic relations with the Republic of China.\(^45\)

Secondly, the making of executive agreements "have long been recognized as necessary and proper in the conduct of the foreign relations of the United States." In fact, since 1952, the great


\(^45\) Memorandum from President Carter on Relations with the People of Taiwan, December 30, 1978, U.S. Policy Toward China, July 15, 1971-January 15, 1979, the Department of State, Selected Documents, No. 9, Bureau of Public affairs, Office of Public Communications, released January 1979, P.51.
increase in the number of executive agreements as compared with treaties has become a fact of life. This apparently led to the passage of the Senate Resolution 596 on February 16, 1972, requiring transmittal to Congress of all executive agreements within 60 days except those secret ones. This also led to the United States Court of Appeals from the District of Columbia action that "an executive compact had legal impact." However, when asked by Frank Church, then Chairman of the Senate Foreign Relations Committee, whether the "agreements" with China would be transmitted to the committee according to the Case Act (S.596, referred to as such because it was introduced by Senator Case), Deputy Secretary Warren Christopher replied: "yes, the communique will be transmitted although it is not formally an agreement."

What Christopher said was self-contradictory. But what the U.S. did subsequently was not. Since the December 1978 Joint Communique was "not formally an agreement," it has never been transmitted to Congress according to the Case Act. Neither has it ever been recorded in the U.S. Treaties In Force. Rather, it appeared within the category of "Joint Statements" in the Public Papers of the Presidents, Jimmy Carter.

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46 The American Journal of International Law, Vol.66, 1972, PP.527, 536; for S.Res. 596, see Congressional Record, Senate, February 16, 1972, P.4094.

47 American Society of International Law, April 28, 1978, P.265.

48 Taiwan Hearings, United States Senate, 96th Congress, 1st Session, 1979, P.23.

The Introduction and retention of these ambiguities in the U.S. position on the sensitive question of sovereignty over Taiwan was undoubtedly intentional. Just as they left something open at the time of their introduction, they certainly do so as they are still retained today.

Political Reality

As much analysis was made above on how the U.S. introduced and retained legal ambiguities on the status of Taiwan, the following part of this chapter will probe the political realities behind these ambiguities. The first to be probed will be the concept of treating Taiwan as a "de facto entity with international personality" which is in reality the "legal rationale" behind the Taiwan Relations Act.

De Facto Entity with International Personality

1. The Concept

The concept of the "de facto entity with international personality" was advanced by Professor Victor H. Li, of Stanford University both in his writings and in his testimony before the U.S. Congress. The concept, according to Li, "accurately reflects reality," which is, while no longer recognized by the United States as a "de jure" government or state, Taiwan continues to control a population and territory and to carry out the usual functions of a government. In the United States own
Foreign Relations Law, Professor Li pointed out, the "entity that has a defined territory and population under the control of a government and that engages in foreign relations" means a "state." The "state" possessing the above qualifications, according to the Conventions on Rights and Duties of States, is a "person of international law." Thus, Professor Li argues that Taiwan is a "de facto entity with international personality." 50

2. The Foundation of the Taiwan Relations Act

According to Professor Li, as Taiwan is now a "de facto entity with international personality," from the perspective of international law, it has the capacity to carry out the "full range" of foreign relations, including entering into international agreements and sending and receiving official missions. With respect to pre-existing treaties and agreements, "international law does not require that treaties entered into with a once recognized government, the terms of which are limited to the territory actually controlled by that government, must lapse after that government loses de jure recognition while still exercising de facto control." Hence, Professor Li advised, in such an "unprecedented situation," the United States could "make a political decision" to maintain these treaties on the ground that it may continue to deal with the authorities in

50 For the specific section or article Professor Li referred to, see Prepared Statement By Professor Li, before the Senate Foreign Relations Committee, Taiwan Hearings, United States Senate, 96th Congress, 1st Session, 1979, P.148.
actual control of Taiwan. This "authoritative view" of Victor Li thus "laid the foundation for American determination to pass the Taiwan Relations Act, which would govern U.S. interchange with Taiwan after the establishment of U.S.-PRC diplomatic relations."  

3. Distinctions between De Facto and De Jure Entities

Professor Li sees that international law supports treating this de facto government just about the same as a de jure recognized government. There are very few provisions in American legislation which provide that de jure and de facto entities should be treated differently. In general, the legislative approach has been to treat them similarly, unless there is a specific provision to the contrary. In sum, Taiwan can do virtually anything a de jure recognized state or government can do. 

The concept of "de facto entity with international personality," Professor Li admitted, is "awkward." But it served three purposes. First, as he emphatically noted, this approach "does not violate the principle of one China." Second, it only  

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51 Ibid.


53 See Professor Li's Prepared Statement in Taiwan Hearings, United States Senate, 96th Congress, 1st Session, 1979, PP.144-157.
deals with "present political realities," and "does not require, or preclude eventual reunification, or any other outcome." Thirdly, as Taiwan is going through a transition from being the "republic of China" representing all of China to "some new and still undefined status," this approach will provide Taiwan with the "smoothest means of making a transition." 54

Li's concept carried special weight with the U.S. Congress. Congress not merely found his concept "very interesting and very informative," but actually accepted this "thesis" as a "basis to proceed" with the Taiwan Relations Act. In fact, Professor Li was asked to consult with the Senate Foreign Relations Committee in "getting his recommendations as to how that thesis could be implemented in statutory language." 55

Not long after the Taiwan Relations Act passed the Congress, Professor Li made the following important comment:

My guess is that in the coming months and years, the United States will increasingly assert, although with some reluctance, that Taiwan is a de facto entity with international personality...Since both the PRC and Taiwan agree on the principle of one China, it is hardly appropriate for the United States, or an outsider, to propose any other position...56

As can be seen, one corollary of Professor Li's rationale could be the de jure international status for a separate Taiwan.

54Ibid., on PP.152-153.

55 Ibid., P.155.

This is another political reality behind the U.S. ambiguities.

*De Jure International Status For A Separate Taiwan*

In theory, when the United States government recognized the government of the People's Republic of China as the "sole legal government" of China, and "acknowledged" the Chinese position that "there is but one China and Taiwan is part of China," it should have precluded itself from fostering or backing Taiwan's separation from China. But, in reality, by remaining firmly ambiguous on the status of Taiwan, the United States is still holding to the possibility of a de jure international status for a separate Taiwan in the future. From Washington's perspective, such a separate Taiwan may emerge if Taiwan eventually ends its claim of being the government of the whole state of China and declares itself an independent state. Or it may evolve out of the self-determination by the "people of Taiwan."

Washington's assumption is laced with many problems. First, there is no indication, whatsoever, that Taiwan authorities will retreat from their long-standing position that "there is one China and Taiwan is a province of China," and will cease to operate under the fiction that it is the "legitimate government of all China." If it eventually does, as Washington wishes, it will have lost its legitimacy of ruling the perceived "independent Taiwan," unless it gets the consent of the people of the island. It seems highly unlikely that the people of Taiwan will give a confidence vote to the new rulers. This will
be contrary to its purpose of declaring independence. Secondly, the viability of such a separate Taiwan might be questionable. Beijing might be compelled to give up its fundamental peaceful approach and take other than peaceful means to recover the lost island. Strong national sentiment precludes Beijing's tolerance of such a movement. The past century of humiliation taught China a lesson that there are times when she would have to stand up in arms. The United States will then face a real dilemma on whether to give priority to its relations with Beijing or to the "newly independent Taiwan." It will have to reexamine its policies and make new decisions in the context of the total situation at that time. Thirdly, even if the United States is ready to offer de jure recognition to such an independent Taiwan at the cost of its relations with Beijing, it is unlikely that all other countries that have recognized the PRC will blindly follow suit and risk their own national interests. A de jure international status for a separate Taiwan seems highly unfeasible.

With regard to self-government for the people of Taiwan, Taipei's policies and political realities on the island virtually precludes such a development. Beijing's position on this leaves no flexibility at all. As far as the United States is concerned, this perhaps is not self-determination in its classic form, since the regimes in both Beijing and Taipei still firmly maintain the common principle of Chinese unity. Under these circumstances, it is hardly appropriate for the U.S. to support the principle of self-determination, for this will not
only offend the regimes on both side of the Taiwan Straits, but also damage its credibility of upholding the principle of territorial integrity of other countries.

These problems aside, Washington still holds on to the above mentioned two possibilities. Developments since the Taiwan Relations Act and especially since the August 17 Communique suggest that the U.S. is actually fostering and backing both.

On November 15, 1983, the U.S. Senate Foreign Relations Committee passed a resolution on "Taiwan's future." The resolution said that

...Taiwan's future should be settled peacefully, free of coercion and in a manner acceptable to the people on Taiwan and consistent with the laws enacted by Congress and the communique entered into between the United States and the People's Republic of China. 57

Despite China's protest that this resolution "is in essence, designed to perpetuate the separation of Taiwan from China under the signboard of the so-called 'self-determination' of the people of Taiwan," the U.S. Senate and the House of Representatives passed respectively on November 17 and 18 the same year an appropriations bill concerning international financial institutions to which an amendment was added. The amendment, consisting of no more than six very short paragraphs, referred six times to the "Republic of China." The amendment expressed the "sense of the Congress" that:

Taiwan, Republic of China, should remain a full member of the Asian Development Bank, and that its status within that body should remain unaltered no matter how the issue of the People's Republic of China's application for membership is disposed of;

The President and the Secretary of State should express support of Taiwan, Republic of China, making it clear that the United States will not countenance attempts to expel Taiwan, Republic of China, from the Asian Development Bank.58

From the Chinese perspective, this amendment, together with Senate Resolution 74 on the "future of Taiwan," represented a new escalation of the U.S. Congress's attempt to create "two Chinas." To the U.S. Congress, this was consistent with the Taiwan Relations Act which treated Taiwan as a de facto entity with international personality, and as such, its status within any international institution or any other international organization should be protected. As expected, the Reagan Administration was ambiguous on the issue. On the one hand, it signed the appropriations bill into law. On the other, it said that the signing itself did not reflect any change in the U.S. position with respect to the "one China principle." The "one China principle" is as ambiguous as misleading. Without taking any position on the Chinese position on both sides of the Taiwan Straits, the U.S. is actually pursuing a "two governments" policy under a vague term of "one China."

The concept of "an autonomous Taiwan associated with the mainland" has been frequently mentioned by U.S. China scholars in recent years. This may be partially due to the United States' increasing stake in China's modernization drive, or China's increasing significance in world affairs. But so far, little detail has been given to this concept. My guess is that, until the mainland convinces Taiwan with its "one state, two systems" formula, and Taiwan agrees to accept it, the U.S. can not be expected to clarify this concept and put it into operation. In other words, this is an option only when it becomes a reality.

In summary, the first option might be "appropriate" for the United States to maintain the "status quo," but it will create as many problems as can be foreseen in its relations with the People's Republic of China. Any step forward from that option will be a step backward to the de jure recognition of a separate Taiwan, which will backfire. The most realistic and positive option seems to be the last one. But the U.S. will be "neutral" until it becomes a reality.
CHAPTER V

THE TAIWAN RELATIONS ACT AND CHINA'S REUNIFICATION POLICY

Fundamental Policy

Known as the "policy of striving for peaceful reunification of the motherland," the fundamental policy consists of two major policy statements. One is the "Message to Compatriots in Taiwan," delivered by the Standing Committee of the National People's Congress on January 1, 1979. The other is "Ye Jianying's Elaborations on Policy Concerning Return of Taiwan to Motherland and Peaceful Reunification" on September 30, 1981. The latter is officially referred to as the "Nine-Point Proposal." The message, coinciding with the normalization of Sino-U.S. relations, marked China's "new approach" on the "return" of Taiwan to the motherland. The Nine-Point Proposal, issued on the eve of the 32nd anniversary of the founding of the People's Republic of China, and in the middle of the period of Sino-U.S. contention on the U.S. arms sales to Taiwan, represented a "further major effort" to strive for a "peaceful solution" to the Taiwan question. Later, on August 17, 1982, this policy concerning the "return" of Taiwan to the motherland and "peaceful reunification" was proclaimed in the Sino-U.S. joint communique on the U.S. arms sales to Taiwan as a

For Message to Compatriots in Taiwan, see Beijing Review, No.1, January 5, 1979, PP.16-17; for Ye's Nine-Point Proposal, see Beijing Review, No.40, October 5, 1981, PP.10-11.
"fundamental policy." How "fundamental" is this fundamental policy? A closer examination of its components might be helpful in answering this question.

The Message to Compatriots in Taiwan

The practice of sending a message at festival times to compatriots in Taiwan was nothing new. What was new at this time was its tone and approach. The usual determination to "liberate" Taiwan was now replaced with fervent hope that Taiwan "returns" to the embrace of the motherland at an early date so that they can "work together" for the great cause of national development. The frequent attack on the "Kuomintang reactionaries" or the "Chiang Kai-shek Clique" was also replaced with a call for "co-operation" with the "Taiwan authorities." Ideological differences were muted. Instead, a "common stand" on the position of "one-China" and opposition to an "independent Taiwan" were emphasized.

Along with this moderate tone, was an unprecedented "new approach."

Our state leaders have firmly declared that they will take present reality into account in accomplishing the great cause of reunifying the motherland and respect the status quo on Taiwan and the opinions of people in all walks of life there and adopt reasonable policies and measures in settling the question of reunification so as not to cause the people of Taiwan any losses.  


3 Message to Compatriots in Taiwan, January 1, 1979, Beijing Review, No.1, January 5, 1979, PP.17.
Notwithstanding its general thrust and its conciliatory tone, the message was, to a certain extent, a very limited policy statement in several respects. First, while "liberation" of Taiwan was dropped and replaced by a hope for its "return" to the motherland, "peaceful" reunification was never mentioned in the message. The implication was obvious. Second, while the message conveyed the PRC leaders' firm declaration that the "present reality" in Taiwan would be considered and the "status quo" there be respected in "settling" the question of reunification, after Taiwan "returns" to the motherland, the long-term future of the island was nevertheless left unaddressed. Liao Chengzhi's speech at a meeting of the National Association of Overseas Chinese held in February, 1979, indicated that at least a "socialist road" was not ruled out. Liao, Head of the Office of Overseas Chinese under the State Council, said:

After China has achieved peaceful unification, the long-term road for Taiwan will be the socialist road. Under the leadership of a single, proletarian political party, there is no reason why one segment should have a socialist system while the other follows the capitalist road. However, the main problem at present is how can we first realize the peaceful unification of China and end the state of disunity that has endured for thirty years. Party Central has spelled out that our task with regard to Taiwan under the present situation is to achieve the goal of peaceful unification through negotiation.  

Thirdly, while the message urged negotiation between the two sides, such negotiation would be held between the Government of the People's Republic of China and the Taiwan authorities, not

\* Liao's speech was translated in *Inside China Mainland*, November, 1981, P.12.
between the Chinese Communist Party and the Kuomintang. This implied, in other words, "unequal negotiations."

This new but limited approach reflected Beijing's judgement of the "new situation" that existed after the normalization of relations with the United States.

The world in general recognized only one China, with the Government of the People's Republic of China as its sole legal government. The recent conclusion of the China-Japan Treaty of Peace and Friendship, and normalization of relations between China and the United States show still more clearly that no one can stop this trend. 5

Whatever the historical trend may be, reality can not be ignored. In the foreseeable future, the policies of the United States have to be reckoned with. Some may increase the possibility of China's future reunification, while others, such as the ones stipulated in the Taiwan Relations Act, may greatly reduce it. For Beijing not to face and deal with these hard facts would be unrealistic. To be realistic, it must reassess the "new situation" in the light of the "actual one," and perhaps, redirect its practices more at the United States than at Taiwan. In this respect, Ye's "Nine-Point Proposal," another very important component of the "fundamental policy," deserves closer analysis.

5 Message To Compatriots In Taiwan, January 1, 1979, Beijing Review, No.1, January 5, 1979, PP.16-17.
Ye Jianying's Nine-Point Proposal

Compared with the message to compatriots in Taiwan, Ye's 9 point proposal indeed represented a "further major effort" on reunification up to that time. Going beyond the message which only made reference to the "return" of Taiwan to the motherland, the proposal, for the first time on the public record, projected the idea of "peaceful reunification." It emphasized "equal talks between the two parties," the Communist Party of China and Kuomintang Party of China, not any more the negotiation between the central government and local authorities. It clarified the future status of Taiwan within a reunified China as a "Special Administrative Region," which can enjoy a "high degree of autonomy" and can even "retain its armed forces." The Central government would not "interfere with local affairs on Taiwan." As for the long-term road for Taiwan after reunification, the proposal made clear that "Taiwan's current socio-economic system will remain unchanged, as will its way of life and its economic and cultural relations with foreign countries." "There will be no encroachment on the propriety rights and lawful right of inheritance over private property, houses, land and enterprises, or on foreign investments." Other points offered Taiwan seats in the central government, economic assistance as needed, and invitations to industrialists and businessmen there to "invest and engage in various economic undertakings on the mainland."  

There seemed little doubt that this "further major effort" was the result of Beijing's reappraisal of the "new situation" in the light of the "actual circumstances." Beijing was now convinced that the United States would remain the "main obstacle" on China's road to reunification. The Taiwan Relations Act, together with its arms sales provisions, indicated that "people in the United States never gave up 'two Chinas' or 'one China and a half'." If the U.S. support continues, Taiwan will not feel compelled to negotiate with Beijing. The proposal, expressing this reality, seemed to be directed more at the United States than at Taiwan. Some of its provisions, as indicated earlier, were so relevant to the provisions of the Taiwan Relations Act that they might have rendered certain key concerns of the act ineffective. But for Beijing to do this was not without potential problems. Policy changes directed at the United States could be taken in Taipei as intending to "influence opinion" in the United States to put pressure on them.

The following year witnessed the Sino-U.S. joint communique on the U.S. arms sales to Taiwan. In that communique, Beijing, for the first time, unilaterally proclaimed its "policy of striving for peaceful reunification of the motherland" indicated in Ye's 9 point proposal and its previous message, as

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8 For reference, see the Taiwan Relations Act (b)(4) and (6); also see Ye Jianying's Nine-Point Proposal (3) and (4).
"fundamental." Then, the United States predicated its arms sales to Taiwan on Beijing's continuation of such a "fundamental policy." Beijing stated that this policy simply further demonstrated the "sincere desire of the Chinese Government and people to strive for a peaceful solution to the Taiwan question. On this question, which is purely China's internal affair, no misinterpretation or foreign interference is permissible." The United States said that its future actions "will be conducted with this peaceful policy fully in mind," and it "will never waver from this fundamental position." 9 The August 17 Communique was supposed to solve the arms sales issue. But, by now, it resulted in no more than creating a new knot, which both sides would find difficult to untie. China's fundamental policy reached its limit.

Reunification Formula

Beijing's reunification formula, later known as the "one country, two systems," developed gradually, and was designed to implement its fundamental policy. Deng Xiaoping was broadly credited for his contribution to this formula. According to Deng:

After the reunification is realized, Taiwan can still practise capitalism while the mainland maintains socialism. Both of them are part of a united China. This is what we mean by "one country, two systems." 10


10 Deng Xiaoping on "One country, Two Systems," Beijing Review,
At the heart of this formula, lies the specific design of the "Special Administrative Regions," first introduced through Ye's 9 point proposal in 1981. The following year, on December 4, the National People's Congress adopted a new constitution, which included among its provisions a new article, Article 31, on the "Special Administrative Regions." The article declared that:

The state may establish special administrative regions when necessary. The systems to be installed in special administrative regions shall be prescribed by law enacted by the National People's Congress in the light of the specific conditions.\(^\text{11}\)

There was no doubt at all this new article was specially designed for both Taiwan and Hongkong. What was left unspecified, however, was the specific policies and measures to be practised in these regions. In this respect, Beijing seemed to be "highly flexible." \(^\text{12}\)

One year later, on June 26, 1983, Deng Xiaoping met in Beijing with Professor Yang Liyu of Seton Hall University, United States. According to Professor Yang, they talked for 2 hours. The focal point of their discussion was the reunification of China. During the discussion, Deng offered "surprisingly detailed" concept on peaceful reunification which went "beyond

\(^\text{10}(\text{cont'd})\) No.5, February 3, 1986, P.25.


the 9 point proposal..." and included the following major points:

1. After reunification, Beijing will not dispatch its Army to Taiwan, nor will it send officials to take over, to take part in, or to oversee Taiwan's "internal affairs." Beijing will not concern itself with the personnel affairs in Taiwan's administrative structure, and will not bother about the troop movements in Taiwan. (But he did not agree with the proposition of "Taiwan people governing Taiwan," because it has an implication of "Taiwan independence.") Deng Xiaoping said: "you do not swallow me, and I do not swallow you. You do not bother me, nor vice versa. Each of the two sides can go its own way." Taiwan can maintain its economic system, its way of living, and its party, government, Army and intelligence agency. The mainland and Taiwan will coexist peacefully. He said: "we will never harm even a single blade of grass or a tree on Taiwan." He also said that this arrangement shall remain unchanged for at least 100 years. If disputes occur in the course of implementing the reunification terms, both sides can seek solutions through consultation. The most important thing is that neither side will conduct anything causing harm to the other side in its own territory. Taiwan's Army will have the right to buy weapons from other countries to consolidate its self-defense ability.

2. After reunification, Taiwan will enjoy independent legislative rights, and can basically maintain its existing laws. On the principle of not violating the constitution, Taiwan's legislature has the right to enact its own laws which act as the foundation for Taiwan's administration.

3. After reunification, Taiwan will have its independent jurisdiction and judicial organs. The laws and acts on the mainland will not be applied to Taiwan. The court of last instance for Taiwan should be set in Taiwan rather than in Beijing.

4. After reunification, Taiwan will maintain certain rights to handle foreign affairs. It can handle its foreign economic relations independently. The Taiwan authorities can issue special passports to Taiwan people and grant entrance visas to foreigners. It can even have the right to sign some agreements directly with other countries.

5. After reunification, Taiwan can still use its special flag and use the title of "China, Taiwan."
According to Professor Yang, Deng stressed that all of these arrangements were based on the principle of "one China." Deng resolutely opposed Taiwan independence. He also said "it is impossible to openly promise that peaceful reunification is the sole form of reunification." Deng concluded that "apart from the principle of one China, the mainland has no other absolute condition. All other conditions and schemes are negotiable."

"The mainland is willing to respect history and current status, and will take a reasonable and flexible attitude to treat problems in the course of reunification, and will give full consideration to terms that are acceptable for Taiwan." 13

Compared with Professor Yang's article, a report by Xinhua News Agency a short time ago on Deng's talks with Yang was both short and brief for unknown reasons. 14 This was perhaps why Hongkong Qishi Niandai, in publishing Professor Yang's article, was so cautious as to write an editor's note which said, "writing according to the author's recollection and notes, this article has not been checked against the Chinese official records. The author will be held responsible if there should be some errors in the content." 15 Subsequent remarks or statements by Chinese top leaders confirmed, however, much of Deng's conversation with Professor Yang. In a speech on Sino-U.S.


14 For Xinhua's report, see Deng Xiaoping on China's Reunification, Xinhua, July 29, 1983, FBIS-China, August 1, 1983, PP.U1-U2.

relations at a dinner given by the World Affairs Council in Chicago and the First National Bank of Chicago, on October 15, 1983, Chinese Foreign Minister Wu Xueqian referred to Deng's "recent conversation" and stressed that this conversation was "more explicit and concrete" than the principles and policies put forward by the Chinese government on many occasions.  16

In his speech at a luncheon in New York given by the National Committee on U.S.-China Relations and Foreign Policy Association, on January 16, 1984, Premier Zhao Ziyang made many important points similar to Deng's talks with Professor Yang. Zhao said:

We are making persistent efforts for a peaceful settlement of the question of Taiwan's return. We have proposed talks between the Chinese Communist Party and the Kuomintang on an equal footing and a third round of cooperation. After the country is reunified, Taiwan, as a special administrative region of China, can retain much of its own character and keep its social system and life style unchanged. The existing party, government, and military setups in Taiwan can also remain unchanged. The central government will send no representatives or troops to station in Taiwan. Using the name "Taiwan, China," Taiwan may also continue its external economic and cultural exchanges, and foreign investments in Taiwan will be fully protected. The only change will be that the People's Republic of China alone is to represent China on the international area. In a word, neither party will swallow up the other... 17

One very interesting point in Zhao's speech was that when he was talking about the "only change" required of Taiwan, he avoided demanding Taiwan "lower its flag," a demand Deng actually


dropped in his discussion with Professor Yang.

The following year, President Li Xiannian, during his visit to Thailand, cleared one other point of Deng's earlier conversation. Li said, Taiwan "can also keep its existing intelligence gathering system" after its reunification with the mainland. 18

As for Taiwan's independent legislative rights, its jurisdiction and judicial power, and rights to handle foreign relations, all these were later addressed in a theoretical article "Concept Points Way to Reunification." 19 Finally, He Fang of the Chinese Academy of Social Sciences wrote on the "Future of Relations Between the Mainland and Taiwan" that "everything is open to negotiation, except the principle that there is one China in the world, and the mainland and Taiwan must be reunited." 20

Deng's conversation, represented the most conciliatory reunification approach to Taiwan after Ye's 9 point proposal. It was so conciliatory that, in principle, perhaps what could be offered to Taiwan had now all been offered. No one in Beijing, including Deng himself, could possibly be expected to go any further. The successful resolution of the Hongkong issue in 1984


19 This article was written by Yan Jiaqi. See Beijing Review, April 8, 1985, PP.22-23.

20 Key to Relations With Taiwan, by He Fang, China Daily, May 10, 1986, P.4.
provided for Beijing a precedent in which the special administrative region would be applied. Beijing, often without fundamentally differentiating the HongKong issue from the Taiwan question, seemed to draw a parallel between the two, and thus emphasized in principle the applicability of the HongKong solution to the resolution of the Taiwan problem. In Beijing's point of view, the Taiwan authorities "should be able to accept the 'one country, two systems' concept."

Taipei's Reaction

Taipei's reaction to Beijing's peaceful overtures has been constantly negative. Earlier, when Ye made his 9 point proposal, Taipei rejected it almost point by point. The proposal for the "three exchanges" was dismissed as arrangements from which "there is little that Taiwan would gain." The offer to Taiwan as a "special administrative region with high degree of autonomy" after reunification was ignored as "worthless," given the case of Tibet. It was viewed as giving Taiwan nothing, but taking away what it already had. To think that Beijing would leave Taiwan's present social-economic structure intact without eventually imposing its socialism on the island was considered "naive." The offer of seats for the Taiwan leaders and people in the central government was dispelled as "ceremonial" and "unrealistic," because no leaders of a "democratic system" could effectively function in a "communist state where policy is dominated by those following Marxism-Leninism." Beijing's
generosity in offering to give Taiwan economic assistance at times needed was rejected on the ground that communist leaders would like to "share in" Taiwan's economic prosperity. Beijing's promise of rights and privileges to the people of Taiwan, was considered "unrealistic," since such rights "are not even enjoyed by the people on the mainland." Investments on the mainland, it was claimed, would prove "not" very profitable. On the contrary, "far more money" would be gained from investments on Taiwan...Underlying all these rejections was the fear or belief that a "communist system" would eventually be imposed on the island should Beijing gain control of it. Thus, Taiwan replied that "unification under communism is forever unacceptable." Taipei believed that Ye's proposals were not meant seriously to be considered by Taipei; rather they were intended to "influence opinion in the United States" and elsewhere in order to further "increase pressure" on Taiwan to accommodate Beijing. 21

A short time later, Taiwan's Premier Sun Yun-hsuan made an authoritative comment on Ye Jianying's 9 point proposal. On June 10, 1982. Sun said:

    Regarding China's reunification, the two sides have advanced different views. Free China calls for Chinese reunification under the Three Principles of the People, whereas the Chinese Communist regime has advanced through ...Ye Jianying a nine-point proposal for so-called peaceful reunification which is actually intended to communize free China...We believe that Chinese reunification should be based on the free will of the Chinese people as a whole...The Chinese

Communists ...should give up the "four fundamental principles" as quickly as possible and take steps to change their way of life. If the political, economic, social and cultural gaps between the Chinese mainland and free China continue to narrow, the conditions for peaceful reunification can gradually mature. The obstacles to reunification will be reduced naturally with the passage of time.  

Whether Sun's remarks contained "something new," as some in Beijing speculated, could be argued. What could not, was the fact that Taiwan remained unchanged in its position that China should be reunified under the so-called Three People's Principles, not under communism. This position was reaffirmed within four months when Chiang Ching-kuo told Newsweek magazine that China's reunification "is possible only when the communist regime and system have disappeared from the mainland."  

As for Taiwan's reaction to Deng's most conciliatory reunification terms enunciated above, it appeared somewhat different in tone, but nothing changed in essence.

The Republic of China does not reject national reunification, nor does Taipei insist that the Kuomintang must be in control of a reunified China... The difference is that Taipei aims at achieving a reunited China under a democratic system. To the Chinese Communist leadership, however, reunification with Taiwan means subjugation of the island province's 18 million people under communism...It is not a question of a quarrel between two political parties. At stake is the future of China, a question of whether Chinese people will have democratic government or remain slaves under a totalitarian regime forever.  


So far, Beijing's reunification policy has gained little success except its popularity in China. The Taiwan authorities, though turning a blind eye on some informal contacts between scholars, athletes, and businessmen on both sides of the Straits, have shown little indication of a willingness to change even one of its established "three no's" policy, "no contact." Taiwan's attitude toward Beijing may have its own internal dynamics, but the U.S. factor holds the key.

**U.S. Attitude Toward China's Reunification**

As indicated earlier, U.S. policy on China's reunification has been deliberately vague. During the Taiwan Relations Act debate, which came immediately after normalization and Beijing's first reunification proposal, Deputy Secretary of State Warren Christopher of the Carter Administration, told the Senate Foreign Relations Committee and its counterpart in the House that, with regard to the reunification of Taiwan with the People's Republic of China,

> The U.S. is neutral on the subject. What we are not neutral about is how that unification shall come about...It is our position that if there is to be a reunification, it is of great importance that it must be peaceful and not be destabilizing in the area. But we do not have a position of encouraging the people on Taiwan to do something against their will.\(^{25}\)

\(^{25}\)Taiwan Legislation, House of Representatives, 96th Congress, 1st Session, P.39; also see Taiwan Hearings, United States Senate, 96th Congress, 1st Session, 1979, P.64.
The Reagan Administration has maintained the same position. In his statement before the House Foreign Affairs Committee, just one day after the August 17 communique, Assistant Secretary of State for East Asian and Pacific Affairs, John Holdridge made it clear that as to the U.S. position on the resolution of the Taiwan problem,

We have consistently held that it is a matter to be worked out by the Chinese themselves. Our sole and abiding concern is that any resolution be peaceful. It follows that we see no mediation role for the United States nor will we attempt to exert pressure on Taiwan to enter into negotiations with the People's Republic of China.26

Later, following President Reagan's April, 1984 trip to China, Assistant Secretary of State Paul Wolfwitz also told the House Foreign Affairs Committee that,

With regard to the question of Taiwan's future, which was raised by the Chinese on several occasions. The President stated clearly to the Chinese, as he and others in his Administration have done before, that we will honor our commitments, that we expect the Chinese to honor theirs, and that within such a framework, this issue is one for the Chinese on both sides of the Straits to resolve by themselves. Our sole and abiding concern, the President reiterated, is that any resolution be a peaceful one.27

Beijing has enough reason to suspect the U.S. "concern." Since 1972, the U.S. has been saying that it is interested in a peaceful settlement of the Taiwan question by the Chinese themselves. When the Chinese finally proclaimed their policy


regarding the peaceful reunification of Taiwan and declared it as "fundamental," Washington directly tied continuation of this policy to its arms sales to Taiwan. Now when Beijing presented its extremely conciliatory reunification formula to implement that policy, Washington says that it is "neutral" on the subject. This apparently frustrated Beijing, which began publicly repudiating the U.S. so-called "neutrality" as "not true." In his latest interview with Mike Wallace from Columbia Broadcasting System, United States, Deng Xiaoping said not without regret, that "the United States has long been involved." He pointed to the fact that in the 1950s, MacArthur and Dulles regarded Taiwan as an "unsinkable aircraft carrier" of the United States in Asia and the Pacific. He said that this is why "the Taiwan question has been the most important issue in the negotiation on the establishment of Sino-U.S. diplomatic relations." This is also why Beijing has been raising this question with the United States because of the latter's "involvement." Usually, Beijing would ask the United States to "observe truly and strictly" the mutually confirmed principles contained in the communiques between the two countries, and refrain from "obstructing" China's reunification effort. But this time, Deng explicitly urged the United States, and especially President Reagan, to do something with regard to this question. Asked what the U.S. and Reagan could do, Deng said, they could "encourage and persuade Taiwan first to have 'three exchanges' with us." He said, contacts of this kind could help enhance mutual understanding between the two sides of the Taiwan
Straits, thus creating conditions for them to proceed to discuss the question of reunification and ways to achieve it. 28

Deng's remarks seemed to be contradictory to his and others' position in the PRC government that the issue of Taiwan is a domestic affair and should be solved by the Chinese themselves. But given the fact that the way to Taipei lies through Washington, Beijing has somehow quietly added something new to this position. Beijing now holds that the Chinese nation's reunification, including that of Taiwan, is China's internal affairs from the viewpoint of law. But it was because of foreign aggression and interference over the past 100 or so years that the question arose. It is in this sense that China's reunification is not purely an internal affair and involves foreign relations. 29

Deng's remarks apparently constituted a "check" on the U.S. "neutral" position. It also reflected Beijing's mentality that "those on the right can do what those on the left can only talk about." 30 Whether Washington, and especially President Reagan would break their "neutrality" on the question as Beijing hoped seems highly questionable at the moment and perhaps even in the foreseeable future.


29 International Law Demands Research, by Shao Tianren, Advisor to the Foreign Affairs Committee of the National People's Congress Standing Committee, China Daily, June, 1986, P.4.

30 "Right" here refers to the Republican Party since it is mainly made up of the conservatives, while "left" refers to the Democratic Party which mostly consists of liberals. For reference, see Mao Tsetung's conversation with President Richard Nixon, in The Memoirs Of Richard Nixon, New York: Grosset & Dunlap Publishers, 1978, P.562.
Beijing faces a real dilemma. Its reunification policy cannot afford more generosity. The one-China principle definitely cannot be compromised. Any action leading to Taiwan's independence will absolutely be opposed and watched for very closely. Non-peaceful means to reunification cannot be ruled out. Socialism and the "four basic principles" will not be given up on the mainland. That the government of the PRC alone is to represent China on the international area cannot be expected to change. And perhaps the concept of "Hongkong people governing Hongkong" will not be applied to Taiwan after reunification. The "Taiwan people governing Taiwan" is always sensitive to Beijing for obvious reasons. Actually, it can be said that in principle Beijing's concessions have reached the limit. But until now, Taiwan has not been responsive, and possibly in the months and years ahead, it cannot be expected to be so. "Three no's" policy will continue into the future. For Beijing, the "Washington way" to Taipei is not at all through. Washington's "neutrality" on China's reunification will prove very difficult to be broken. Given the continued existence of a "who lost China" syndrome in the United States, perhaps no one wants to be blamed for the "loss of Taiwan."

The potential consequence of this "trilateral stalemate" for Beijing will be serious. Taiwan used to try to take advantage of the "American formula", normal relations with Beijing and substantial relations with Taipei short of diplomatic recognition, to expand its limited connections with the
countries that derecognized it. This was to some extent checked by Beijing's diplomatic warning to the countries concerned. Now that Beijing itself has offered Taipei such generous terms, and has promised that it has no intention of weakening and isolating Taiwan, as a declining and chaotic Taiwan is in neither side's interest, what if Taiwan publicly takes advantage of these terms to improve its international standing? By then, Beijing will be in an awkward position to counter Taiwan's possible moves. For Beijing to do this will be read in Taiwan as lacking "sincerity." There are other problems too. Countries that derecognized Taiwan but still have keen interest in doing business with it will also probably take advantage of Beijing's generosity to Taipei. As long as their relations with Taipei are non-governmental and non-official, what Beijing can do will be very limited. Whether the above prediction is reasonable will be tested by reality. If this proves to be the case, Beijing will have to study the new situation and its implications on the reunification of Taiwan with the mainland.
This thesis will conclude without a prognosis of the future but with a summary, and reflections, or its academic significance.

The Actuals

1. The Taiwan Relations Act is a product of its time. As a domestic act, it represents something new. It is an unprecedented move in American legislative history. As a "law of the land" stipulating the guiding principles of U.S. China policy, it also represents something old.

2. This act serves as a legal basis for the subsequent U.S. arms sales to Taiwan. And the act itself is based on a "legal rationale," though this rationale is not explicitly stated in any statutory language.

3. The "legal rationale" is to treat Taiwan as a "de facto entity with international personality." This idea has its own premises. While no longer recognized by the United States as a "de jure" government or state, Taiwan continues to control a population and territory and to carry out the usual functions of a government.

4. The Taiwan Relations Act, as a legal document based on this legal rationale, creates a "moral commitment" on the part of the United States. Quite often, Americans expressed this
moral commitment to Taiwan in such unequivocal terms: "America can not let her friends down."

5. The Taiwan Relations Act is a logical product of U.S. long-held ambiguities on the status of Taiwan. These ambiguities were introduced in the early 1950s, and have been retained and creatively reinterpreted ever since. They seem to have stood against the test of changing times. Unlike the usual diplomatic skill to bypass a thorny issue, these ambiguities actually have left open certain options. As far as this research can identify, the present legal rationale behind the Taiwan Relations Act holds on to the possibility of a de jure international status for a separate Taiwan, with an autonomous Taiwan associated with the mainland as the last choice.

6. Why is the United States not giving up Taiwan, and why did it opt for the Taiwan Relations Act? Numerous works have pointed to military and economic factors. But to what extent would the loss of Taiwan as a military base affect U.S. national security? And to what extent would the loss of Taiwan as a market affect the U.S. economy? The old legacy is well alive today as it was in the early 1950s. It is in this I find the period I am dealing with most analogous to the most difficult period between 1950 and 1955 in Sino-American relations. The point will be elaborated on later.

7. To summarize, the U.S. is committed to an "ideological position." This position is often expressed in "moral terms"
which is created by the "legal rationalization" of acts that are basically "political."

The Analogies

This legal rationalization of political acts is analogous to the period between 1950 and 1955 in Sino-U.S. relations, a period which will be long remembered for its lasting effects. When President Truman made his "political" decision to send the U.S. Seventh Fleet to neutralize the Taiwan Straits to contain the spread of Chinese Communism into East Asia, he immediately justified this "political act" with an introduction of "legal ambiguities" on the status of Taiwan. The following years witnessed a series of well-planned efforts by the U.S. to erect a "legal superstructure" to legalize these newly introduced ambiguities. The 1951 Peace Treaty with Japan, the 1952 Peace Treaty between Japan and Taiwan, and the U.S-Taiwan Mutual Defense Treaty of 1954, all satisfied this purpose.

American policy in the 1950's had as its objective the creation of "a ring of steel" around China extending from Japan through the Philippines to Southeast Asia, and finding its southern anchor in Thailand. This was built to "contain" Chinese Communism. An often-heard theme of that period was that "the Chinese Communist regime was illegitimate," and did not deserve recognition. This legitimist doctrine rationalized U.S. political policy of nonrecognition which lasted until the late
Overall, this neatly fits into the realist approach cloaked in moral and legal terms. A past not forgotten is a guide for the present. Many premises of the containment policy with its isolation and non-recognition may be gone with the changing times, but not all. Along with the old legacy of anti-communism, another is well worth mentioning, namely that the western form of development is better than the Communist form, and perhaps the sole legitimate form of development.

The Impact

The Taiwan Relations Act is an integral part of the United States new policy toward China. In fact, the present U.S. China policy is embodied in the Taiwan Relations Act. This determines the extent to which this act affects the People's Republic of China rather than Taiwan. The impact has already been felt and will be felt in the years ahead. What has already been felt is the effect on China's "reunification policy." That may seem ridiculous as well as ironical from the Chinese perspective. But my comparative study of China's Taiwan policy both before and after the Taiwan Relations Act indicates that had it not been for the Taiwan Relations Act, China's reunification policy would

1970s. 1

'1The legitimist doctrine requires: 1) acceptance of rule by the majority of state's citizens, preferably through a democratic procedure, and 2) satisfaction of the state's international obligations, particularly obligations towards the United States. The United States abandoned this doctrine in the early 1930s, but renewed it as a result of the second World War.
not have been formed in such a manner and would not have gone as far as it stands now. The short history of Sino-American relations with the Taiwan Relations Act is hardly a pleasant one. The bitter contention over the weapons sales almost resulted in a diplomatic catastrophe which would have spoiled what had just been achieved. The ambiguous communique prevented the worst from happening, but hardly improved relations. "The tree may prefer calm, but the wind will not subside." When the wind blows, it must be coming from somewhere related to the Taiwan Relations Act. That is the issue which can threaten the stability of Sino-American relations, if not turn back the clock of these relations.

The implications of the Taiwan Relations Act on international relations are obvious. While the normalization communique recognized the PRC as the "sole legal government of China," and acknowledged the "Chinese position that there is one China and Taiwan is a part of China," the Taiwan Relations Act enables relations between Taiwan and the United States to continue virtually unchanged. What may be called the American formula, provided a precedent in international relations to treat a diplomatically derecognized but ideologically preferred entity as if "it were a state." This formula has already shown its attractiveness to quite a number of countries such as Japan, Britain, France, Canada and others who wanted to improve their "cultural, commercial, and 'other unofficial' relations" with Taiwan. Recognition in international relations has developed to
such an extent that there is almost no demarcation between diplomatic and essential relations. This can hardly be ignored by scholars of international relations.

Experts in the field of international law have already pointed out the academic significance of the Taiwan Relations Act in their field. The significance is that it has provided something "innovative" in international law. In the context of two rival foreign governments, treaty relations with a former de jure recognized government which continues its actual control over the same territory as before the change in status, may remain in force if the derecognizing country treats it "as if it were a state" for purposes of its domestic law, and if the former governmental parties to the treaties so agree. The Taiwan Relations Act represents the best case to look at the contemporary practice of the United States with respect to the relationship between international and domestic laws. Its practice will certainly affect international relations in general terms.

Reflections

1. As indicated earlier, the Taiwan Relations Act is the logical product of the American ambiguities on the Taiwan issue. Long before the U.S. formal recognition of the People's Republic of China, China specialists both within and outside of the U.S. government had begun to ponder the implications of such recognition upon U.S-Taiwan relations.
Among the implications, one that received the most attention and consideration was the future security of Taiwan. Consensus was that the Congress could pass "legislation" to deal with this problem at the time when formal U.S. recognition would be transferred from Taipei to Beijing. With a free press in the United States, these views should have been well known to China. However, when the Taiwan Relations Act passed through the Congress, China was surprised by the scope and form of the new American commitments to Taiwan. This may be partly due to China's lack of efficient research, certainly not sufficient materials, on American studies. Other problems may find their origin in the structure of China's U.S. studies. For a long time, these studies have been more or less vertical, lacking, if not totally without horizontal coordination. This apparently posed and will continue to pose problems for China's policy makers.

2. China's initial slow and low-keyed reaction to the Taiwan Relations Act in the period of the Carter Administration and its strong and highly-publicized objections to this act in the early period of the Reagan Administration, reflected a long-held mentality within China that it feels more at ease with the Democrats than with the Republicans. And yet interestingly, the Republicans can do what the Democrats can only talk about. There may be justification for each one at certain time period. But there may be difficulty in finding one justification for both. Somehow, both of these two
mentalities seem to be functioning.

3. China's positivist approach to international law behind its reaction to the U.S. Taiwan Relations Act was hardly effective. There was a period when the U.S. was strongly advocating this theory on the nature of international law and held that the basis of that law was to be found only in "a system of rules" (specific agreements such as treaties and other internationally binding documents) or on "a consensual basis" (common consent of nations expressed through generally observed customary rules). But this period is long past. In its place, has been the "policy" and "value" oriented neorealist approach practiced by the United States. In this regard, the Taiwan Relations Act presents the best case in which the contemporary neorealist approach of the U.S. to international law can be examined. Objections to the Taiwan Relations Act based on the positivist theory and U.S. practice of that theory in its idealist period may have reflected China's lack of understanding of the authority and limit of international law and U.S. contemporary practice of that law.

4. The ability of the United States to maintain ambiguities on the status of Taiwan and enact a Taiwan Relations Act even after the two countries exchanged diplomatic relations constitutes an inability on the part of China to maintain its sovereignty and territorial integrity. This failure is an indication of China's continued national weakness, which produced a century of humiliation. This weakness is far from
As far as this situation exists, the resolution of the Taiwan problem will always be in question. In other words, China can not get rid of this burden of the past from a weak position.

5. Ideally, Taiwan should become a province of the People's Republic of China, but political realities seem to make this impossible at the present time. A possible resolution might be a highly autonomous Taiwan for the indefinite future thus eliminating the mentality of subordination, but in fact being under nominal Chinese sovereignty. At some future date, Taiwan might again merge with the mainland. Whatever the future of Taiwan will be, it ought to be some sort of special relationship with the mainland.

Academic Significance

The Concept of Linkage

This thesis explores the concept of linkage on two levels. On the national level, as far as the United States is concerned in the case of the Taiwan Relations Act, the linkage between domestic politics and foreign policy, between law and foreign policy apparently exists, and seems to function rather significantly. Political parties, pressure groups, separation of powers, and congressional hearings and debates— all of these were part of the domestic politics involved in the U.S. foreign policy making with respect to China and Taiwan. The long legislative and executive process of the Taiwan Relations Act
records all these politics. Actually, it can be said that a foreign policy issue regarding China was domesticated.

The linkage between the domestic law (the Taiwan Relations Act) and foreign policy (U.S. China policy) is very prominent. The Taiwan Relations Act links the establishment of diplomatic relations with the People's Republic of China to an unilateral understanding that the Taiwan issue will be solved peacefully. It further links any armed attack, use of force, boycott, or embargo against Taiwan to a threat to the peace and stability of the Western Pacific which is of grave concern to the United States. These principles of the Taiwan Relations Act have later become the principles guiding U.S. China policy. Given the reality that the domestic law has now assumed control over the foreign policy, what can be said at this point is that the traditional distinctions between foreign and domestic policies within the United States tend to break down.

At the international as on the national level, there are also linkages between domestic politics and foreign policy. We see how a transnational relationship (as in the normalization of relations between China and the U.S.) has affected the domestic politics of a state (the United States) and that its official decision-makers were in turn influenced in their foreign policy decisions. We also see how the domestic politics which centered around the Taiwan Relations Act have frustrated and influenced China's decision-making on the politically internal, but in reality internationalized, Taiwan issue. It is also obvious that
these U.S. domestic and foreign policies made within this context, have influenced China's general foreign policy as in her shift of emphasis from an anti-Soviet to an independent stance (There are other factors attributed to this change, but this is certainly a very important one). The dilemma that evolved out of all this represents a clear linkage situation existing in Sino-American relations. As the Chinese responded to the U.S. interest in the peaceful resolution of the Taiwan issue with a fundamental peaceful reunification policy, the U.S. immediately linked the continuation of this policy to its qualitative and quantitative reduction of arms sales to Taiwan. A document which reflected this linkage situation is the August 17 communique of 1982 on the U.S. arms sales to Taiwan. In sum, the United States has explored the function of linkage considerably to its favour. In fact, the concept of linkage has become an important instrument of U.S. foreign policy to influence China— an influence that encompasses inducements, arms sales to Taiwan or the threatened use of force against China.

Recognition and Concepts of De Jure and De Facto Recognition

The political reality of a divided state such as China with two regimes contending for legitimacy within that state has freed many countries from the recognition of China as a state, but at the same time imposed upon them a dilemma of the recognition of a government. This thesis has unfolded before us in the unique practice of the United States with respect to the concept of de jure and de facto recognition of these contending
governments to avoid this dilemma, though temporarily. The de jure recognition of the government of the People's Republic of China, and derecognition of the government of the Republic of China as such, brought forth an urgent question of what the United States would consider Taiwan to be. The United States would continue to have an interest in the peaceful resolution of the Taiwan issue, the maintenance of more than 55 treaties and other international agreements on the one hand, and commercial, cultural, and other relations (including arms sales) with Taiwan on the other. This question was immediately solved by the Congress through its passage of a Taiwan Relations Act which treated Taiwan as a "de facto entity with international personality" for purposes of U.S. domestic law. Not surprisingly, this legal rationale was made without distinguishing between de jure and de facto recognition of which rival government represents the state of China. According to Professor Victor Li, who appears to have been responsible for offering this legal rationale, international law supports treating the de facto government just about the same as a de jure recognized government. The U.S. legislative approach has been to treat them similarly. As introduced earlier in the thesis, this practice of the United States is unprecedented. Many other countries' de jure recognition (such as Britain, Canada, and Japan) of the government of the People's Republic of China may imply continued de facto treatment of the governing authorities in Taiwan. But neither of them has, like the United States, kept in force the previous treaties and other
international agreements with Taiwan, and none has passed a
domestic law treating Taiwan just as a de jure recognized
government. The United States may derive some short-term
benefits from this practice, but this policy of expediency and
intentional ambiguity will be difficult to maintain forever.
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