

An Uncertain Relationship: The United States, Taiwan and the Taiwan Relations Act*

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The United States has separate mutual security treaties with Japan and the Republic of Korea which provide for stationing American forces and have established procedures for close co-operation. These alliances constitute the keystone of the American security position in East Asia and, possibly, the trigger for future involvement in the area.

Yet since the early 1990s these formal alliances have been overshadowed by a relationship based not on a treaty, but rather on an act of Congress – the Taiwan Relations Act (TRA) of 1979. This domestic legislation provides neither for the stationing of American troops on Taiwan nor for military co-ordination. Nevertheless, it figured prominently when, in March 1996, the Clinton administration sought to deter the People's Republic of China (PRC) from disrupting Taiwan's presidential elections by dispatching the largest naval force to be deployed in the region since the Vietnam War. These events focused attention on this legislation passed after the Carter administration's normalization of relations with the PRC. At that time, there was considerable Congressional self-congratulation regarding its legislation of a foreign policy commitment and its central role in enforcing that commitment.

Nevertheless, afterwards, the impact of the TRA has been a matter of debate. Some regard it as a virtual treaty while others depict it as providing for little more than what was already present in existing legislation or the Constitution. Some praise it as a key to the security of Taiwan over the past 20 years while others see its progressive weakening. This discussion joins the debate through an analysis of the origins of the act; its evolutionary course since 1979; and the differing impacts which it has had on the PRC/Taiwan policy of the United States.

The Taiwan Relations Act: Origins, Ambiguities and Opportunities

The TRA: assuring Taiwan's security? The origins of the TRA were in the legislation submitted by the Carter administration (S.245) intended to maintain "commercial, cultural and other relations with the people on Taiwan on an unofficial basis."¹ This was technical legislation concerned largely with maintaining the status of "the people on Taiwan" as a foreign state under American law and providing for the creation of a non-profit

* The authors wish to thank Martha Johnson and Nada Tomisova for their research assistance. Special thanks to Nancy Hearst of the Fairbank Center at Harvard University who provided her usual perceptive editorial and critical input.

1. For a text of this bill see United States Congress, Senate, Committee on Foreign Relations, *Taiwan: Hearings Before the Committee on Foreign Relations* (hereafter *Taiwan: Hearings*), 96th Congress, 5,6,7,8,21 and 22 February 1979 (Washington, D.C.: Government Printing Office, 1979), pp. 3–10.

institution, the American Institute in Taiwan, to represent American interests.

Congressional action beyond this legislation was inevitable, however. The manner in which normalization had taken place (there was virtually no consultation with Congress despite the demands of powerful members, such as Senator Robert Dole, that the Senate be consulted before the administration made any changes to the treaty with Taiwan) as well as its substance (the termination of the treaty and the failure to secure a pledge for a peaceful resolution from Beijing) assured that a broad coalition would emerge in support of adding a security component to the legislation. It was also a diverse coalition driven by motives ranging from pro-Taiwan, anti-communist sentiments, to support for normalization but with concerns over the impact of the treaty termination on American credibility, to anger over the manner in which the decision had been made.² Indeed, one author has suggested that Congressional determination to draft its own legislation had more to do with the manner in which normalization was carried out than with its substance.³

President Carter warned that he would reserve the right to veto legislation contrary to normalization. Administration spokespeople argued that language assuring Taiwan's security was unnecessary. The United States had made its interest in "peaceful resolution" clear: use of force would damage PRC economic ties with the West, Beijing lacked the capacity to invade the island and Taiwan would maintain its defensive capabilities because of American arms sales.⁴

Congress was not impressed. The leading response was a proposed joint resolution introduced by Edward Kennedy and Alan Cranston in the Senate and Lester Wolff in the House. Senator Kennedy argued that the sponsors hoped that a "legislative package" would emerge which would provide for "substantive continuity in the vital security sphere ... on unofficial terms" in the same manner as administration legislation provided for such continuity in "commercial, cultural and other relations." Such continuity, he was confident, could be achieved in a manner that was "consistent with" normalization; did not establish official relations with Taiwan; required Congressional participation; and did not commit the United States "to specific actions under hypothetical circumstances." The goal was to "do no more nor less than our existing security commitments."⁵

2. Robert G. Sutter, *The China Quandary: Domestic Determinants of U.S. Policy, 1972-1982* (Boulder: Westview Press, 1983), pp 5-7.

3. Victoria Marie Kraft, *The U.S. Constitution and Foreign Policy: Terminating the Taiwan Treaty* (New York: Greenwood Press, 1991), pp. 150-51.

4. This paragraph is based on the testimony of the administration's lead witnesses at Congressional hearings. See United States Congress, House of Representatives, Committee on Foreign Affairs, Subcommittee on Asian and Pacific Affairs, *Implementation of the Taiwan Relations Act: Issues and Concerns* (hereafter *Implementation of the Taiwan Relations Act*), 96th Congress, First Session, 14 and 15 February 1979 (Washington, D.C.: Government Printing Office, 1979), pp. 11-61.

5. Lester L. Wolff and David Simon (eds.), *Legislative History of the Taiwan Relations Act: An Analytic Compilation with Documents on Subsequent Developments* (Jamaica, NY: American Association for Chinese Studies, 1982), pp. 1-2. See also Alan Cranston's statement, *ibid.* pp. 3-4.

This proposal, with its contradictory goals of preserving both a security commitment to Taiwan and normalized relations with Beijing, set the parameters of subsequent legislation. The solution to the contradiction lay in the wording of the commitment in article five of the 1954 Mutual Defense Treaty:

Each Party recognizes that an armed attack in the Western Pacific Area directed against the territories of each of the Parties would be dangerous to its own peace and safety and declares that it would act to meet the common danger in accordance with its constitutional processes.⁶

Undoubtedly many members of Congress were surprised to find that this treaty was – like most others to which the United States was a party – not an automatic commitment. This language would be the most important element in achieving Kennedy’s goals as well as the presidential acceptance.

The final wording of the TRA recast much of this language in a lengthy and convoluted form.

- “... peace and stability in the [Western Pacific] area are in the political, security, and economic interests of the United States, and are matters of international concern”;
- “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”;
- the United States would “maintain the capacity to resist any resort to force or other forms of coercion that would jeopardize the security, or the social or economic system, of the people of Taiwan”; and
- the President was 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,” while “the President and the Congress shall determine, in accordance with constitutional processes, appropriate action by the United States in response to any such danger.”⁷

What was omitted was the earlier language which identified an attack on Taiwan as a danger to the “peace and security” of the United States. An attempt to preserve this sense by substituting the phrase “to the security interests of” for “of grave concern to” narrowly failed.⁸

The sentiment to keep the language ambiguous was driven by very different concerns which included the fear of entrapment by Taiwan in a cross-strait confrontation; the importance of normalization; a sense that in the event of a crisis, American interests had to be considered

6. “Text of mutual defense treaty between the United States of America and the Republic of China,” in United States Congress, Senate, *Oversight of the Taiwan Relations Act: Hearings Before the Committee on Foreign Relations* (hereafter *Oversight*), 96th Congress, First Session, 15 November 1979 (Washington, D.C.: Government Printing Office, 1980), p. 137.

7. Wolff and Simon, *Legislative History of the Taiwan Relations Act*, pp. 288–89.

8. Yufan Hao, *Dilemma and Decision: An Organizational Perspective on American Policy Making* (Berkeley: Institute of East Asian Studies, University of California, 1987), pp. 167–68 and *Congressional Record–Senate*, 8 March 1971, p. 4316.

in relation to the relationships with Japan and South Korea; and a worry that too open a commitment to Taiwan would enhance the “imperial presidency.”⁹

Indications in the legislative history of what might happen if Taiwan were attacked are vague. Although one influential Democrat argued that the bill left “no room for doubt that it is the official policy to oppose ... [a] military attack,” his colleagues were not sure.¹⁰ The report accompanying the House version declared that the legislation simply “makes clear that there should be a prompt response by the United States,” but did not attempt to specify what the particular circumstances or response might be.¹¹ The Senate report went further, acknowledging that there might be “a decision to do nothing.”¹²

The other security component grafted on to the administration’s legislation related to the sale of “defensive arms.” Congress responded sceptically to the executive pledge made at the time of normalization to continue sales of defensive weapons to Taiwan.¹³ A legislative basis for such sales was seen as a complement to the security clauses.¹⁴ Thus, the TRA stipulated that Taiwan would be provided:

... such defense articles and defense services in such quantity as may be necessary to maintain a sufficient self-defense capability ... [and that] the President and Congress shall determine the nature and quantity of such defense articles and services based solely upon their judgment of the needs of Taiwan, in accordance with procedures established by law. Such determination of Taiwan’s defense needs shall include review by United States military authorities in connection with recommendations to the President and the Congress.¹⁵

Amendments to forbid the President from considering the views of Beijing in deciding future sales to Taiwan and to specify, by name, weapons to be sold to Taiwan failed.¹⁶

Two issues – the definition of “defensive weapons” and the manner in which such weapons would be procured – were resolved using the Arms Export Control Act which was included in the TRA by the reference to sales “according to procedures established by law.”¹⁷ This was intended to maintain continuity in the process by which the ROC purchased arms.¹⁸ However, it also weakened Congressional influence by putting it in the passive position of approving or rejecting arms sales proposals put before

9. Hao, *Dilemma and Decision*, p. 135.

10. Wolff and Simon, *Legislative History of the Taiwan Relations Act*, p. 22.

11. *Ibid.* p. 17.

12. *Ibid.* pp. 141–42.

13. Hao, *Dilemma and Decision*, pp. 139–140.

14. For a convenient summary of Congressional statements corroborating these points, see Wolff and Simon, *Legislative History of the Taiwan Relations Act*, pp. 92–103 and 117–149.

15. “Taiwan Relations Act,” in *ibid.* p. 289.

16. *Ibid.* pp. 93, 95, 97 and 100.

17. *Ibid.* pp. 102, 124, 125, 133 and 135–38.

18. *Ibid.* pp. 118–19.

it.¹⁹ Robert Dole's amendment requiring the President not simply to report arms sales to Taiwan but also to report "... the status of all such requests for arms from the Taipei authorities" also failed.²⁰

The TRA: asserting congressional prerogative. In 1979 Congress was legislating the TRA in the shadow of the Vietnam War. There was a lingering determination to assert Congress's prerogative vis-à-vis an "imperial presidency." Moreover, as the legislative process progressed, a sense of pride of ownership in the act also developed. One member declared that the TRA was "our own creation ... This is Congress asserting itself in foreign affairs."²¹ Others suggested that Congress now had special responsibility for the island.²²

Thus one might have expected Congress to establish strong provisions requiring consultation. Senator Joseph Biden had argued that the purpose of the legislation was not to assure Taiwan but to assure presidential consultation with Congress.²³ However, there was no guidance regarding the nature of consultation nor of sanctions on a president who refused.²⁴ Oversight was related to consultation. Expressions of its importance were ubiquitous in the debates.²⁵ However, the act contains modest wording whereby the president would report on the implementation of the act during its first three years and inform Congress of any agreement to which the American Institute in Taiwan was a party.

The contrast between legislation on consultation and oversight and the fierce rhetoric of debate is consistent with the arguments of those who stress the limitations on Congressional activism on any issue relating to foreign policy. Specifically, they point to Congress's lack of information, the weakness of the oversight mechanism as well as the heavy weight of historical precedent, constitutional prerogative and legislation which favours presidential power. In addition they also point to Congress's institutional unwillingness to take responsibility for an area that entails great risks but brings little benefit for members concerned with their constituents' needs. Congress, it has been argued, even in the post-Vietnam era, has made strong rhetorical commitments, but provided few substantive mechanisms for implementation or

19. Hao, *Dilemma and Decision*, pp. 194–95, and Richard Bush, "Helping the Republic of China defend itself," in Ramon H. Myers (ed.), *A Unique Relationship: The United States and the Republic of China Under the Taiwan Relations Act* (Stanford: The Hoover Institution Press, 1989), pp. 79–118.

20. *Congressional Record—Senate*, 7 March 1979, pp. 4099–4100.

21. *Washington Post*, 9 March 1979. Hao, *Dilemma and Decision*, makes a similar point.

22. For example, John Danforth suggested that since the administration had projected the appearance of "abrogating" America's responsibility towards Taiwan, it was "now on our shoulders in Congress to assume this responsibility." Senate Foreign Relations Committee, *Taiwan: Hearings*, pp. 416–17 and 427.

23. *Ibid.* pp. 383–85.

24. This is a central thesis of Bush's superb "Helping the Republic of China defend itself," pp. 79–118.

25. Cited in Hao, *Dilemma and Decision*, p. 193.

follow-up.²⁶ Still, the nature of the TRA can not be explained simply as institutional shirking. It also resulted from the political circumstances surrounding the act.

The TRA was the work of an ambivalent and divided Congress that could realistically reach overwhelming agreement on the importance of doing *something* to respond to an affront to its institutional pride. Members of the Democratic Party, then in the majority, were generally sympathetic to normalization. Some chose to view the TRA as a commitment to defend Taiwan. However, the legislation was primarily an effort to save face on the consultation issue and present the impression of continued American commitment.

Congress and the president were pursuing parallel strategies.²⁷ The president, realizing that it would be politically impossible to sever all relations with Taiwan, chose to use unilateral statements to preserve a semblance of a continued commitment to Taiwan. Congress went further, creating the TRA which maintained enough of a commitment to Taiwan to satisfy concerns regarding the abandonment of an "old ally," but remained general enough to secure wide Congressional support, avoid a veto and not provoke Beijing. The TRA thus did not simply represent an example of Congressional shirking. Like the president, Congress sought to straddle the politically unacceptable either/or choice that was the only definitive solution to PRC demands. In short, the ambiguity in the American relationship with Taiwan, which many in Congress would later condemn, was an integral part of the TRA's political logic and the key to its passage with bipartisan support.

Nevertheless, the discrepancy between this intent and the words of the TRA remained. The act was an assertion of Congressional prerogative which grew out of an inter-branch conflict. Should such conflict re-emerge, the act would be a natural choice for reasserting that prerogative. However ambiguous, its language could still justify a security relationship with Taiwan and a major Congressional role in managing it. This solution to improved relations with the PRC could easily become a problem in securing further improvement.

The Taiwan Relations Act, 1979–1994: An Uncertain Mandate

1979–82: Congressional activism or executive dominance? Or both?

Soon after the passage of the TRA a Senate report asserted that the Carter administration was adhering to the legislation it had submitted, rather

26. Barbara Hinckley, *Less than Meets the Eye: Foreign Policy Making and the Myth of the Assertive Congress* (Chicago: The University of Chicago Press, 1994), p. ix. See also Stephen R. Weissman, *A Culture of Deference: Congress's Failure of Leadership in Foreign Policy* (New York: Basic Books, 1995).

27. In his *Dilemma and Decision*, Yufan Hao makes the relationship between the two branches the central thesis of his study. This discussion has benefited from his analysis.

than to that which had become law.²⁸ This seems to have been the case especially with regard to arms sales where there was minimal consultation.²⁹ When Ronald Reagan was elected president in 1980, this issue quickly came to a head. During the campaign Reagan had used the TRA to legitimize his criticism of the Carter administration and his own pro-Taiwan rhetoric. The act, he maintained, was the “law of the land” and he pledged to “enforce it.”³⁰ With Reagan’s election, it seemed that the TRA would realize the intentions of its more conservative Congressional supporters.

However, in January 1982, despite Congressional complaints regarding lack of consultation, Taiwan’s request for an advanced fighter plane was denied.³¹ In August 1982, the United States and the PRC announced a joint communiqué on the subject of arms sales to Taiwan. In it the American side stated

that it does not seek to carry out a long-term policy of arms sales to Taiwan, that 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, and that it intends to reduce gradually its sales of arms to Taiwan, leading over a period of time to a final resolution. In so stating the United States acknowledges China’s consistent position regarding the thorough settlement of this issue.³²

The Congressional response was bipartisan outrage.³³ Once again Congress had played a secondary role in an executive decision touching on the TRA.

Still Congress – more accurately the Senate – was neither inattentive nor deferential to the executive. Most of the original drafters of the TRA were still in office. The determination to protect Congressional prerogatives remained. The fact the Senate had a Republican majority when the 1982 communiqué was announced certainly moderated reaction. However, the tone of the hearings on the communiqué was set by Democrat John Glenn who charged that the administration had “discarded” the framework of the TRA by agreeing to wording that suggested a phasing out of arms sales and set levels for their quantity. Most of all, the Senate was angered by the fact that PRC pressure had clearly influenced American policy towards Taiwan – despite the intent of the TRA.³⁴

28. *Congressional Record–Senate*, 1 July 1980, p. 18208.

29. Robert Sutter, “The Taiwan Relations Act and the United States China policy,” in Myers, *A Unique Relationship*, pp. 61–62.

30. *The New York Times*, 26 August 1980.

31. *Washington Post*, 13 January 1982.

32. Wolff and Simon, *Legislative History of the Taiwan Relations Act*, pp. 312–13.

33. *The New York Times*, 18 August 1972 and Wolff and Simon, *Legislative History of the Taiwan Relations Act*, pp. 326–29.

34. United States Congress, Senate, Committee on Foreign Affairs, *U.S. Policy Towards China and Taiwan*, 97th Congress, Second Session, 17 August 1982 (Washington, D.C.: Government Printing Office, 1982), pp. 1–5.

In response, the Reagan administration “clarified” certain elements in the communiqué, suggesting that arms sales could be increased in a crisis; that the future level of arms sales would be adjusted for inflation; that the transfer of defence technology was not included in calculating sales; that Taiwan had been given assurances (the “six assurances”) regarding American policy; and that weapons systems would be replaced by modern – not outdated – technology.³⁵

Another Senatorial intervention took note of this apparent shift in policy, but focused on procedure. In early autumn 1982, the Senate Subcommittee on Separation of Powers conducted a study that assessed the compatibility of the communiqué with the TRA from a Constitutional perspective. This study proceeded from the assumption that if the communiqué was not consistent with the TRA, then this would present “a prima facie case of failure by the President to execute faithfully the laws of the United States” – presumably an impeachable offence. It concluded that although the “apparent meaning” of U.S. statements was “inconsistent with the policy set forth in the Taiwan Relations Act,” subsequent “statements and actions by the administration” were “generally consistent with the act.”³⁶

These early developments demonstrated the vulnerability of the solution to normalization. The PRC was becoming impatient with the very limited distance that Washington had put between itself and Taiwan. And, once again, in seeking to preserve the earlier momentum, the executive was exploring ways to increase that distance. However, the TRA was making this difficult. The 1982 interventions suggested that the act could provide legal authority for a Congress which, guided by partisan and/or policy differences, sought to limit presidential attempts to improve relations with the mainland.

1983 to 1994: Congressional passivity and the roots of change. The fact that any further development of the potential contradictions in United States policy towards the PRC did not develop at this time was due largely to American politics and the environment in Asia. At home, China policy had entered a period of bipartisanship. Sino-American relations were in a honeymoon phase, and cross-strait relations were moving in a positive direction as economic, cultural and even political relations slowly developed. In this context the TRA seemed very unimportant.

The most obvious indicator of this is statistical. From the 98th Congress (1983–84) until the 101st Congress (1989–90), the TRA was

35. The six assurances were that the United States “pledged (1) not to set a date for ending arms sales to Taiwan, (2) not to hold prior consultation with Beijing on arms sales to Taiwan, (3) not to play any mediatory role between Beijing and Taipei, (4) not to alter its position regarding Taiwan’s sovereignty, and (6) not to exert pressure on Taipei to enter negotiations with Beijing.” Hao, *Dilemma and Decision*, pp. 276–78.

36. United States Congress. Senate, Committee on the Judiciary, Subcommittee on Separation of Powers, *Taiwan Communiqué and Separation of Powers* (Washington, D.C.: Government Printing Office, 1983), pp. 5–6 and 18.

mentioned only five times in legislation or resolutions introduced in either house.³⁷ Only two of these were related to security issues and only one to a specific issue: to require that the Secretary of State submit annual reports on the implementation of the TRA. This failed amendment was an atypical act of Congressional activism.³⁸ Overall, members were largely passive, merely inserting into the record *post-facto* reports of arms sales to the island.³⁹

Action on Taiwan was restricted largely to the usual diet of advocacy legislation (such as that Taiwan not be expelled from the Asian Development Bank); proposals to enhance economic relations; and statements in praise of Taiwan's economic progress.⁴⁰ Congressional attention was also focused on domestic developments in Taiwan. Before the lifting of martial law in 1987, Congressional liberals had criticized authoritarian rule on Taiwan. Thereafter, they praised democratization on the island.⁴¹

The June 1989 events at Tiananmen and President George Bush's response were the catalysts for a new round of activism on the Taiwan issue during the 101st (1989–90) and 102nd (1991–92) congresses. Hopes for change of the PRC's authoritarian system had been dashed. The economic prosperity and democratization of Taiwan provided a new rationale for those in Congress who promoted U.S.–Taiwan relations as well as for those Democrats who saw Bush's policies as fodder for partisan politics.⁴²

Still, unlike during the 1979–82 period, the legislative mandate contained within the TRA itself played a relatively minor role. References to it were largely absent in floor debates (a mere 24 references) and completely absent in proposed legislation (excluding resolutions) during

37. These tabulations are drawn from THOMAS, the Library of Congress's online reference service for Congressional documents.

38. House Amendment 307, 99th Congress, and *Congressional Record–Senate*, 11 July 1985, pp. 18583–87.

39. There was a joint resolution proposed to prohibit the sale of avionics kits to the PRC unless advanced aircraft were sold to Taiwan. It died in committee. House Joint Resolution 592, 99th Congress. For examples of the arms sales reports see, *Congressional Record–Senate*, 18 July 1983, pp. 19681 and *ibid.* 19 February 1985, pp. 2513–14.

40. House Concurrent Resolution 120, 98th Congress; Senate Resolution 137, 98th Congress, House Resolution 5563, 100th Congress; and *Congressional Record–Senate*, 1 May 1984, p. 10487.

41. Compare Senate Concurrent Resolution 38 and House Concurrent Resolution 344, 98th Congress, as well as Senate Concurrent Resolutions 70, 121 and House Concurrent Resolution 49, 99th Congress with *Congressional Record–Senate*, 30 September 1986, p. 27429 and *Congressional Record–House*, 3 October 1986, pp. 28673–4.

42. See for example, *Congressional Record*, 28 July 1989, p. E2728, *ibid.* 19 September 1989, p. E3089, House Concurrent Resolution 233, 101st Congress, *Congressional Record–Senate*, 26 March 1990, p. S3161, *ibid.* 20 May 1991, pp. S6154–55 and *ibid.* 19 May 1992, pp. S6891–92. For an excellent outline of actions taken by Congress from 1989 to 1999 see Yann-huei Song, "The second decade of the Taiwan Relations Act: U.S. Congressional involvement in the implementation of the law," paper prepared for the International Conference on United States–Taiwan Relations: 20 Years after the Taiwan Relations Act, Taipei, Taiwan, 9–10 April 1999. The discussion which follows has benefited much from this comprehensive paper.

the 101st and 102nd congresses (1989–92).⁴³ There were few assertions of a right to share the policy-making prerogative with the executive or attempts to oversee its actions.⁴⁴

During the 1992 campaign Bill Clinton harshly criticized President Bush's China policy. When he took office, Clinton decided to respond to Congressional demands to link MFN with an improvement of the human rights situation in the PRC. However, growing pressure from the Senate to enhance the relationship with Taiwan further complicated the situation. As one State Department official put it: "How can we get Congress off our backs?"⁴⁵ The answer was a review of Taiwan policy which some in Congress saw as an opportunity to strengthen the TRA and United States' relations with Taiwan.

This activism was further stimulated by two events. The first was a stopover in Hawaii by President Lee Teng-hui during which the State Department granted permission for an overnight stay if he did not leave the airport. Lee refused, spending the evening on the plane. Congress was outraged and, with the forthcoming Taiwan policy review in mind, there was a flourish of proposed legislation regarding visits by Taiwanese officials.⁴⁶ The second was the announcement of the results of the Clinton administration's Taiwan policy review which, in the eyes of many in Congress, unjustifiably limited relations with Taiwan.⁴⁷

There was a sharp reaction in the Senate to these events. Senator Charles Robb, chair of the Senate Subcommittee on East Asian and Pacific Affairs, reminded administration witnesses that the management of relations with Taiwan was a shared "responsibility between the Congress and the executive branch ... Congress is by law more actively involved in the conduct of relations with Taiwan than other countries in the world."⁴⁸ This assertion, made by a Democrat, suggested a reawakening of legislative prerogative.

Confrontation in the Taiwan Strait and TRA Redux: 1993–2000

A changed context. In 1993 "unofficial" representatives from the PRC and Taiwan met in Singapore. By early 1995 it seemed that improved

43. Examples of the relatively innocuous references can be found in House Concurrent Resolution 210, 102nd Congress, First Session and House Concurrent Resolution 193, 102nd Congress, First Session. The statistics are derived from the search engine in THOMAS.

44. The fact that President George Bush's decision, announced in September 1992, to end the nearly decade-old stalemate on the issue of advanced fighter aircraft by selling F-16s to Taiwan (an apparent violation of the 1982 communiqué) was made largely without Congressional involvement clearly illustrates this. For detailed discussion of this decision, see Patrick Tyler, *A Great Wall: Six Presidents and China: An Investigative History* (New York: Public Affairs, 1999), pp. 376–79.

45. Jim Mann, *About Face: A History of America's Curious Relationship with China, from Nixon to Clinton* (New York: Alfred A. Knopf, 1999), p. 321.

46. For a listing of the proposed legislation see Song, "The second decade of the Taiwan Relations Act," p. 51.

47. Mann, *About Face*, p. 319.

48. "Hearing of the East Asian and Pacific Affairs Subcommittee," *Federal News Service*, 27 September 1994.

relations were a possibility. However, in May of that year, as a result of Congressional pressure, a visa was granted to President Lee Teng-hui to attend a class reunion in the United States. The mainland demonstrated its displeasure by staging military exercises and missile tests. When similar actions were taken in the midst of Taiwan's presidential elections in early 1996, the United States dispatched two aircraft carrier groups to the area. The immediate danger of armed confrontation passed, but cross-strait relations lurched, for the next four years, between stalemated negotiations and signs of renewed crisis.

From 1993 to 1996, Sino-American relations stumbled from controversy to controversy. The military exercises of 1996 spurred the Clinton administration to end the confrontational cycle with the PRC. Over the next four years, it worked to improve relations with a PRC leadership increasingly focused on the necessity of realizing reunification and suspicious that American support was encouraging Taipei's resistance. Cross-strait relations became the principal factor complicating administration efforts to "engage" China.

In the United States domestic politics were transformed by the Republican Congressional victory. The strident anti-administration tone of the new leadership after 1995 set the stage for a bitter partisan inter-branch confrontation. The conservative Republican leadership joined liberal human rights advocates (many from the Democratic Party) to create an atmosphere deeply distrustful of Clinton initiatives. This mood gained strength from, but also fed, charges that Beijing meddled in American politics, stole weapons technology, and was building weapons systems capable of threatening Taiwan and the United States.

In sum, from 1995 to 2000 a concatenation of events, both international and domestic, changed the context for Washington's Taiwan/PRC policy. Seeking to improve relations, the Clinton administration faced PRC demands to demonstrate that it did not encourage separatist sentiments in Taiwan. As the administration sought to distance itself from the island, a partisan Congress, sceptical of the policy of engagement, acted to "balance" the Clinton policy by enhancing the American relationship with Taiwan.

*Turning point: the 1996 confrontation.*⁴⁹ In January 1996, Taiwan moved to centre stage. As indications grew that Beijing would express its dissatisfaction with the forthcoming presidential election on Taiwan, there were calls from Congress for American action.⁵⁰ On 7 February, the Senate Subcommittee on East Asian and Pacific Affairs held hearings to which it invited Assistant Secretary of State Winston Lord and Deputy Assistant Secretary of Defense Kurt Campbell.

49. Our analysis of this event has benefited greatly from conversations with Robert Ross. See his "The 1995–1996 Taiwan Strait confrontation: coercion, credibility, and the use of force," *International Security*, Vol. 25, No. 2 (Fall 2000).

50. *Congressional Record*, 24 January 1996, pp. 338–40 and 25 January 1996, p. E88.

Questioners focused on the ambiguity regarding a United States response in the event of military confrontation and the administration's failure to consult Congress during the July 1995 military exercises.⁵¹ Administration witnesses responded by using the terms of the TRA to minimize legislative activism. Winston Lord noted that since a military "threat" to Taiwan had not yet materialized, the administration could not make an unambiguous statement regarding the defence of Taiwan as the TRA required precedent consultation with Congress once such a threat existed. In this respect, he asserted "there's no ambiguity, in my view, in the minds of either Taiwan or Beijing or anyone else, that we would respond in close consultation with Congress to threats to Taiwan."⁵²

When, in March, the PRC announced its first round of military exercises, Congress focused on the issues of ambiguity and consultation. Initially, separate resolutions were introduced in the Senate (S. Con. Res. 43) and the House (H. Con. Res. 148) invoking the TRA. As the legislative process proceeded, differences between the two resolutions became evident.

The House resolution, taken up first, was concerned more with prescribing a response to the confrontation than establishing the necessity of consultation. With reference to the TRA, it asserted that the "sense of the Congress" favoured specific actions by the United States which included: maintaining American military capacity to resist any "resort to force or other forms of coercion" that threatened the security of Taiwan; establishing a naval presence to keep sea lanes open "in and near the Taiwan Straits"; supplying defensive arms to Taiwan; and, "in accordance with the Taiwan Relations Act and the constitutional process of the United States," assisting in the island's defence against "invasion, missile attack or blockade" by the PRC.⁵³

The language of this final stipulation went beyond the language of the TRA which was, in Representative Lee Hamilton's words, intended "to give the United States maximum flexibility in dealing with Chinese threats to Taiwan." This resolution, he argued, appeared "to push American policy further than it has ever gone before in a quarter of a century" towards a "commitment to defend Taiwan."⁵⁴ The House, dissatisfied with ambiguous language, was seeking to move the TRA – and American policy – in the direction of a *de facto* mutual defence treaty. Still, the debate that accompanied the passage of the resolution remained as ambiguous as the act itself regarding American action. While the House wanted action to be taken in defence of Taiwan, there was no single view of what that action might be.⁵⁵

51. "Hearings of the Subcommittee on East Asian and Pacific Affairs on Taiwan's Security," Federal News Service, 7 February 1999.

52. *Ibid.*

53. House Concurrent Resolution 148, 104th Congress, 2nd Session.

54. *Congressional Record–House*, 19 March 1996, p. 2343.

55. One of the sponsors, Benjamin Gilman, who had argued that it was necessary for Congress to act as the president would not, suggested that the clause did not "necessarily [mean] sending forces, it would mean trying to provide essential material and support to

In the final vote taken on 19 March, the measure passed 369 to 14 in the House with strong bipartisan support. When the resolution reached the Senate it was recast. All but one of the calls for action that existed in the House resolution were dropped – and that one was radically changed.⁵⁶ The emphasis in the Senate was on the *procedural* stipulations of the TRA, particularly the importance of consultation with Congress should an “actual threat” develop.⁵⁷ The Senate vote (97–0) represented more an effort to protect institutional prerogative than to formulate policy prescriptions. It is likely that the words and actions of the administration, which had less impact on the House vote, were important factors in the Senate’s orientation.

When Lord and Campbell testified before the House for a second time on 14 March, the Clinton administration had already taken unprecedented actions to address the crisis atmosphere in the strait. On 7 March, a visiting Chinese official had been informed of American concerns in language drawn from the TRA. When Chinese missile firings continued, it was announced three days later that two aircraft carrier battle groups would be ordered to the area. The next day, 11 March, the Chinese announced the end of missile tests. Although a tense atmosphere would persist through the presidential elections of 23 March, the mainland military threat was clearly passing.⁵⁸

This new environment changed administration strategy. Earlier, Campbell and Lord sought to minimize the possibility of escalation due to inflammatory rhetoric or Congressional meddling. On 14 March, they sought to deter the PRC from precipitous action and the Congress from passing resolutions that might reignite a crisis. Both continued to justify not invoking the TRA by the fact that a “threat” did not exist. But this time they quoted extensively from the TRA and its legislative history, pledging fealty to its consultation provisions.

There was also far less evasion regarding an American response should a conflict break out. Recognizing the need to “stamp out the Energizer Bunny of ‘strategic ambiguity’” (Lord’s words), both, although insisting that the intent of the TRA was not to make a specific commitment, came close to doing so. Campbell spoke of “strategic clarity” and “tactical ambiguity”; that is that Washington would take action, although the nature of that action was open-ended. Lord went further, noting that the PRC had been reminded of the terms of the TRA and that the “message

footnote continued

Taiwan in the event they were being invaded.” The other sponsor, Gerald Solomon, spoke more affirmatively, arguing that the U.S. “ought to defend them against that attack.” Doug Bereuter, a staunch advocate of ending ambiguity, used a phrase more common in the debate, “to assist” in the defence of Taiwan. *Ibid.* pp. 2343–44 and 2347.

56. This was the call to supply defensive arms to Taiwan which became in the Senate a call for the president to “re-examine the nature and quantity of defensive arms and services that may be necessary to enable Taiwan to maintain self-defense capability.” See Senate Amendment 3562, *Congressional Record*, 26 March 1996, p. S2622.

57. *Ibid.*

58. See Tyler, *A Great Wall*, pp. 32–36.

is clear. A resort to force with respect to Taiwan would directly involve American national interests and would carry grave risks.”⁵⁹ Lord’s invocation of “American national interests” was similar to language rejected in 1979 and was the strongest statement by any administration to date.

The administration clearly “pre-empted ... Congressional action” in March 1996.⁶⁰ However, its statements on strategic ambiguity were based less on the administration’s desire either to suit policy to Congressional preferences or to signal a change in Taiwan policy than to send a message of deterrence to Beijing. When policy changed to one of enhanced engagement, it would return to a position of strategic ambiguity.⁶¹ In Congress the commitment to end strategic ambiguity remained, particularly within the Republican majority in the House of Representatives where the rhetoric of the “Republican revolution” was most critical of administration policy.

The strait confrontation was a turning point in the Clinton administration’s policy towards the PRC. Congress had been placated and China deterred; but these successes were costly. The security aspects of the TRA had been given unprecedented public exposure and credibility because of the dispatch of the carrier groups. The role of the Congress was highlighted and the president’s opponents there now had an improved instrument with which to intervene. It would not be long before they did so. The occasion was the renewal of Sino-American summitry. In October 1997 President Jiang Zemin visited the U.S. and in June 1998, President Clinton made a return visit to China. As the Washington summit neared, general resolutions were introduced in Congress calling upon the president “to make clear” to Jiang the commitment to the security of Taiwan mandated by the TRA and the expectation that cross-strait differences would be resolved peacefully. More pointedly, the House passed legislation by a vote of 301–116 calling for Defense Department studies regarding the provision of anti-ballistic missile systems to Taiwan and Taiwan’s possible inclusion in a theatre-wide system – an obvious attempt to complicate rapprochement with the PRC.⁶²

The response to the June summit was more focused because the president made a public effort to distance the United States from Taiwan. When he articulated the “three noes,” Congress was mobilized.⁶³ For

59. “House International Relations Committee, Subcommittee on Asia and Pacific Hearing re: Military Stability in the Taiwan Straits,” Federal News Service, 14 March 1996.

60. *Congressional Quarterly Weekly Review*, 23 March 1996.

61. Indeed, by late March there were reports in the press that the executive–legislative consensus was coming apart. *Washington Post*, 20 March 1996.

62. For examples of the resolutions, see “House Resolution 225” (9 September 1997), “House Resolution 252” (29 September 1997), “House Concurrent Resolution 178” (28 October 1997), and “Senate Concurrent Resolution 57” (27 October 1997). The legislation on ballistic missile systems was House Resolution 2386. It was sent to the Senate, where it died.

63. No support for Taiwan independence, no support for “two Chinas” or one China and one Taiwan, and no support for Taiwan’s membership in any international body that requires status of statehood.

Clinton's opponents this was a glaring example of an appeasement policy, while supporters expressed uneasiness over an apparent narrowing of the options for resolution of cross-strait differences.⁶⁴ This situation was exacerbated by yet another accusation of a failure to consult. Prior to the president's visit, rumours had circulated that he planned some action – perhaps a fourth communiqué – that would adversely affect Taiwan's interests. As members of the administration were called before Congress to testify before the visit, they were asked repeatedly if there would be a change in policy related to Taiwan. Both at the cabinet level and at the staff level, administration representatives assured Congress that there would be no such change.

Enter the Pentagon. In February 1999 Congress received two reports from the Department of Defense that had been mandated in 1998. In one, the Pentagon submitted a feasibility study for the "architecture" of a missile defence for Taiwan. In the second, a report regarding the military balance in the Taiwan Strait, the Pentagon estimated that a steady growth in PRC capabilities (especially increased missile deployment on the coast opposite Taiwan) would soon pose a serious threat to the island. These reports reached Congress just as the administration decision regarding arms sales to Taiwan in the following year entered its final stages and the 20th anniversary of the passage of the TRA approached.⁶⁵

The tack that the Congressional leadership took after 1999 in respect to "balancing" the administration's Taiwan/PRC policy was shaped by these circumstances. Congressional focus shifted to arms sales as a leverage point for enhancing its influence and, by doing so, the president's critics gained a valuable, albeit tacit, ally. By 1999, the Pentagon was ready to play a more assertive role in shaping Taiwan policy. This stance was, in part, a result of Congressional "pull." Reports on the military balance had been mandated by legislation and the subsequent focus on arms sales increased pressure from Congress for information and advice. These demands would not be ignored as the ongoing appropriations process placed a premium on good legislative relations.

However, there was also bureaucratic "push." By the mid-1990s there was increasing concern in the Pentagon regarding the growth of Chinese military power.⁶⁶ Many felt that the nature of the relationship with Taiwan needed reorientation in order to strengthen America's strategic position. Congressional activism would serve this goal even as it increased the prominence of the Department of Defense in an arms sales

64. For example, compare the statement of Senator Craig Thomas (*Congressional Record*, p. S7916) and Lee Hamilton (*Congressional Record*, p. H58888).

65. Department of Defense, "The security situation in the Taiwan Strait," 26 February 1999 and "Report to Congress on theater missile defense architecture options for the Asia-Pacific regions." According to *China News Agency*, 29 April 1999, the latter report was made available to Congress in a classified form in February 1999.

66. Jim Mann discusses this in his *About Face*, pp. 332–33.

process previously dominated by the Department of State and the White House.

Before the confrontation of 1996 there had been a robust relationship with Taiwan centred around the foreign military sales programme. Since 1988, Taiwan had consistently ranked as America's second or third largest arms customer in dollar terms, and the single largest customer in Asia, well ahead of treaty allies Japan, South Korea and Australia. Taiwan's purchases had covered a wide spectrum including air defence systems, frigates, ship-to-ship missiles, tanks and armed helicopters.

Political considerations significantly shaped the nature of these sales. Taiwan's officials often sought arms as a symbolic indicator of American support, attaching less significance to the ability of their military to absorb diverse weapons systems or to integrate them into a single defence strategy. The United States, seeking to avoid provoking the PRC, sharply restricted any dealings with Taiwan that might suggest steps towards a renewed military alliance. The American side strictly limited what could be sold. For example, a narrow definition of "defensive" had been maintained by all administrations, excluding certain defensive weapons (submarines, for example) with possible offensive uses. Items such as shared early warning systems that might involve interaction between the Taiwan and American militaries were also excluded.

Moreover, the United States government placed limitations on the rank and purpose of visits of U.S. officials to Taiwan. American military representatives had to be on missions related to the foreign military sales programme and be an O-6 (Colonel or Navy Captain) or below. For civilian counterparts in the Defense Department, the upper limit was the GS-15 rank, with the result that officials responsible for formulating security policy for the Asia-Pacific region could not visit Taiwan. Additionally, it was a matter of U.S. policy to limit the exchanges between military professionals responsible for operational matters in order to assure the PRC that the TRA was not a functional alliance. This policy included professional seminar discussions or joint military exercises and training. One result of this was that while the TRA tasked the U.S. military with maintaining "the capacity to resist any resort to force or coercion" in the area and the Commander-in-Chief of U.S. Pacific Forces had an operational plan for a Taiwan Strait contingency, it was a plan based on little knowledge of Taiwan defence planning and no significant pre-crisis interaction between the two militaries.

The events of 1995-96 caused some in the Pentagon to rethink the relationship. Beijing, it seemed, had the will, and was developing the military ability, to use military force to secure its aims vis-à-vis Taiwan. Of greater consequence, when the U.S. deployed two aircraft carrier groups, it became immediately clear that poor channels of communication and a high degree of unfamiliarity would pose serious problems if fighting were to break out. Communications that went through a small, overworked staff at the American Institute in Taiwan, and their equally taxed counterparts within the Taipei Economic and Cultural

Representative Office, were inadequate.⁶⁷ The Department of Defense was, thus, ready in 1999–2000 to assume a more assertive role in the making of decisions regarding how the TRA should be interpreted and implemented.

The president “engages” and Congress “enhances.” The impact of the February 1999 Department of Defense report on the cross-strait balance as well as this convergence of interests were reflected primarily in two ways. The first was a more pro-active and tactically astute effort by some members of Congress to influence the annual review of U.S. arms sales to Taiwan. Citing TRA language that “the President and Congress shall determine the nature and quantity of such defense articles and services based solely upon their judgment of the needs of Taiwan,” House Foreign Affairs Committee Chairman Gilman demanded in a letter to the president in March 1998 that he be briefed on the administration’s decisions before Taiwan was informed of the final outcome. The administration refused the request stating that it would continue to follow normal procedures for notifying Congress of all proposed foreign military sales.

In the following year Gilman and his staff adopted a more aggressive (and arguably more effective) approach. They asked for and received briefings on the arms review process. Equipped with a better understanding of the critical decision nodes in the process, the House Foreign Affairs Committee staff closely tracked the 1999 review process. With the help of willing collaborators at the Pentagon, they were able to determine which systems that Taiwan had requested were “close calls” for release and the subject of intense inter-agency debate. With this information, Gilman and other members intervened in the decisions with greater precision.

For example, in a letter to the president in spring 1999, Gilman again cited TRA language, noting that the law requires Taiwan be “provided defense articles and defense services in such quantity as may be necessary for sufficient self-defense capability.” Gilman demanded the release of a specific system – ground-based early warning radar – that he knew was then the subject of disagreement between the Pentagon and the State Department (Pentagon supporting release, State opposing). Gilman threatened to halt all arms transfers globally if the situation was not resolved favourably. Less than a week later, the administration gave Taiwan conditional approval to purchase such a system.

The other major impact was reflected in the resolutions introduced in both the House and Senate recognizing the two decades of the TRA. Noting that the PRC arms build-up not only threatened Taiwan’s security but also “United States interests in the Asia-Pacific region,” they called

67. As one senior defence official from the United States remarked, “we were almost standing shoulder-to-shoulder with Taiwan in conflict, and we knew far less about them than we knew about the PRC,” while a Taiwan official noted after the crisis that Taipei did not even have a phone book listing commercial phone numbers for individuals at the United States Pacific Command in Hawaii.

upon Congress and the president to exercise their shared responsibility to receive “recommendations” from the “military authorities” and to “determine the nature and quantity of what Taiwan’s legitimate needs are for its self-defense.”⁶⁸

On 24 March, Senator Jesse Helms submitted the Taiwan Security Enhancement Act (TSEA) in the Senate and on 18 May Representative Tom DeLay did the same in the House. This act converted the hortatory, general quality of the earlier resolutions into legislative form. It was the most ambitious attempt to use the TRA to secure Congressional influence over U.S.–Taiwan relations.

After expressing the “sense of the Congress” that the Secretary of Defense reserve positions for the Taiwan military at training and educational facilities and that the Secretary of State take into account Taiwan’s “special status” in military sales and provide “timely access to price and availability data” for defence items, it continued with stipulations directing:

- The possible enhancement of staff at the American Institute in Taiwan to facilitate arms exports as well as reports by the president to Congress after arms talks with Taiwan that detailed what had been requested by the island’s military; the “defense needs asserted by Taiwan”; and a detailed account of the fate of each request, the rationale for the decision taken and the level at which that decision was taken;
- That it would “violate the intent of Congress” as legislated in the TRA to take into account any consideration other than Taiwan’s needs (i.e., the 1982 communiqué or “any other similar executive agreement”);
- That the “Secretary of Defense in consultation, with the Secretary of State” develop “operational training and exchanges for personnel between the armed forces of the United States and the armed forces of Taiwan for work in threat analysis, doctrine, force planning, operational methods and other areas. The plan shall provide for exchanges of officers up to and including general and flag officers in the grade of O-10”;
- That the Secretary of Defense report on that plan within 180 days and implement it within 30 days of such report;
- That “secure direct communications” be established between the Taiwan military and the United States Pacific Command;
- That the “President is authorized to make available to Taiwan at reasonable cost” a long list of itemized military systems including the Aegis system.⁶⁹

Hearings on the TSEA were held in the Senate in August 1999 and in the House in September. However, the legislation that emerged from the full House committee in October and passed by a vote of 341–70 on 1 February 2000 had been significantly changed.⁷⁰

68. See “Senate Concurrent Resolution 17” (11 March 1999), *Congressional Record*, p. S2605 and “House Concurrent Resolution 56” (17 March 1999), *ibid.* p. H1531. The former was passed on 12 April 1999 and the latter on 23 March 1999. The quotations are from the House resolution.

69. “House Resolution 1838,” 18 May 1999.

70. United States Congress. House of Representatives, Committee on Foreign Affairs, *Taiwan Security Enhancement Act, Report 106–423*, 106th Congress, First Session, 28 October 1999, pp. 5–6.

There were two categories of changes. The first was the removal of sections identifying specific weapons systems “authorized” for sale to Taiwan. Instead, wording was added requiring annual Defense Department reports to Congress on the “security situation in the Taiwan Strait” as well as on the U.S. ability “to respond successfully to a major contingency in the Asia-Pacific region where the United States interests on Taiwan are at risk.”⁷¹ The second change was the introduction of three new paragraphs into the findings section of the legislation which identified the ambiguity in the American commitment as the cause for the crises of 1995–96, and added that it would be

... in the national interest for the United States to eliminate ambiguity and convey with clarity continued United States support for Taiwan, its people and their ability to maintain their democracy free from coercion and their society free from the use of force against them.⁷²

This language, consistent with past Congressional efforts, was also related to developments in cross-strait relations as the TSEA was being considered.

In July 1999, on the eve of the second high-level meeting between mainland and Taiwan representatives, President Lee Teng-hui asserted that relations with the mainland were “special state-to-state relations.” Beijing angrily postponed the meeting and charged Lee with supporting independence. Although Lee was criticized by some supporters, Congressional focus was on the harsh PRC rhetoric. This rhetoric became sharper when, at the end of the year, Chen Shui-bian, a former independence advocate, emerged as a viable presidential candidate. Although Beijing eventually refrained from a repeat of 1996, its statements became increasingly hostile as the March elections approached. After Chen was elected, there were serious concerns regarding renewed conflict in the strait.

At the same time, President Clinton’s efforts to engage the PRC reached a critical juncture. The two sides were negotiating the conditions for China’s entry into the World Trade Organization. In the autumn of 1999 a Sino-U.S. agreement was reached to open the mainland to greater trade and investment. By the spring of 2000, the administration was taking the first steps towards implementing this agreement by seeking Congressional approval of permanent normal trade relations status (PNTR, previously known as most-favoured nation status) for Beijing.

In the past, whenever the administration sought to improve relations with the PRC while Beijing’s threat to Taiwan grew, there was renewed Congressional activism and a consequent increase in inter-branch conflict. This was the case with the TSEA as its sponsors worked to draw on their broad base of support both within Congress and without to use the act to

71. *Ibid.* pp. 3–4.

72. This was apparently at the insistence of Representative Doug Bereuter. See “U.S. Representative Benjamin Gilman (R-NY) holds markup: Washington, D.C.,” *Federal Document Clearing House Political Transcripts*, 29 October 1999, p. 8.

deter the PRC from interfering in the Taiwan elections. One target of Congressional efforts was the Department of Defense.

In the Pentagon, some defence planners were becoming increasingly concerned regarding a PRC arms build-up accompanied by growing anti-American rhetoric. This required a reconsideration of American strategy in the area as well as a focus on Taiwan's eroding defensive edge. Statements by Defense Department officials to PRC officials that the nature and quantity of arms sales to Taiwan would be determined by Beijing's build-up suggested that the island's defensive capabilities (that is, the result of Taipei's choice and deployment of American weapons systems) were becoming a crucial element in the Pentagon's calculations of United States' capabilities in the area. Finally, as the possibility of American intervention in the area grew, so did concerns regarding deficiencies in co-ordination with Taiwan's military.

Overlap between the goals of Congress and those of the Pentagon was demonstrated by the testimony of Department of Defense officials at Congressional hearings.⁷³ While all were careful not to contradict administration policy openly, there were also suggestions of an inclination towards a less restrictive definition of defensive weapons; an eagerness to play a stronger role in the process by which Taiwan not only obtained weapons but also trained its users and integrated them in the island's force structure and strategy; and support for enhanced co-operation with the Taiwan military.⁷⁴

Private interactions were more complex. Internally, the Pentagon decided on a public strategy of "support the spirit of the act" but not its actual passage. Many officials recognized that the TSEA could be useful in promoting their own bureaucratic interests. It was hoped that raising the spectre of Congressional meddling might spur an otherwise reluctant State Department and White House into supporting the Pentagon's goals. Thus, Congressional pressure was used by the Department of Defense as a source of leverage in inter-agency disputes. In some cases, this led to outright collusion between Congress and the Pentagon at the staff level. Pentagon staff reviewed the TSEA in draft form before it was made officially available to the administration for comment. The same Department of Defense staff made recommendations for changes to the draft (some of which were accepted) based on the perceived help to be derived from the bill in inter-agency battles. They continued to "coach" Capitol Hill staff through its hearings and in its correspondence with the admin-

73. These were the Senate hearings commemorating the 20th anniversary of the TRA in March 1999 (Assistant Secretary of Defense Franklin D. Kramer testifying) as well as the Senate hearings in August and the House hearings in September (Deputy Assistant Secretary Kurt Campbell testifying).

74. United States Congress, Senate. Committee on Foreign Relations, *United States-Taiwan Relations: The 20th Anniversary of the Taiwan Relations Act*, 106th Congress, Second Session, 25 March 1999, pp. 16-28. "U.S. [sic] Jesse Helms (R-NC) holds hearing on the security of Taiwan; Washington, D.C.," *Federal Document Clearing House, Inc.*, pp. 13-31 and "U.S. Representative Doug Bereuter (R-NE) holds hearings on Taiwan and China: Washington, D.C.," *ibid.*, 15 September 1999, pp. 25-36.

istration. The Pentagon was not shy in suggesting the types of questions Capitol Hill should be asking officials at the State Department and the National Security Council on Taiwan policy matters.

Yet there were limits to these shared interests. Identification of specific weapons systems to be made “available” to the island were coolly received in the Pentagon. This would impinge on the prerogatives of professional military planners, encourage Taiwan’s tendency to use political criteria for purchases and further politicize the process in Washington. Finally, the Defense Department was more constrained than Congress in its ability to defy the executive. The redrafting of the TSEA seemed, in part, to be an attempt to ameliorate some of these concerns.

However, it was also intended to gain the support of those Democrats who were ready to back legislation which supported Taiwan, but not criticize the president. This was done by omitting the section authorizing specific weapons systems (a response to past administration decisions, but also of doubtful constitutionality) while inserting the wording on ambiguity and the maintenance of American military capability.

Ironically, the attitude of the Clinton administration which judged Congressional interference as a major obstacle to improving U.S.–China relations through a delicate period may have increased bipartisan support. The administration worked not only to defeat the TSEA, but also to insulate the pending consideration of arms sales from Congressional meddling.⁷⁵ By the time of the final vote in February 2000, support for the TSEA had become for many as much an expression of a determination to defend Congressional prerogative as it was of a determination to defend Taiwan.⁷⁶

However, while the administration snub was a crucial element in gaining bipartisan support for the revised TSEA, it was only marginally related to the timing of its introduction in the House more than three months after it was reported out of committee. More significant in this respect was the impact of the two contradictory themes discussed earlier: growing concern over the PRC’s hostile response to the elections in Taiwan and the effort to secure closer economic ties with Beijing. The

75. In the August hearings, Senator Joseph Biden, an administration supporter, criticized this strategy. He pointed to “a lack of trust” as the basis for the TSEA. He attempted to gain assurances from administration witnesses that consultation with Congress prior to arms sales would be increased. Inter-branch relations (“up-street-down-street relations”) were as important as cross-strait relations. He warned that if they were not attended to, the “boss” (Senator Jesse Helms) was “going to win.” See, “U.S. [sic] Jesse Helms (R-NC) holds hearing on the security of Taiwan, Washington, D.C.,” p. 19. This was a somewhat gratuitous act as Congress was probably being kept abreast by Taiwan of their requests. For example, a Congressional delegation had been briefed when it visited Taiwan in February. *Washington Times*, 8 February 2000.

76. It is thus no accident that when they presented the revised TSEA for a final vote both the Chairman of the House Foreign Affairs Committee (Benjamin Gilman) and the ranking Democratic member (Sam Gejdenson) emphasized its importance as an expression of Congressional responsibility. *Congressional Record–House*, 1 February 2000, p. H114. It should, however, be noted that some prominent Democrats such as Tom Lantos of California opposed this legislation as unnecessary and provocative. This, of course, was also the administration position. “U.S. Representative Benjamin Gilman (R-NY) holds markup: Washington, D.C.,” pp. 10–12.

role of Congress regarding the first theme was consistent with past trends. The TSEA was brought to the House floor in late January 2000 to deter the PRC. Its sponsors intended its passage, as well as the stipulations contained within the bill, to be, like the dispatch of the aircraft carrier groups four years earlier, an unambiguous signal of American commitment.⁷⁷ The Congressional role in respect to the second theme introduced a new element into the dynamic in executive–legislative relations regarding Taiwan/PRC policy.

In the past, Congress, using the TRA, had played the role of a spoiler in efforts to improve relations with Beijing. Presidential efforts to enhance engagement by accommodating mainland sensitivities regarding the Taiwan issue almost inevitably stimulated Congressional efforts to aggravate them. In 1999–2000, even as they followed this same strategy, the president’s opponents were timing the legislative course of the TSEA to accommodate, and not frustrate, administration efforts to gain the PRC’s admission to the World Trade Organization, a matter of concern to key Republican constituencies. And so, in October 1999, the very same leadership that promoted the TSEA despite warnings that it would worsen relations with the PRC tabled a full-house vote as World Trade Organization negotiations reached a delicate stage.⁷⁸ Similarly, the timing of the 1 February 2000 vote was, in part, motivated by the need to provide “political cover” for representatives who were soon to vote positively on PNTR.

A similar connection is found in the subsequent fate of the TSEA in the Senate. Despite concern regarding possible PRC action in the run-up to, and then aftermath of, the Taiwan elections, the TSEA was not placed on the Senate calendar immediately after House passage. Further action might unnecessarily provoke the PRC. However, in mid-April, as the administration was in the final stages of the arms sales process, the TSEA was placed on the Senate calendar. Congressional pressure was strong for the inclusion of the Aegis system (a possible platform for the island’s future participation in a theatre missile defence programme) as a sign of support for Taiwan and a response to the PRC. A letter to the president from Senator Trent Lott – timed to coincide with the administration’s final internal deliberations on arms sales – urged release of the ships to Taiwan, and cautioned that failure to make the system available to

77. The need to end strategic ambiguity is a recurring theme of almost all those who spoke in the final debate on the TSEA. See *Congressional Record–House*, 1 February 2000, pp. H103–121. See *Washington Post*, 2 February 2000. After the elections, Senator Robert Torrecilli noted that a purpose of the TSEA was to “discourage Beijing from interfering in the elections. *Washington Post*, 27 April 2000.

78. In the committee discussion, Douglas Beureuter noted that he had done “everything I could to delay” the TSEA and that part of the motivation behind the changes in the legislation was to avoid giving the PRC an excuse to scuttle the WTO agreement. “U.S. Representative Benjamin Gilman (R-NY) holds markup: Washington, D.C.,” p. 9. Newspaper accounts noted that Beureuter was a representative from Nebraska which had much to gain from PRC entry into WTO in terms of grain sales. However, while there were divisions within the Republican Party, the vote was apparently postponed due to pressure from the business community expressing similar concerns. *Washington Post*, 3 October 1999 and 2 November 1999 and *The Washington Times*, 2 February 2000.

Taiwan would negatively affect the prospects for PNTR passage. Tabling the TSEA (bolstered by such warnings) was meant to warn of the consequences that might flow from a refusal to sell the ships. Nevertheless, the Aegis was omitted from the arms package announced at the end of April 2000.⁷⁹ Despite angry reactions from Senate majority leader Trent Lott and Senator Jesse Helms, the Republican leadership decided against an immediate vote – although Lott noted coyly that it could be brought up at any time.⁸⁰

The most important reasons for this postponement were a disinclination further to incite China's leaders and signals that the newly elected leadership in Taiwan did not favour passage of the legislation at that time. However, there were also reports that introduction of the TSEA might become a complicating factor in the final stages of PNTR passage.⁸¹ The Senate put aside a major effort to "balance" the policy of engagement in order to clear the way for a keystone in that same policy.

This analysis of the evolution of the TRA thus ends on a paradoxical note. On the one hand, during the 1990s Congress increasingly exercised the potential authority found in the TRA to intervene in the making of Taiwan/PRC policy. On the other hand, the TSEA, which in 1999–2000 seemed to be a dramatic culmination of that process, ended with what appeared to be a resounding whimper.

Has the TRA, after more than 20 years of Congressional struggle, proven that it can do little to enhance either the commitment of the United States to Taiwan or the influence of Congress in securing that commitment? Or, like other pieces of Congressional legislation, has its significance been less than one might conclude from the rhetoric, yet more than one might deduce from the Congressional interventions taken in its name?

Conclusion

The assertion that the post-1972 Sino-American rapprochement foundered on the events of 1989–91 is accepted wisdom. The events at Tiananmen, it is argued, increased Beijing's concerns regarding the corrosive effects of international contact even as it undermined American hopes that these contacts would transform the PRC. The demise of communism in the West over the next two years is said to have weakened the relationship's strategic rationale and further substantiated the American belief that unapologetic communist leaders in Beijing were defying a trend of world democratization. The inability to reconstruct – or to find a substitute for – these two bases of rapprochement is thus established as the root cause of the subsequent unsteady relationship. This analysis suggests that a third factor should also be considered: the re-emergence and metamorphosis of the Taiwan issue.

79. *Washington Post*, 18 April 2000.

80. *Ibid.* and *The New York Times*, 28 April 2000.

81. *The Washington Times*, 19 April 2000 and *The New York Times*, 28 April 2000.

This issue had frustrated attempts by Presidents Nixon and Ford to make progress in the Sino-American relationship after 1972. By the end of the Nixon administration, Beijing was insisting that a severing of military and diplomatic relations with Taiwan was the essential precondition for any further progress in the relationship. However, neither the Nixon nor the Ford administration could meet this demand. Although establishing diplomatic relations with the PRC had domestic political support, so did the commitment to Taiwan. Moreover, in the wake of the failure in Vietnam, Presidents Nixon and Ford were determined to avoid actions that would cast doubt on American credibility.

Both presidents were thus trapped in a cross-strait conundrum. While it was clear that political reality was such that any further progress in the relationship with the PRC required that the status quo in relations with Taiwan be maintained, it was equally clear that a change in that status quo was the necessary prerequisite for Beijing's agreement to any further progress.

As argued in this article, the process of normalizing relations with China in 1979 was in form an attempt to eliminate that conundrum, but in substance an effort to work within it. President Carter and the Congressional drafters of the TRA sought to arrive at a formula for a minimal commitment to Taiwan that would meet both the administration's domestic political requirements and the conditions set by the PRC.⁸²

Normalization had not resolved the conundrum; it evaded it. The PRC leadership remained dissatisfied with continuing American arms sales and the treaty-like wording of the TRA. Many members of Congress, mostly Republicans but also Democrats, were displeased with the nature of support expressed for Taiwan and narrowly missed inserting stronger language. The bases of normalization were thus extremely fragile and would crack under the cumulative stresses of 21 years.

The TRA bears much of the responsibility for these stresses. This was an intensely political and ambiguous piece of legislation shaped in form by inter-branch conflict and in substance by the balance between the two branches as well as that within Congress. The central finding is that the TRA has, over the past 21 years, taken on different colourations depending on the nature of these factors.⁸³ To argue that it is the equivalent of a treaty or that it has assured the security of Taiwan since its passage is to ignore this dependent and variable quality. Similarly, to argue that United States's actions since 1979 have represented a retreat from its original commitments is to miss entirely the ambiguity of those commitments.

This final argument has an additional shortcoming. It seeks to assess the impact of the TRA by deductions drawn from actions or statements – in other words from what was done. There is, of course, another way

82. Yufan Hao's central thesis concerns this division of labour between the executive and the legislative. However, our view of the result is somewhat more pessimistic than his. See *Decision and Dilemma*.

83. This dependent quality was a central argument of Kraft, *The U.S. Constitution and Foreign Policy: Terminating the Taiwan Treaty*.

of judging that impact; from the perspective of what was not done. Action by Congress, particularly in foreign affairs, is most frequently restrictive rather than directive. While it can rarely mandate a specific action by the executive, Congress can set permissive boundaries. How effective those boundaries will be, of course, varies by issue and, most importantly, by the legislative basis for Congressional action.⁸⁴

It is here that the true significance of the TRA can be found. The resurfacing of the Taiwan issue in Sino-American relations has been the result of the confluence of domestic and international factors. The re-emergence of the cross-strait conundrum as the specific dilemma narrowing American options in resolving the Taiwan issue has been the direct result of Congressional action motivated by the complex mixture of partisan politics, institutional pride and ideological differences described above. By 2000 the cumulative effect of these actions was to raise the level of support for Taiwan to the point that it represented the status quo in the American position that had to be maintained as better relations with the PRC were explored. Yet, as was the case earlier, it is change in this status quo that Beijing is demanding as a condition of better relations. Here is the significance of the TRA for American policy. Since 1996 it has emerged as a powerful legislative instrument for the setting of foreign policy boundaries by Congress.

To some degree, the act's effectiveness is the result of its very nature. Unlike the usual diet of Congressional action on foreign affairs, it is "the law of the land." Such a status has permitted members of Congress to declare it as the "legal standard" against which to judge Taiwan policy; has led at least one Congressional committee to suggest that a president might be held constitutionally accountable for not upholding it; and can provide the legitimacy for the efforts of sympathetic individuals in the defence bureaucracy to justify support for Congress's efforts.

However, perhaps most important, as is often the case in American politics, rhetoric, when presented often enough and loudly enough, becomes reality. Since 1996, the TRA has figured prominently in United States PRC/Taiwan policy. Although it did not provide the legal basis for the dispatch of naval forces to the area, its legitimacy was enhanced by the actions of both Congress and the executive at that time. In the years that followed, Congress widely cited the legislation as the basis for its own actions and, more generally, as an obligation of the United States. The result of this has been to socialize a new generation of Congressional members in the elements that originally lay at the heart of the legislation: Congress's prerogatives and its special relationship with Taiwan. Finally, since 1996, the provisions of the act have contributed to the enhancement of Congressional influence through the tacit bureaucratic alliance that has been formed with the defence establishment and the informal networks and consultative procedures which have resulted. The cumulative effect

84. This is a common theme raised by those who have studied the role of Congress in foreign affairs.

of all these factors has been to give credibility to the rhetoric of the TRA and to the influence of Congress in defining its terms.

Of course, as this discussion has shown, dependence on exogenous variables that have contributed to the greater influence of the TRA can also weaken it. It remains, at its core, an ambiguous document with serious operational flaws. This is certainly indicated by the manner in which political cross-currents related to the PNTR influenced the TSEA in 1999–2000. Future changes in the political and generational composition of Congress as well as the White House, the nature of inter-branch relations and perceived American priorities in Asia are the more fundamental factors that will shape the future role of the TRA. Congress did indeed create a “unique relationship” in 1979, but it has also been an uncertain one.