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## PARTNERSHIP IN TRANSITION: A REVIEW OF RECENT TAIPEI- WASHINGTON RELATIONS

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King-yuh Chang

WHEN THE GOVERNMENT of the Republic of China (ROC) resettled in Taiwan in 1949, the United States, the only country that could render it some assistance, adopted a hands-off policy. Sino-American relations underwent drastic changes as a consequence of the Korean War, which broke out on June 25, 1950. President Harry Truman immediately ordered the U.S. Seventh Fleet to patrol the Taiwan Straits in order to prevent hostilities from spreading there. Subsequently, the U.S. began to extend the Europe-oriented containment policy to Asia and the Middle East. On December 3, 1954, the ROC-U.S. Mutual Defense Treaty was signed as part of the joint effort to contain communist expansion. The signatories pledged, among other things, to act to meet an armed attack in the West Pacific area directed against the territories of either the U.S. or the ROC, including Taiwan, the Pescadores islands, and such other territories as may be determined by mutual agreement. This treaty marked the beginning of a period of intimate cooperation between the two countries.

In the security field, the Military Assistance Advisory Group (MAAG) created by the U.S. government in 1951 continued to function, and a Taiwan Defense Command was established by the U.S. in 1955 to implement the Mutual Defense Treaty. The U.S. provided substantial military assistance including the supply of weapons, training of military personnel, and sale of military hardware to the ROC. During the crises over the offshore islands in 1954 and 1958, the two countries acted together successfully in thwarting the attempts of Chinese communists to seize the Quemoy and Matsu island groupings. Over the years, the ROC also served the security interests of the United States. It

played a supporting role to the U.S. involvement in Indochina, provided the bases for monitoring development in mainland China, formed the link between Northeast Asia and Southeast Asia, and guarded the flank of the vital U.S.-Japan security alliance.

In the diplomatic field, the voting records of the United Nations indicate that the ROC and the U.S. almost invariably voted on the same side until the ROC was unjustly deprived of its UN seat in October 1971. The U.S. consistently supported the ROC's seat in the UN and other specialized agencies until President Richard Nixon abandoned this policy in 1971.

In the economic field, cooperation between the two countries was even more intimate. From 1950 to 1965 (the year that U.S. aid was phased out), U.S. economic aid to the Republic of China totalled \$1.3 billion in loans and grants, averaging \$80 million a year. The aid consisted largely of agricultural and industrial raw materials (75%), capital goods (19%), and the necessities of life (6%). From 1951 to 1961, U.S. aid also constituted about 36.8% of the gross domestic capital formation. Moreover, the sale of U.S. goods not only eased the pressure of inflation and made up for the budgetary deficit, but also funded certain technical research and development projects, chiefly in agriculture, industry, electricity, and transportation.

Under the American technical assistance project over three thousand specialists from the Republic of China had been sent to the U.S. by the end of 1976 to receive training in such areas as agriculture, industry, education, and public administration. These people later played vital roles in the economic development of the Republic of China.

The closeness of the economic relations between the two countries can be further illustrated by trade figures. Table 1 shows that total ROC imports from the U.S. leaped from \$98 million in 1954 to \$2,376 million in 1978, a 24-fold increase. ROC exports to the U.S. in the same period jumped from \$5 million to \$5,010 million, a 1000-fold increase<sup>1</sup>. The majority of the ROC's exports to the U.S. were labor intensive, light industrial products, such as textiles, plastic and rubber products, electrical and electronic goods, and plywood. Its imports from the U.S. were, by and large, farm products and capital goods. From the viewpoint of the "comparative advantage" of international trade, the expansion of bilateral trade enhanced the economic well-being of both nations.

In addition to aid and trade, the U.S. had also invested heavily in Taiwan by the end of 1978. Direct investment amounted to \$566.13 million, more than 25% of total foreign investment. The major area of American investment was in the electronics industry. The U.S. Export-Import Bank also provided substantial loans and credits to the ROC for the development of electric power, oil refinery, petroleum, and

<sup>1</sup> *Taiwan Statistical Data Book 1979* (Taipei: Council for Economic Planning and Development, 1979), p. 192.

TABLE 1: ROC-U.S. Trade Relations, 1954-1978

Year	Imports from U.S. (US\$1,000)	Exports to U.S. (US\$1,000)	Balance
1954	98,079	5,016	-93,063
1955	95,527	5,402	-90,125
1956	81,396	6,699	-74,697
1957	84,665	5,246	-79,419
1958	84,383	9,725	-74,658
1959	83,507	13,469	-70,038
1960	113,112	18,856	-94,256
1961	130,852	42,793	-88,059
1962	115,388	53,160	-62,228
1963	150,512	53,908	-96,604
1964	139,002	80,648	-58,354
1965	176,359	95,675	-80,684
1966	166,334	115,875	-50,459
1967	247,307	167,825	-79,482
1968	239,501	278,200	+38,699
1969	290,923	399,050	+108,127
1970	363,915	564,175	+200,260
1971	408,155	859,200	+451,045
1972	543,417	1,251,325	+707,908
1973	951,922	1,677,101	+725,179
1974	1,679,895	2,036,623	+356,728
1975	1,652,175	1,823,242	+171,067
1976	1,797,600	3,636,700	+1,241,100
1977	1,963,800	3,636,300	+1,672,500
1978	2,376,100	5,010,400	+2,634,300

SOURCE: *Taiwan Statistical Data Book 1979* (Taipei: Council for Economic Planning and Development, 1979), p. 192.

chemical industries, and transportation and communications. Actually, the ROC was the Ex-Imbank's third largest client and the Taiwan Power Company its largest individual borrower. Meanwhile, the ROC also received new technologies from the U.S. through specific technical cooperation agreements, the importation of U.S. plants and equipment, and direct U.S. investment.

It was by no means accidental that economic and technical cooperation between the two countries developed rapidly and bilateral trade expanded vigorously during the quarter century after the conclusion of the Mutual Defense Treaty. Several important factors accounted for this development. First, the foundation for cooperation was built with U.S. economic aid in the earlier years and the substantial U.S. investment after aid was terminated. Second, the free enterprise system and open economic policy of both countries facilitated economic exchanges. Third, the multitude of personal and institutional ties established between the two peoples was a great asset. Fourth, the stability prevailing in Northeast Asia contributed greatly to the accelerated economic development and sustained economic prosperity of all free nations in the area.

*U.S.-ROC Relations: 1969-1981*

Political relations between the two countries underwent drastic changes after President Nixon took office in 1969. While the people of the ROC were deeply concerned with the direction of U.S. China policy, they put their trust in the operation of the U.S. political process. The American public in one public opinion poll after another and the Congress by various actions indicated their opposition to the termination of U.S. diplomatic relations with Taipei as a sine qua non for the establishment of formal ties with Beijing. Many state legislatures in the U.S. adopted resolutions to the same effect. Therefore, when President Jimmy Carter announced his fateful decision to recognize Communist China on December 16, 1978 (Taipei time), and at the same time to sever diplomatic relations with the Republic of China, the government and the public of the ROC were genuinely stunned.

President Carter's decision to establish diplomatic relations with mainland China has been widely analyzed. Suffice it to say that the U.S. government acted in such great haste that it was easy for the Beijing authorities "to hold firm against making any substantial concession."<sup>2</sup> Further, the decision was made in such total secrecy that not even the Congressional leaders were consulted, despite an amendment to the International Security Assistance Act of 1978 (adopted by the Congress on September 12, 1978) calling for prior consultation between the Congress and the executive branch on any proposed policy changes affecting the continuation in force of the U.S.-ROC Mutual Defense Treaty.<sup>3</sup> In such a hasty and secret way, the U.S. for the first time in its history terminated diplomatic relations with a long-standing friend and loyal ally.

The initial reaction of the ROC government and people can be summarized in one word: indignation. ROC Foreign Minister Y. S. Tsiang expressed the ROC's position this way:

We strongly oppose [President Carter's] decision which we believe is wrong, and which has most seriously impaired the rights and interests of this country. We are convinced that it will also impair the long-term interests of the United States and endanger the peace and stability of the Asian-Pacific region. Although President Carter's decision is so far-reaching, we were advised of it only seven hours before it was made public. This is not the way for a leading world power to treat a long-standing ally.<sup>4</sup>

However, the government of the ROC was prepared to cope with the unfavorable situation and to rebuild Taipei-Washington relations.

<sup>2</sup> Gottfried-Karl Kindermann, "Washington Between Beijing and Taipei: The Restructured Triangle 1978-1980," *Asian Survey*, May 1980, p. 459.

<sup>3</sup> Hungdah Chiu, ed., *China and the Taiwan Issue* (New York: Praeger, 1979), p. 254.

<sup>4</sup> *China Post* (Taipei), December 29, 1978, pp. 1, 12.

While the U.S. was determined to maintain relations with the ROC on an unofficial basis, President Chiang Ching-kuo informed the visiting U.S. deputy secretary of state Warren Christopher on December 29, 1978 that future ties between the ROC and the U.S. should rest on five principles—reality, continuity, security, legality, and governmentality. In his words, the U.S. should recognize and respect the “simple reality” of the legal status and international personality of the Republic of China; traditional ties should be continued without interruption and expanded to meet future needs; the U.S. should take concrete and effective measures to ensure the security of the ROC and the Western Pacific; treaties and agreements and other arrangement should be continued “in full force and effect” through appropriate legislative measures; and “government-to-government level mechanisms be set up” in Taipei and Washington “to facilitate the continuation and expansion” of relations.<sup>5</sup>

Bilateral negotiations between Taipei and Washington were to be supplemented by U.S. legislation to provide the legal basis for an unprecedented relationship. The Taiwan Omnibus Bill introduced by the Carter administration concentrated almost exclusively on creating a private, non-profit corporation—the American Institute in Taiwan (AIT)—to “maintain commercial, cultural, and other relations with the people on Taiwan without official government representation and without diplomatic relations.” As one observer commented, the bill “was so stark and so spare of details that it represented a symbolic rejection of Taiwan.”<sup>6</sup>

Moved by an assertion of its institutional prerogatives, a deep concern with protecting U.S. business interests, a sensitivity to the credibility of the U.S. as a trustworthy ally, and a sense of justice,<sup>7</sup> the U.S. Congress took upon itself the task of rewriting the Taiwan Relations Act. Members of Congress attached a great deal of importance to the maintenance of the future peace and security of Taiwan and to the building of a strong legal foundation for continuing the broad scope of commercial, cultural, and other non-governmental activities that constitute the bulk of relationships between the U.S. and the Republic of China.<sup>8</sup> The Senate Foreign Relations Committee in its report also indicated that the bill was to enable the U.S. “to maintain close and friendly relations with the people on Taiwan in a manner that contributes to the peace, stability and well-being of the Western Pacific

<sup>5</sup> *China Post* (Taipei), December 30, 1978, pp. 1, 12.

<sup>6</sup> Jeffrey T. Bergner, “America and Taiwan: Implementing the Taiwan Relations Act in 1980’s,” in *Emerging Western Pacific Community: Problems and Prospects* (Proceedings of the Seminar on Western Pacific Community, Freedom Council, Taipei, 1980), 231.

<sup>7</sup> *Ibid.*, pp. 231–233.

<sup>8</sup> U.S. Congress. House. Committee on Foreign Affairs. Report 96–26. *United States—Taiwan Relations Act* (Washington, D.C.: U.S. GPO, 1979), pp. 4–7 (hereafter *House Committee on Foreign Affairs Report 96–26*).

area.”<sup>9</sup> As a result Congress prepared and adopted a package that deals with policy, security, and the legal foundation for continuing business and other relations with the ROC, and provides for an entity to handle matters previously handled by the American embassy in Taipei. The Taiwan Relations Act (TRA) was adopted by the Congress on March 29, 1979 and President Carter signed it into law on April 10. This legislation now forms the major basis of U.S.-ROC relations. It is perhaps useful to review some of the more important points of the legislation.

*Security provisions:* The People’s Republic of China (PRC) had for years insisted on the abrogation of the security treaty, severance of official diplomatic relations, and the withdrawal of U.S. military personnel and installations from Taiwan as its conditions for “normalization of relations” with the United States. To these three demands, the PRC added two more conditions in 1978—that it would not accept a unilateral declaration of support for Taiwan’s security by the United States nor would it approve the continued sale of defensive weapons to Taiwan. When the PRC indicated its readiness to be somewhat more flexible on the two additional conditions, a “breakthrough” was announced in mid-December 1978. The Carter administration accepted the PRC’s original conditions; on one of the additional items, arms sales, it agreed to disagree.<sup>10</sup> Ever since the ambassador-level “Warsaw talks” held between the U.S. and the PRC beginning in 1955, the U.S. government had insisted that Communist China should renounce the use of force against Taiwan. The Carter administration failed to insist on this condition, believing on the one hand that the PRC would not accept the condition and on the other that it was incapable of militarily taking over Taiwan in the near future.

The Congress disagreed with the Carter administration’s approach and insisted on an elaboration of U.S. security interests in the Western Pacific area. On this issue the following provisions of the TRA are highly relevant. Section 2B of the TRA says that it is the policy of the U.S. (1) to declare that 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; (2) to make clear that the U.S. decision to establish diplomatic relations with Communist China rests upon the expectation that the future of Taiwan will be determined by peaceful means; (3) to consider any effort to determine the future of Taiwan by other than peaceful means, including boycotts or embargoes, a threat to the peace and security of the Western Pacific

<sup>9</sup> See U.S. Congress, Senate, Committee on Foreign Relations, Report 96-7, *Taiwan Enabling Act* (Washington, D.C.: U.S. GPO, 1979), p. 3 (hereafter *Senate Foreign Relations Committee Report 96-7*).

<sup>10</sup> Prepared Statement of Richard L. Walker in *Taiwan*, Hearings Before the Committee on Foreign Relations, United States Senate, 96th Congress, First Session (Washington, D.C.: U.S. GPO, 1979), p. 469 (hereafter *Taiwan*).

area and of grave concern to the United States; (4) to provide Taiwan with arms of a defensive character; and (5) to maintain the capacity of the U.S. 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.

In order to implement the U.S. security policy with regard to Taiwan, the U.S. "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 services. Furthermore, "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 the Congress shall determine, in accordance with constitutional processes, appropriate action by the United States in response to any such danger."<sup>11</sup>

Although the termination of the Sino-American Mutual Defense Treaty has seriously undermined the security position of the Republic of China, if the words and the spirit of the TRA are faithfully implemented, the security of the ROC and stability in the Western Pacific can still be maintained. Factors contributing to the security and peace of this region are: (1) the continued availability to Taiwan of defense articles and defense services to enable Taiwan to maintain a sufficient self-defense capability; (2) the capacity of the U.S. to resist coercion that would jeopardize the security, or the social or economic system, of the people on Taiwan; and (3) the cooperation of the U.S. Congress and the President to determine appropriate action by the U.S. in response to any threat to its interests arising from any threat to the security or the social or economic system of the people on Taiwan.

In a certain sense, the security provisions of the TRA are more elaborate than the Sino-American Mutual Defense Treaty. The treaty provided that the signatories would take joint measures in accordance with their respective constitutional processes to cope with military attacks in the Western Pacific area. It did not say anything about coercion other than military. According to the TRA, the U.S. considers "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." When 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" exists, the president is directed to inform the Congress and to determine jointly with Congress appropriate U.S. responses. Hence the United States would be concerned with coercion other than military against Taiwan.

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<sup>11</sup> Section 3 of TRA.



*Economic, trade, investment, and other provisions:* President Carter and other high U.S. officials did assure the ROC that termination of diplomatic relations and the Mutual Defense Treaty would not damage existing commercial, cultural, and other relations, though they would be maintained on an unofficial basis. Section 2(b) of the TRA declares that it is the policy of the U.S. "to preserve and promote extensive, close, and friendly commercial, cultural, and other relations between the people of the United States and the people on Taiwan." Specifically, the Act refers to the application of U.S. laws to Taiwan as to any other foreign country. It gives due protection to property of the ROC in the United States. Other matters, such as the export of nuclear fuels, immigration, overseas private investment insurance, are all taken care of. Congress approves the continuation in force of all treaties and other international agreements, including multilateral conventions, entered into by the United States and the Republic of China prior to January 1, 1979, and in force between them on December 31, 1978, unless and until terminated in accordance with law. Congress also requests the President "to extend to the instrumentality established by Taiwan the same number of offices and complement of personnel as were previously operated in the United States by the Republic of China prior to January 1, 1979."<sup>12</sup> Thus a new foundation has been laid to promote economic and other relations between the two countries.

From the foregoing analysis, it is clear that the U.S. Congress is deeply concerned with the security of Taiwan and the peace and stability in the Western Pacific. The U.S. Congress is also instrumental in the detailed regulations on U.S.-ROC commercial and other relations. If the TRA is implemented in good faith, the damage suffered by the ROC as a result of President Carter's decision could be greatly reduced.

Many members of the U.S. Congress believed that they had adopted legislation which would allow the U.S. to continue the same relations in every respect with the ROC as before, save only formal diplomatic recognition.<sup>13</sup> Senator Edmund Muskie summarized this view in the following way:

For the purposes of U.S. domestic law, this legislation views Taiwan as a country, absent the official sovereign status. It extends to those representing Taiwan interests all privileges and immunities necessary in conducting business with our country. Thus, Taiwan will continue to be eligible under such statutes as the Arms Exports Act, the Export-Import Bank Act, and the Atomic Energy Act. All existing international agreements, with the exception of the Mutual Defense Treaty, made between the United States and the Republic of China will continue in force notwithstanding the changed status of Taiwan. This legislation also details the close relations between the American Institute in Taiwan and the

<sup>12</sup> Sections 4, 5, 10 of TRA.

<sup>13</sup> See, for instance, Senator Jacob Javits' remarks in *Congressional Record*, Senate, March 7, 1979, S 2124.

U.S. government. The Institute is authorized to enter into new agreements as necessary. Such agreements will continue to be subject to congressional approval and consultation, pursuant to U.S. law.<sup>14</sup>

However, in the actual implementation of the TRA, considerable difficulties have arisen, the most important being the nature of U.S.-ROC relations, the supply of arms, and the continuity of existing treaties and agreements.

*Nature of U.S.-ROC relations:* The reestablished relationship between the ROC and the U.S. certainly is non-diplomatic because diplomatic relations have been terminated since January 1, 1979. However, in the American view, even these relations have to be unofficial. While Taipei considered "government-to-government level mechanisms" necessary "to facilitate the continuation and expansion of all relations" between the two countries, the Americans insisted that relations could only be maintained on an unofficial basis. Therefore, the instrumentality established by the Republic of China—the Coordination Council for North American Affairs (CCNA)—to handle ROC affairs in the U.S. is not permitted to use "China" or the "Republic of China" in its name. Furthermore, officials of the ROC cannot pay official visits to the United States, although unofficial or informal talks can be arranged. U.S. officials on the federal level are also to refrain from visiting the Republic of China except in a private capacity or through the American Institute in Taiwan (AIT).

In spite of the U.S. decision to maintain non-diplomatic relations with the ROC "without official government representation and without diplomatic relations,"<sup>15</sup> it is difficult to maintain that the current relationship is purely unofficial for several reasons.

(1) In section 15(2) of the TRA, the term "Taiwan" is defined as including "the governing authorities on Taiwan recognized by the United States as the Republic of China prior to January 1, 1979."

(2) Although in accordance with U.S. practice, unrecognized status and governments cannot sue in U.S. courts, section 4(b)(7) of the TRA specifically recognizes the capacity of the Republic of China to sue and be sued in U.S. courts.

(3) Section 4(b)(2) of the TRA provides that "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 the Republic of China.

(4) Treaties and other international agreements, including multi-lateral conventions, in force between the two countries shall continue in force after the termination of diplomatic relations.

<sup>14</sup> *Congressional Record*, Senate, March 13, 1979, S 2574.

<sup>15</sup> President Carter's "Memorandum for All Departments and Agencies on Future Relations with the People of Taiwan," December 30, 1978. See Chiu, *China and the Taiwan Issue*, pp. 263–264.

(5) Although the AIT is considered a non-governmental organization and its trustees non-officials under American law, in reality the AIT is funded by the U.S. Congress and the trustees of the AIT are appointed by the Secretary of State in consultation with the Senate Foreign Relations Committee.

(6) The AIT and the CCNAA perform at least consular functions such as issuing visas directly (CCNAA) or in the name of the Consulate-General in Hong Kong (AIT).

(7) The AIT and the CCNAA, both the institutions and their staff members, enjoy diplomatic privileges and immunities in all aspects but name.<sup>16</sup>

(8) As Herbert J. Hansell, Legal Adviser of the Department of State, informed the Senate Foreign Relations Committee on February 5, 1979: the U.S. intended to continue on an unofficial basis the many relations and programs being carried on with the ROC, including arms sales, nuclear cooperation, Export-Import Bank programs, Overseas Private Insurance Corporation (OPIC) investment guarantees, trade preferences, cultural exchanges, most-favored-nation treatment, travel, imports and exports, banking and other financial activities, and patent protection, among others.<sup>17</sup> It is hard to imagine that arms sales, nuclear power cooperation, most-favored-nation treatment, and existing Ex-imbank loans can be effected between the U.S. and the ROC without involving official contacts.

But while the U.S. Congress intended to maintain full-fledged non-diplomatic relations with the Republic of China, President Carter chose largely to ignore the intent of Congress and proceeded to enforce the TRA in an overly stringent manner, which unnecessarily jeopardized the ROC's long-range interests. In order to avoid "official" relations, the administration prevented a group from the Ex-imbank from visiting the ROC even though it is the Ex-imbank's third largest borrower. In late May 1980, members of the Joint Economic Committee of the U.S. Congress were allowed to go to the ROC only if the crew on the official military plane wore civilian clothes and if the plane stayed in Taiwan only long enough for unloading and picking up the passengers.<sup>18</sup> Another example is the trade marks incident. The U.S. State Department in May 1980 issued a directive to the U.S. Customs Service to issue a ruling to block the entry of goods from Taiwan into the U.S. after December 1, 1980 if the goods were labeled "Taiwan, R.O.C." or "Republic of China." Several influential members of Congress and the business community raised protests because this directive violated section 4(a) of

<sup>16</sup> Agreement on Privileges, Exemptions and Immunities Between The American Institute In Taiwan and The Coordination Council For North American Affairs, signed on October 2, 1980.

<sup>17</sup> *Taiwan*, p. 82.

<sup>18</sup> Congressman John M. Ashbrook's statement in *Congressional Record*, House, June 4, 1980, E 2476.

the TRA<sup>19</sup> and came at a time just after a procurement mission from the ROC had visited the U.S. and purchased \$1.79 billion worth of goods.<sup>20</sup> Only then did the State Department modify its directive. Ronald Reagan listed this incident as one example of "how Carter has gone out of his way to humiliate our friends on Taiwan."<sup>21</sup> Congressman John M. Ashbrook commented that it was "only the tip of the iceberg. There is a comprehensive policy to destroy any vestige of the Republic of China in order to further placate the rulers of Communist China."<sup>22</sup>

Because the Carter administration chose to interpret "official" relations in the broadest way, the ROC officials are ignored at senior levels of the U.S. government and ROC military officers are no longer allowed to train in the U.S. or attend service academies. Presidential candidate Ronald Reagan, in his August 25, 1980 statement in Los Angeles, pledged to make certain changes:

I am satisfied that this (Taiwan Relations) Act provides an official and adequate basis for safeguarding our relationship with Taiwan, and I pledge to enforce it. But I will eliminate petty practices of the Carter Administration which are inappropriate and demeaning to our Chinese friends on Taiwan. For example, it is absurd and not required by the Act that our representatives are not permitted to meet with Taiwanese officials in their offices and ours. I will treat all Chinese officials with fairness and dignity.

I would not impose restrictions which are not required by the Taiwan Relations Act and contravene its spirit and purpose.

It is hoped that the U.S. government will carry out President Reagan's pledge so that the "nature" of ROC-U.S. relations would no longer create any more differences and difficulties.

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<sup>19</sup> Section 4(a) sets a U.S. policy by which the absence of diplomatic relations "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 with respect to Taiwan prior to January 1, 1979." If Taiwan can no longer use the marking "ROC," the laws are obviously not being applied in the same manner as prior to January 1, 1979, when it could use such designation.

<sup>20</sup> The trade balance between the United States and the Republic of China consistently favored the United States through 1967. Since 1968, however, trade surpluses have been registered for the Republic of China. The surplus rose from \$39 million in 1968 to more than \$2.5 billion in 1980.

In order to reduce this imbalance, the Republic of China has undertaken three concrete measures. First, it assisted the U.S. Department of Commerce in establishing a Trade Center in Taipei to stimulate domestic demand for U.S. exports. Second, it has adopted a policy of actively favoring the importation of U.S. goods. Third, the government has despatched five special procurement missions to the United States since March 1978. Altogether, more than \$4.3 billions of American goods were purchased. See *Report of the Fifth ROC Special Procurement Mission to the United States* (Taipei, 1981), pp. 419-423.

<sup>21</sup> Statement by Ronald Reagan on August 25, 1980 in Los Angeles, California.

<sup>22</sup> *Congressional Record*, House, June 4, 1980, E 2476.

*Security relations and the supply of arms:* The Carter administration failed to insist on the PRC's renunciation of the use of force against Taiwan. It claimed that the Chinese communists acceded to the U.S. right "to continue the sale of defensive arms" to the ROC and agreed not to contradict a U.S. statement expecting "the Taiwan matter to be settled peacefully."<sup>23</sup> Deputy Secretary of State Warren Christopher asserted that "the setting for making the statement with the other party agreeing not to contradict it has great significance in international law as well as for the two parties involved."<sup>24</sup>

However, in a statement accompanying the Joint Communiqué on the Establishment of Diplomatic Relations between the U.S. and the PRC on December 15, 1978, the latter asserted that "as for the way of bringing Taiwan back to the embrace of the motherland and reunifying the country, it is entirely China's internal affairs."<sup>25</sup> In a press conference on December 16, 1978, Hua Guofeng, Chairman of the Chinese Communist Party, contended that while the U.S. would continue to sell arms to Taiwan for defensive purposes, his government "absolutely would not agree."<sup>26</sup>

In spite of these differences, the U.S. and the PRC agreed on a joint communiqué establishing diplomatic relations. However, the lack of security assurance was considered by the U.S. Congress as a major shortcoming of the administration's proposed Taiwan legislation. In order to remedy this deficiency, the U.S. Congress had to rewrite the TRA by stipulating an American concern for the security of Taiwan and a continued flow of arms to the ROC to ensure it of "a sufficient self-defense capability."<sup>27</sup> In case there is any threat to the security or the social or economic system of the Republic of China, the president will promptly consult with Congress to take appropriate action,<sup>28</sup> including military action.<sup>29</sup> The House Report on the TRA stated: "If . . . an armed attack or use of force against Taiwan were to occur, the legislation makes clear that there should be a prompt response by the United States. What would be appropriate action, including possible use of force in Taiwan's defense, would depend on the specific circumstances."<sup>30</sup>

<sup>23</sup> Deputy Secretary of State Warren Christopher's statement before the Senate Committee on Foreign Relations, February 5, 1979 in *Taiwan*, p. 56.

<sup>24</sup> *Ibid.*

<sup>25</sup> *Peking Review*, 21:51 (December 22, 1978), pp. 8-9.

<sup>26</sup> *Ibid.*, pp. 9-11.

<sup>27</sup> Section 2(b)4 and Section 3(a) of the Taiwan Relations Act.

<sup>28</sup> Section 3(c) of the Taiwan Relations Act.

<sup>29</sup> President Carter stated in February 1979 during the Congressional debate on the Taiwan Relations Act: "There is nothing to prohibit a future Congress, if we feel that Taiwan is unnecessarily endangered, from interposing the American Pacific Fleet between the island and the Mainland. And there is certainly nothing to prevent a future President or Congress from even going to war, if they choose, to protect the people of Taiwan. . . ." Quoted by Senator Charles Percy in *Congressional Record*, Senate, March 8, 1979, S 2323.

<sup>30</sup> *House Committee on Foreign Affairs Report* 96-26, p. 6.

The U.S. security policy with regard to the ROC as provided by the TRA is rather unique in several aspects. First, it is a unilateral commitment rather than a contractual relationship. However, as this commitment takes the form of a statute, in terms of domestic law, it is no less obligatory than an international agreement. Second, in a certain sense, the security provisions of the TRA are more elaborate than the Sino-American Mutual Defense Treaty. The Treaty provided that signatories would take joint measures in accordance with their respective constitutional processes to cope with military attacks in the Pacific area. It did not say anything about coercion other than military. However, the Act also deals with coercion other than military, such as boycotts and embargoes. Not only threats to the security of Taiwan, but also threats to the *social or economic system* of the ROC are to be subject to U.S. action. Third, the law provides that the U.S. will make available to the ROC such defense articles and defense services in such quantity to enable it to maintain a sufficient self-defense capability. In assisting the ROC to maintain a self-sufficient self-defense capability, the U.S. was not limited solely to the supply of arms, but could assist in other appropriate ways. And the U.S. retained the right to determine what was "sufficient."<sup>31</sup>

Members of the U.S. Congress were deeply aware of the advanced stage of Taiwan's economic development and were determined to protect the economic and social system of the ROC against economic boycott and blackmail.<sup>32</sup> That is why the TRA talks about not only physical security against external attack but also social and economic security against boycott and blackmail and other forms of coercion. As the ROC cannot possibly match mainland China's arms quantitatively,<sup>33</sup> a qualitative edge, especially in air and naval power, is essential to its security. The U.S. policy regarding arms sales to the ROC is rightly judged to be the barometer for U.S. interest in Taiwan's security.

The Carter administration's attitude was not reassuring. It imposed a one-year moratorium throughout 1979 on arms sales although the U.S.-ROC Mutual Defense Treaty remained in force throughout that year. Furthermore, the Carter administration attempted to limit the range of arms sales to defensive weapons carefully selected.<sup>34</sup> On the other hand, members of the U.S. Congress disagreed with the Carter administration's judgment and eventually President Carter signed the

<sup>31</sup> *Senate Foreign Relations Committee Report 96-7*, p. 31. See also assurance by Senators Frank Church and Jacob Javits in *Taiwan*, pp. 793-794.

<sup>32</sup> See, for instance, remarks of Senator Jacob Javits in *Congressional Record*, Senate, March 7, 1979, S 2125, and of Senator Birch Bayh, *Congressional Record*, Senate, March 13, 1979, S 2594.

<sup>33</sup> For a review of this military balance, see Edwin K. Snyder, A. James Gregor, and Maria Hsia Chang, *The Taiwan Relations Act and Defense of the Republic of China* (Berkeley, Calif.: Institute of International Studies, University of California, 1980), pp. 24-62.

<sup>34</sup> See the remarks made by U.S. Secretary of State Cyrus Vance and other high Carter administration officials prior to the adoption of the TRA. *Taiwan*, pp. 37, 75.

Congress-amended TRA into law, which, *inter alia*, stipulated: (a) 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, and (b) The President and the Congress shall determine the nature and quantity of such defense articles and services based solely upon their judgment of the needs of Taiwan.<sup>35</sup> One scholar noted that "Congress, unable to initiate or secure foreign arms sales, has advocated arms transfers to insure Taiwan's self-defense capability, whereas the Carter Administration, which controls such transfers, has shown a disinclination to sell and transfer anything other than 'selective' defensive weapons."<sup>36</sup>

In the post-1979 period, the Republic of China experienced the Carter administration's strict standard of "selectivity" and "defensiveness" and its extreme sensitivity to the PRC's objections. Although the ROC welcomed the U.S. decision to resume arms sales in 1980, it was greatly disappointed when its request for high performance aircraft was again rejected. Asked what was the most serious damage as a result of severance of diplomatic relations, Premier Sun Yun-hsuan replied that it greatly increased the Chinese Communist threat to the freedom and security of the people of Taiwan and that the ROC must possess new weapons systems in order to control the air and the sea over the Taiwan Straits. Anti-submarine capabilities, anti-ship capabilities, high performance aircraft, and sophisticated missiles are essential to deter a Chinese Communist attack.<sup>37</sup>

It has been frequently asserted that Communist China poses no immediate threat to the ROC because of its conflict with the Soviet Union, its lack of amphibious capabilities, and its preoccupation with the "Four Modernizations." However, even though one can have legitimate differences in assessing the military balance, a noted military authority, Vice Admiral Edwin K. Snyder, former Commander of the U.S. Taiwan Defense Command, has observed: "The PRC enjoys almost a 10 to 1 superiority over the ROC in terms of personnel and in all categories of major equipment. The PRC has the largest land army, the third largest navy, the third largest air force, and the third largest defense budget in the world."<sup>38</sup> With the PRC's preponderant military power and persistent stated policy of taking over Taiwan, for the ROC government to ignore its defense would be a fatal mistake. If the ROC is perceived as unable to provide an adequate defense, the communist

<sup>35</sup> The legislative history indicated that the U.S. Congress insisted upon adding *sufficiency* as opposed to *selectivity* although the Carter administration considered the addition unnecessary. See U.S. Defense Secretary Harold Brown's testimony in *Taiwan*, p. 51.

<sup>36</sup> James Hsiung, "The Security of Taiwan and U.S. Policy," U.S. Congress, Senate, Committee on Foreign Relations. *Taiwan: One Year After United States-China Normalization* (Washington, D.C.: U.S. GPO, 1980), pp. 124-125.

<sup>37</sup> Interview with correspondent Paul Galloway of the *Chicago Sun Times*, published in the said paper on January 13, 1981.

<sup>38</sup> Edwin K. Snyder, *et al.*, *The Taiwan Relations Act*, p. 24.

regime would be tempted, even urged by the more militant elements, to launch military attacks upon Taiwan. If the ROC possesses sufficient deterrent power, the PRC would be less likely to initiate any military adventure. Therefore, in order to maintain peace and stability in the Taiwan Straits and the Western Pacific area, the best strategy would be for the ROC to command a military force sufficient to deter aggression from the mainland.

In this regard the U.S. security commitment and its commitment to supply the ROC with arms and services sufficient for defense is vital in the strategic equation. The future relations between the two countries will depend a great deal on whether the U.S. lives up to the intention of the TRA and satisfies the security needs of the ROC. A continuous flow of sophisticated weapons for defensive purposes will be the best indicator of such U.S. intentions.

*The continuity of treaties and agreements:* The Republic of China had very extensive relations with the United States in the form of treaties and international agreements prior to the severance of diplomatic relations. The continued existence of the treaties and agreements was considered an essential basis for a stable and predictable relationship after January 1, 1979. Washington agreed to the PRC's demand to terminate the Mutual Defense Treaty, but the future of other treaties and agreements was of great concern to the Republic of China.

When the TRA was being considered by the U.S. Congress, the Carter administration stressed that it had made clear to the PRC authorities that while the U.S. would terminate the Mutual Defense Treaty in accordance with its terms, rather than abrogate it as the communists earlier demanded, all other agreements would remain in force.<sup>39</sup> Deputy Secretary of State Warren Christopher sought and received confirmation from the ROC that all existing agreements would continue in force after January 1, 1979, when he went to Taiwan in December 1978.<sup>40</sup> President Carter's December 30, 1978 "Memorandum for All Departments and Agencies on Future Relations with the People of Taiwan" confirmed this point.

During the hearing on the TRA, Senator Richard Stone asked what the State Department plan would do specifically, following "normalization of relations" with Communist China, with the U.S. Treaty of Friendship, Commerce and Navigation with the Republic of China, the air transport agreement, the agreement on civil uses of atomic energy, textile agreement, and the agreement on double taxation on earnings for the operation of ships and aircraft. The Carter administration responded at that time: "all international agreements will remain United States. As the U.S. demand for a new air transport agreement on an unofficial basis came only four months after the TRA had become

<sup>39</sup> *Senate Foreign Relations Committee Report 96-7*, p. 6.

<sup>40</sup> Prepared statement, February 5, 1979, in *Taiwan*, p. 19.



in force, except for the Mutual Defense Treaty and related agreements which will terminate on January 1, 1980.”<sup>41</sup> Senator S. I. Hayakawa also asked how the U.S. could maintain treaties and agreements with an entity it did not recognize. Deputy Secretary Christopher replied that the United States “would find no difficulty if the legislation is passed in treating the people on Taiwan as a valid treaty partner for purposes of important treaties, such as aviation arrangements, nuclear supply arrangements, which now exist. *Under international law, I think that our judgment is clear that it is legally permissible to have a treaty or an agreement with an entity that is not formally recognized as a government*”<sup>42</sup> (emphasis added). Christopher believed that the PRC would not interpose any objection to such an arrangement.

Finally, the TRA provides that: “For all purposes, including actions in any court in the United States, the Congress approves the continuation in force of all treaties and other international agreements, including multilateral conventions entered into by the United States and the governing authorities on Taiwan recognized by the United States as the Republic of China prior to January 1, 1979, and in force between them on December 31, 1978, unless and until terminated in accordance with law.”<sup>43</sup> It is clear that both sides considered that the continued enforcement of existing treaties and other agreements—with the exception of the Mutual Defense Treaty and related agreements—was necessary “to preserve and promote extensive, close, and friendly commercial, cultural, and other relations” between the two countries. The U.S. was considered to have made a wise decision.<sup>44</sup>

However, less than four months after President Carter signed the TRA into law, the U.S. began to initiate changes in treaties and agreements. When Vice President Walter Mondale was visiting the Chinese mainland, he indicated that the Air Transport Agreement between the ROC and the U.S. signed in Nanking in 1946 would soon be abrogated and replaced by an informal unofficial agreement.<sup>45</sup> It seems very clear that the PRC demanded and Washington agreed that the abrogation of the 1946 agreement was a prerequisite to their conclusion of an air transport agreement between the United States and Communist China.

When the members of the U.S. Congress heard of the Carter administration’s attempt to abrogate the U.S.-ROC air transport agreement, they were very much surprised. Senator John Glenn, chairman of the Subcommittee on East Asian and Pacific Affairs of the U.S. Senate Committee on Foreign Relations, stated in an open hearing on oversight of the Taiwan Relations Act:

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<sup>41</sup> *Taiwan*, p. 77.

<sup>42</sup> *Taiwan*, p. 49.

<sup>43</sup> Section 4(c).

<sup>44</sup> Ralph N. Clough’s remarks before the Senate Committee on Foreign Relations, February 6, 1979. See *Taiwan*, p. 439.

<sup>45</sup> UPI, Canton, August 31, 1979.

It was my understanding throughout the Taiwan Relations Act debate, and I am sure other Senators would agree with me, that, except for the Mutual Defense Treaty and related military agreements, our treaties and agreements with Taiwan would remain in force.

Clearly, terminating the air transport agreement goes beyond anything I contemplated when we voted to establish our new and unofficial relationship with Taiwan. Replacing it with an "arrangement" does not really change that fact.<sup>46</sup>

Senator Glenn believed that the existing agreement between Washington and Taipei should be amended or extended, if necessary, but not terminated. He was against making further concessions regarding Taiwan or walking "constantly on egg shells for fear of upsetting the PRC."<sup>47</sup> However, the Carter administration considered the 1946 Nanking agreement "inappropriate and a hinderance"<sup>48</sup> since the U.S. was about to begin talks with the PRC on an aviation agreement. As a matter of fact, the U.S. adopted such a position simply because otherwise the PRC would not agree to start negotiations on an air agreement with Washington.<sup>49</sup>

For the Republic of China, the air transport agreement was a test case. Taipei considered that the 1946 agreement, amended several times since to adapt to changing situations, should be allowed to remain in force though it could be further amended by agreement between AIT and CCNAA to meet changing needs. Taipei did not like to set a precedent that existing agreements could be terminated and replaced by informal agreements, when and if the PRC so demanded. The ROC sought to be assured that the way the U.S. proposed to terminate the Nanking agreement did not create a model for handling other agreements.<sup>50</sup> Pledging that termination of the air agreement would "absolutely not" set a precedent, Deputy Secretary Christopher maintained that "Only where fundamental sweeping changes are necessary in the underlying concept will new agreements be necessary."<sup>51</sup>

Having been deeply hurt by the Carter administration's decision to establish diplomatic relations with mainland China, the ROC was greatly concerned about any further erosion of its relationship with the

<sup>46</sup> *Oversight of Taiwan Relations Act*, Hearing before the Subcommittee on East Asia and Pacific Affairs of the Committee on Foreign Relations, United States Senate, 96th Congress, First Session, on the Administration intent regarding the existing treaties and agreements between the United States and Taiwan with special emphasis on the civil air agreement (Washington, D.C., U.S. GPO, 1980), p. 1 (hereafter *Oversight of Taiwan Relations Act*).

<sup>47</sup> *Oversight of Taiwan Relations Act*, p. 2.

<sup>48</sup> Assistant Secretary for Congressional Relations J. Brian Atwood's remarks in *Oversight of Taiwan Relations Act*, p. 5.

<sup>49</sup> See remarks of Deputy Secretary of State Warren Christopher in *Oversight of Taiwan Relations Act*, p. 7.

<sup>50</sup> Statement before the Legislative Yuan by Foreign Minister Y. S. Chiang on November 26, 1979. *United Daily News* (Taipei), November 27, 1979.

<sup>51</sup> *Oversight of Taiwan Relations Act*, p. 20.

U.S. Since the latter's demand for a new air transport agreement on an unofficial basis came only four months after the TRA had become law, Taipei was naturally exceedingly suspicious of U.S. intentions. Even though the U.S. concluded similar agreements with a number of other aviation partners and China Airlines eventually obtained better terms in substance, the ROC attempted to prevent its relations with Washington from being dictated by the PRC. It was only when the U.S. government assured the ROC and the U.S. Congress that no precedent would be set and that the civil air agreement was *sui generis* that a new agreement to succeed the Nanking agreement was concluded between the AIT and the CCNAA.

In the last two years, economic relations between the ROC and the U.S. have been smooth. Two-way trade reached \$9.03 billion in 1979 and \$11.23 billions in 1980. Rapid expansion of trade has made the ROC the eighth trading partner of the United States, next only to Canada, Japan, Mexico, Germany, Britain, Saudi Arabia, and France.<sup>52</sup> Private American investment and Ex-imbank loans have continued to flow to the ROC in increasing amounts. After the termination of diplomatic relations, several important American banks have joined other American banks in opening branches in Taiwan.

In the political field, however, Taipei-Washington relations are still in a period of transition. The Carter administration's record on arms sales, official contacts, the reopening of closed ROC offices in the United States, the civil air transport agreement, trade marks, and other matters were far from satisfactory to the Republic of China. On several occasions, the Reagan administration has indicated its intention to adhere to "American law established in the Taiwan Relations Act,"<sup>53</sup> and "eliminate petty practices of the Carter Administration which are inappropriate and demeaning to our Chinese friends on Taiwan."<sup>54</sup> However, the actual policy of the Reagan administration toward the ROC is still cloudy because several observers have warned the Reagan administration not to do anything to upset the Chinese Communists in order to maintain the newly established fragile relations with the PRC. These observers also advanced the argument that if the U.S. improves relations with the Republic of China, it would undermine the position of Deng Xiaoping, a "friend" of the United States.<sup>55</sup>

As matter of fact, the history of intra-party struggles on the Chinese mainland in the last three decades indicates that no Communist leaders can be said to be secure in their position. Whether any one of them can survive any power struggle is not determined by external fac-

<sup>52</sup> Information released by the U.S. Department of Commerce reported in *Central Daily News* (Taipei), February 4, 1981.

<sup>53</sup> See "An Interview with Haig," *Time*, March 16, 1981, p. 15.

<sup>54</sup> Statement by Ronald Reagan, August 25, 1980.

<sup>55</sup> See, for instance, the following: James P. Sterba, "China's Warning on Taiwan Said to Reflect Anxiety," *The New York Times*, January 22, 1981; Kenneth Lieberthal, "Dealing with China," *ibid.*; "Political Lessons from China—Editorial," *Baltimore Sun*, January 28, 1981; "China in Turmoil—Meaning for U.S.," *U.S. News & World Report*, February 9, 1981.

tors, and Deng Xiaoping will not be an exception. He faces many difficulties, all of which are of internal origin.<sup>56</sup> Furthermore, as Communist China's ultimate objective is to take over Taiwan, unless and until the U.S. acts as an accessory in achieving that objective, Communist China would be easy to displease and impossible to satisfy. Can the U.S. base its foreign policy on not doing anything to "upset" political leaders in countries which are "friends" in name but "adversaries" in fact?

So far as Taipei-Washington relations are concerned, despite the great shock of late 1978 and the subsequent difficulties, there remains a deep reservoir of trust built up for many years through innumerable channels. Future ROC-U.S. relations should be rebuilt on such a foundation. The way to manage the relationship successfully is to preserve mutual trust and to demonstrate good will on both sides.

The United States is the key to security and stability in the Western Pacific. While the U.S. is shouldering responsibilities globally, the U.S.-ROC relationship also has wider implications than the bilateral relationship per se. Taiwan constitutes the first line of defense for U.S. military bases in the Philippines. It also guards the sea lanes of communication in the Western Pacific that forms the economic lifeline of Japan and South Korea. Since the Mutual Defense Treaty no longer exists and the U.S. military presence in Taiwan has become a thing of the past, it is entirely in the interests of the U.S. and its allies in the Western Pacific that the fighting forces of the ROC be supplied with the best weapons available. A weak ROC could be a tempting target; an isolated ROC could be a sure target. A strong and modernized military capability will not only assure ROC's security but also contribute toward maintaining general tranquility in the Western Pacific area.

It is unrealistic for the ROC to hope to match the overall military strength of the Chinese Communists. It is feasible and necessary, however, for the ROC to obtain qualitative superiority in certain categories of arms, such as fighter aircraft, anti-submarine warfare, and command and control systems. However, to build up a credible deterrence, better than purely defensive capabilities will be vital and will determine the choice of aircraft, ships, and missiles. It is hoped that Washington will take these factors into consideration in order to meet the changing security needs of the Republic of China. Long-standing cooperation proves that the interests of the Republic of China and the United States coincide in many respects. However, only when the U.S. fulfills the declared objectives of the Taiwan Relations Act, especially "to preserve and promote extensive close and friendly" relations with the ROC and to maintain peace and stability in the area, can genuine partnership between the two countries be restored.

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<sup>56</sup> King-yuh Chang, "The Position of Teng Tsiao-p'ing and his American Connection," *Issues and Studies*, March 1981, pp. 1-4.

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