

Creating Enduring Strategic Relationships in the Absence of Formal Diplomatic Ties: The Case of the United States and Taiwan

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ABSTRACT

At the heart of creating sustainable strategic relations between the United States and the Republic of China (ROC) (Taiwan) has been a balancing act of appeasing the People's Republic of China (PRC). Politically, the contentiousness between the executive branch (the presidency) and the U.S. Senate was a litmus test in the case of the Taiwan Relations Act (TRA), especially in regards to the People's Republic of China in the era of the Cold War. A primary impetus of the appeasement of China has been the intentional absence of formal diplomatic ties between the United States and Taiwan (at least since 1979). Thus, how can the United States (and perhaps other countries), maintain strategic relationships in the midst of regional contentiousness and the absence of formal diplomatic ties? This is a significant question because it illustrates that the typical "tools" of maintaining relationships in international relations, may not always be necessary. Thus, such relations matter beyond U.S.-Taiwan relations, especially as globalization increases, while historical adversarial (real or perceived) tensions co-exist alongside cooperation, peace and prosperity.

INTRODUCTION

One of the more enduring challenges in U.S. Foreign Policy and American Politics more broadly is how to create foreign policies that can withstand Congressional turnover, Presidential biases, ideological differences and international events, etc. which can alter original pieces of legislation. A quintessential example of a foreign policy that has ebbed and flowed the past 40 years (especially with the ever-increasing political and economic prowess of the People's Republic of China not only in Asia, but throughout the world), has been the Taiwan (Republic of China) Enabling Act, subsequently known as the Taiwan Relations Act (1979) of the 96th U.S. Congress. This important Act of Congress not only strengthened our political, economic, military and diplomatic roles in Asia, but also "raised suspicious eyebrows" in Beijing, home of the Chinese Communist Party (CCP) of the People's Republic of China. United States foreign policy can be quite complex, consider this prime example: the United States does not maintain an embassy in Taiwan (in order to maintain diplomatic relations with the People's Republic of China), but it does operate a consulate there to take care of its overseas citizens and to handle items such as travel visas and trade between the United States and Taiwan.

Essentially, (in part) the Act "Authorizes continued relations with the people of Taiwan and the Pescadores, which shall not be affected by the lack of diplomatic recognition of the government of Taiwan. Defines the term "people on Taiwan", as used in this Act, to include the governing authority on Taiwan, recognized by the United States prior to January 1, 1979, as the Republic of China; its agencies, instrumentalities, and political subdivisions, the people governed by it; or the organizations and other entities formed under the law applied by the people on Taiwan. As well, the Act continues all treaties and other international agreements entered into between the United States and the Government recognized as the Republic of China prior to January 1, 1979, unless terminated by law." The Act goes on to say "Declares it to be the policy of the United States to: (1) consider any effort to resolve the Taiwan issue by other than peaceful

means, including boycotts or embargoes, a threat to the peace and security of the Western Pacific area and of grave concern to the United States; (2) maintain American military assistance to Taiwan; and (3) act to meet any threat to the security of Taiwan and any danger to the interests of the United States in accordance with all applicable constitutional and statutory requirements. Lastly, the Act directs the President to inform the Congress promptly of any threat to the security or the social or economic system of Taiwan and any danger to the interests of the United States arising from such threat.”

Taiwan (Republic of China) was officially part of China from 1683-1895. However, in 1895 the island state of Taiwan was ceded to Japan by the Treaty of Shimonoseki, after the Chinese were defeated in the first Sino-Japanese War. Furthermore, Taiwan and China’s friction was exacerbated on December 9, 1941 by the Republic of China (ROC), then on the mainland, made a formal declaration of war against Japan and declared the abrogation of all treaties and agreements between China and Japan.

Meanwhile, at the heart of creating sustainable political, economic, cultural and strategic relations between the United States and the Republic of China (ROC) (Taiwan) has been a tedious balancing act of appeasing the People’s Republic of China (PRC) (China), and notwithstanding *Weinberger v. Rossi* (1982), which dealt with the distinction between executive agreements and treaties. So, politically, the contentiousness between the executive branch (the presidency) and the Senate was a litmus test in the case of the Taiwan Relations Act. A primary impetus of the appeasement of China has been the *intentional* absence of formal diplomatic ties between the United States and Taiwan (at least since 1979). Thus, how can a country maintain strategic relationships in the midst of regional contentiousness and the absence of formal diplomatic ties? In fact, one of the architects of the Taiwan Relations Act (1979), the late Senator John Glenn suggested in the Senate Floor Statements while the bill was being debated:

Taiwan’s future is not some vague abstraction; rather, it is the reality of 17 million people with the second highest standard of living in Asia. The committee (Senate Foreign Relations), while agreeing upon the importance of normalization with the PRC, nevertheless felt these legislative changes were necessary to chart a safer course for Taiwan.” Senator Glenn added, “The immediate issue before the committee and the Senate is how to maintain an informal relationship with Taiwan in the absence of formal diplomatic ties.

Glenn goes on to add “that S. 245 will allow us to retain close and cordial ties with Taiwan, to continually mutually beneficial trade and investment, and to insure the freedom of the people of Taiwan to choose their own destiny.” S. 2122, March 7, 1979. Senator Glenn’s efforts were buttressed up by the late Senator Frank Church (D-ID), who suggested in some of his Senate notes “key is U.S. interests these are best served by current situation not continued hostility between U.S. and the P.R.C.” Senator Church was a member of the Senate Committee on Foreign Relations, alongside Senator Glenn. Senator Church went on to say, “the authorities on Taiwan have already accepted the unofficial offices, established Coordinating Council on North American Affairs, we have achieved everything short of official relations-immunities, arms sale, etc. to create a Liaison Office would rupture entire agreement.”

BRIEF LITERATURE REVIEW/INTERNATIONAL RELATIONS THEORY

International Relations theory (at least in the American sense, or more broadly in the Western notion of the concept), includes democratization, globalization, bilateralism and multilateralism. A caveat, as we continue to broaden the scope of international relations theory,

Odoom and Andrews (2017) challenge Western notions of international relations theory, in their research on African contributions to international relations theory. Nevertheless, the continued relationship between the United States and Taiwan is hedged on the critical principles of democratization, trade (U.S.' ninth largest trading partner) and a military strategic alliance. The exporting of these domestic ideas to the international sphere¹ has played a crucial role in helping to shape and bolster U.S.-Taiwan relations since 1979. The role that domestic institutions (e.g., legislatures, presidents and lobbying groups) have played in bolstering this relationship is salient as well.

Historically, international relations has been primarily concerned about powerful and weak countries in an anarchical world. State survival is seen as a self-help system, especially one with a strong military. The United States is seen as a great power (militarily and economically), whereas Taiwan is seen as an emerging market, with minimal military capability. However, China's "watchful eye" over Taiwan creates a level of anxiety for both Taiwan and the United States. Thus, the pillars of international relations (anarchy and self-help) become more complex, especially in light of the lack of official diplomatic recognition of Taiwan by the United States. And for Taiwan, to maintain such a cozy relationship in this anarchical, self-help world, a super-power like the United States is a way to hedge one's geographical vulnerability to a big state like China. Thus, as stated by Sharman (2017), "states are said to have two options for maintaining their security and survival: strengthening their internal military power and/or concluding alliances with more powerful states as part of a balancing or bandwagoning strategy." (p. 564)

Additionally, in the international anarchical sphere, sovereignty is always a concern, especially for weak or fragile states. Such states are always vulnerable to invasion, by powerful states especially if the weak state has precious commodities. Thus, Taiwan's semi-sovereign status is always in the balance with China. The 110 mile stretch (The Taiwan Strait) of water to the west of Taiwan which separates Taiwan and China is not much of a buffer. However, the United States' economic, political and military power has been able to shield the tenuous political region. Thus, Taiwan's (current) status is buttressed by the United States via democratization channels; its strategic geographical position vis-à-vis China; its military alliance with the United States and its semi-sovereign (although tenuous) status in the world of international relations. All of these current attributes have allowed Taiwan to continue to be an important trading partner with the United States, in spite of non-diplomatic recognition by the United States. Taiwan in this new era of big and small states in international relations, may be in a safe position politically and economically (at least for now). Moreover, if one considers Taiwan a micro-state, "the shift whereby territories that once were fiercely contested by great powers are now left militarily untroubled as sovereign states, and actively supported in times of economic crisis, suggests a fundamental transformation in the nature of the international system." (Sharman, 2017, p. 572) This special, unique relationship can provide a baseline to address the very important question: How can the United States (and perhaps other countries), maintain strategic relationships in the midst of regional contentiousness and the absence of formal diplomatic ties?

TAIWAN RELATIONS ACT (TRA)

The Taiwan Relations Act (enacted April 10, 1979; H.R. 2479) is an act of the United States Congress passed in 1979 after the establishment of diplomatic relations with the People's Republic of China (PRC) and the breaking of relations between the United States and the Taiwan

by President Jimmy Carter. Congress rejected the State Department's proposed draft and replaced it with language that has remained in effect since 1979. The Carter Administration signed the Taiwan Relations Act to maintain commercial, cultural, and other relations through the unofficial relations in the form by a nonprofit corporation incorporated under the laws of Washington, D.C., the American Institute in Taiwan, without official Government representation and without formal diplomatic relations. In sum, the Act (Public Law 96-8) of the 96th U.S. Congress, asserts, "To help maintain peace, security, and stability in the Western Pacific and to promote the foreign policy of the United States by authorizing the continuation of commercial, cultural, and other relations between the people of the United States and the people of Taiwan, and for other purposes." A caveat, Taiwan is also known formerly as the sovereign Republic of China (ROC).

The Taiwan Relations Act has played an indispensable role in shaping American policy toward Taiwan and U.S. strategy in Asia. It represents America's best ideals and safeguards fundamental security and commercial interests. The TRA is unique in purpose and form. It is the only law to govern nearly every aspect of U.S. relations with a foreign government in the absence of diplomatic relations. It sets forth clear policy goals and establishes an institutional framework sufficient to meet those objectives.

The fact that the Taiwan Relations Act remains in force today, without amendment, is a testament to the wisdom and foresight of its drafters. Who in 1979 could have foreseen the dramatic changes that would transform Taiwan, China, and the world over the next 20 years? Taiwan is now a vibrant democracy. China is gradually adopting market reforms. The Soviet Union is no more. Yet through it all, the Taiwan Relations Act remains constant, relevant, and effective.

Although many things have changed, some things remain the same. The United States still concludes government-to-government business with Taipei, though such dealings are conducted via a private nonprofit corporation, the American Institute in Taiwan, instead of through normal diplomatic channels. The United States continues to provide Taiwan with defensive arms, and such transfers remain as objectionable to Beijing now as they were in 1979. A fragile peace survives in the Taiwan Strait. None of this would have been possible, as Ronald Reagan noted in 1980, had it not been for "the timely action of the Congress, reflecting the strong support of the American people for Taiwan." Moreover, President Reagan offered "Six Assurances" to Taipei on July 14, 1982, that in negotiating the third Joint Communiqué with the PRC, the United States: (1) has not agreed to set a date for ending arms sales to Taiwan; (2) has not agreed to hold prior consultations with the PRC on arms sales to Taiwan; (3) will not play any mediation role between Taipei and Beijing; (4) has not agreed to revise the Taiwan Relations Act; (5) has not altered its position regarding sovereignty over Taiwan; and (6) will not exert pressure on Taiwan to negotiate with the PRC.² (Kan and Morrison 2013)

As the United States continues to pursue strategic relations with Taiwan, whether those relationships are political, economic, cultural and/or military, the linkages can provide a blueprint for other bilateral and multilateral partnerships. For decades, Taiwan has been of significant security, economic, and political interest to the United States. In 2017, Taiwan was the 11th-largest U.S. trading partner. Taiwan is a major innovator and producer of information technology (IT) products, many of which are assembled in the PRC by Taiwan-invested firms there. Ties or tension across the Taiwan Strait affect international security (with potential U.S. intervention), the U.S.-Taiwan relationship, and U.S.-PRC cooperation. While the United States does not diplomatically recognize Taiwan, it is in reality an important autonomous actor. Today,

23 countries (including the Vatican) have diplomatic relations with Taiwan as the ROC. Taiwan's 23 million people enjoy self-governance with democratic elections. After Taiwan's presidential election in 2008, the United States congratulated Taiwan as a beacon of democracy. Democracy has offered Taiwan's people a greater say in their status, given competing politics about Taiwan's national identity and priorities. Taiwan held presidential and legislative elections in January 2012. Kuomintang (KMT) President Ma Ying-jeou won re-election against the Democratic Progressive Party's (DPP) candidate." (Kan and Morrison 2014)

ORIGINS OF THE TAIWAN RELATIONS ACT (TRA)

On December 15, 1978, President Jimmy Carter announced that as of January 1, 1979, the United States would end its diplomatic relationship with the Republic of China on Taiwan and instead recognize the government in Beijing as the sole legal government of all of China. The announcement came as quite a shock to many in Taiwan and in United States, but it could not have been entirely unexpected. Ever since President Richard Nixon's opening to China in 1972 and the signing of the Shanghai Communiqué, the U.S. government had been seeking to find a way to establish relations with Beijing without sacrificing significant American interests in Taiwan. It was well-known that this was a high priority for the Carter Administration. Although a majority of Americans seemed to support President Carter's efforts to improve relations with Beijing--efforts which were born more of a fear of Soviet expansion than of dissatisfaction with Taiwan--his administration had fallen woefully short in addressing America's continuing interests in Taiwan.

The Administration hastily produced the initial draft of the Taiwan Relations Act soon after the President's December 15 announcement. The proposed legislation was then passed to the foreign affairs committees in the House and Senate.

Members of the Senate Foreign Relations Committee expressed concern over the haste with which the Administration had moved late in 1978, as well as with the lack of consultation with Congress and the lack of adequate consultation between the United States and its allies. The committee's report pointedly noted that the bill as submitted by the Administration contained no reference to the interests of United States in Taiwan's security, and lacked any reference to the sale of defensive arms to Taiwan. The House of Representatives' Foreign Affairs Committee expressed similar views in its report. It emphasized that the executive branch bill failed to address Taiwan's security needs and did not provide an adequate legal foundation for continuing the broad scope of nongovernmental activities that constitute the great bulk of relations between United States and Taiwan. Fortunately, Congress was swift and effective in its response. In February and March 1979, Congress redrafted, debated, and passed by overwhelming majorities the version of the Taiwan Relations Act that has governed U.S. relations with Taiwan successfully for over 30 years.

HOW THE TRA HAS ADVANCED U.S. INTERESTS

The Taiwan Relations Act (TRA) has proved to be a surprisingly effective guide for U.S. policy. Over the past 20 years, the TRA has allowed the United States to preserve peace, promote freedom, and maintain flexibility in balancing its relations and interests with the governments on both sides of the Taiwan Strait. The TRA has been a source of clarity and consistency for U.S. policy from administration to administration, Democrat and Republican alike. It has maintained its relevance in the face of changing politics at home and in Taiwan, and

remains an important safeguard against any Administration's sacrificing U.S. interests in Taiwan in pursuit of improved relations with Beijing.

The TRA has advanced U.S. interests in the following areas:

Deterrence:

By deterring aggression by the mainland, the U.S. has protected Taiwan from being forced into negotiations with China under the threat of armed attack or other forms of coercion. In 1995 and 1996, China tested America's resolve by conducting provocative military exercises and missile tests in Taiwan's vicinity. The Clinton Administration initially downplayed the threat of these tests to Taiwan's security, even when some Chinese officials provocatively questioned whether the United States would be willing to risk American lives in Taiwan's defense. U.S. determination to uphold the Taiwan Relations Act was made clear in March 1996 when China undertook threatening military exercises on the eve of Taiwan's presidential election. Emboldened by the mandates of the TRA, the United States responded with its most powerful show of military force toward China since the Taiwan Strait crises of the 1950s. The U.S. Navy deployed two aircraft carriers and 36 ships and submarines in support.

Fostering Freedom:

The TRA maintains the stable and secure environment within which Taiwan has transformed itself into one of the world's leading free-market democracies. Taiwan's democratic transition is a blessing to its people, but it is also a critical factor in American strategy as the United States seeks to balance its interests across the Strait. Taiwan's democracy is an important example to the mainland of how to expand political freedom and increase social stability. Taipei's economic success is also an important example to Beijing, and Washington should remember that the 21 million people on Taiwan buy nearly twice as much in American goods as do the 1.2 billion people on the mainland.

Preserving Flexibility:

The TRA also preserves U.S. diplomatic flexibility as China-Taiwan relations evolve. Taiwan no longer claims sovereignty over the mainland; but Taipei's search for greater international status has led to accusations from Beijing that Taiwan seeks independence, and China has threatened to respond with war to a declaration of independence. In June of last year, President Clinton tilted U.S. policy toward China when he said that the U.S. does not support independence for Taiwan. This tilt was unnecessary. The brilliance of the TRA is that it does not require amendment to adjust to new realities in Taiwan. Policies as outlined in the TRA are clear enough to protect U.S. interests and flexible enough to allow the United States to have substantive relations with both sides of the Taiwan Strait. The TRA at its core addresses U.S. policy interests, not outcomes, its efficacy would not be affected substantially by the existence or absence of diplomatic relations. Taiwan's development toward democracy only enhances the relevance of the TRA. The TRA is now more than a shield against Communism--it is a guardian of democracy (Yates, 1999).

EARLY VARIOUS STAKEHOLDERS IN THE ULTIMATE PASSAGE OF THE TAIWAN RELATIONS ACT

The American Institute in Taiwan (Taipei), which is a private organization, funded by the U.S. federal government, and whose trustees are appointed by the Secretary of State, played (and still plays) a monumental role in helping to sustain the Act.

- Pacific Cultural Foundation (Taipei, Taiwan)

- Institute of International Relations (Taipei, Taiwan)
- Retired Servicemen’s Engineering Agency (Taipei, Taiwan)
- Pacific Glass Corp. (Taoyuan, Taiwan)
- Export Processing Zone (Kaohsiung, Taiwan)
- Taichung Harbor Construction Bureau (Wuchi, Taiwan)
- The Central Committee of the Kuomintang Nationalist Party (Taipei, China)

As well, there were many stakeholders in Congress and the Executive branch at that time which bought into the salience of establishing the Taiwan Relations Act. For example, from a security perspective, the Chairman of the Joint Chiefs of Staff (General David C. Jones) and other senior Defense Department officials were consulted in the process. Likewise, from a financial and legalistic perspective, many specialists in the areas of trade, banking and law were consulted. Thus, having stakeholders from myriad perspectives helped create the legislation and ultimately embed the law, which is still in effect today. Senator John Glenn indicated, while chair of the Foreign Relations Subcommittee on East Asian and Pacific Affairs, at the opening of debate on S. (Senate bill) 245:

The bill does not treat Taiwan as a country for purposes of U.S. domestic law. It is based on the view that any benefits the United States decides to confer on Taiwan by statute can be conferred without regard to Taiwan’s international legal identity. The Committee consulted several eminent legal scholars, and they supported this view. Thus, the bill sets forth the specific manner in which relations between the United States and Taiwan will be maintained.

Moreover, utilizing the American Institute in Taiwan as a liaison was a unique approach for the United States, one that was modeled after Japan’s normalized relations with the People’s Republic of China. There were several executive branch (President Carter) shortcomings in the proposed legislation, at least from the point of view of the Committee. For instance, the bill submitted by the Administration (Carter) contained no reference to Taiwan security or to the need to provide defensive arms to the people on Taiwan. Furthermore, the Committee was determined to correct this weakness, and Members carried out extensive discussions on this matter. Some form of a tangible security clause of an indefinite future was deemed mandatory. In part, the security component of the legislation included, to provide the people on Taiwan with arms of a defensive character. Hence, a broad consensus helped create an important piece of legislation, in terms of trade, cultural, strategic and security components.

SO WHY NOT A U.S. – TAIWAN FREE TRADE AGREEMENT LIKE THE U.S. HAS WITH TWENTY OTHER COUNTRIES (CURRENTLY)?

Interestingly, as top-tiered trading partners, the United States and Taiwan do not (currently) have a formal free trade agreement, like the United States has with twenty other countries, including Singapore and South Korea. Why not? There are several reasons, not the least of which is that current political realities make it difficult for Taiwan to join in “competitive liberalization” in the Asia Pacific (Lardy and Rosen, 2007, p. 197). China’s insistence that Taiwan is not (the one China policy) a separate sovereign country makes it that more difficult politically, economically and diplomatically for the United States to even engage in such discussions. Moreover, “political objections from the People’s Republic of China, rooted in the complex history of China and Taiwan since 1949, make its neighbors hesitant to begin negotiations with Taiwan.” (Lardy and Rosen, 2007) Other countries are reluctant to enter into

bilateral trade relations with Taiwan (because of China's influence, which might stymie other countries' trade with China). However, such a free trade agreement between the United States and Taiwan might help "facilitate Taiwan's further integration into the global economy." (Lardy and Rosen, 2007)

Senator John Glenn noted (March 7, 1979), "The PRC continued to insist that diplomatic relations could only be established after the United States withdrew recognition from the Republic of China, withdrew all U.S. troops from the island, and ended the Mutual Security Treaty." Indeed, in 1977 the PRC added a fourth demand -- that no arms sales be made to Taiwan after normalization. However, such contentious rhetoric by Beijing (Peking at the time), began to wane somewhat by mid-1978. Senator Glenn advised, "The PRC had begun to place top priority to economic development and its four modernizations -- industry, agriculture, science and defense. This forced it (China) to look to the West and Japan for capital goods, technology and financial support. In these circumstances, any military move against Taiwan would risk rupturing its relations with the United States and Japan, thus destroying its "four modernizations" and its hope to become strong enough to face its major adversary, the Soviet Union. Thus, the PRC began to demonstrate greater flexibility on Taiwan." Senator Glenn went on to say:

The PRC began to speak of "reunification" rather than "liberation" regarding Taiwan. Vice Premier Teng Hsiao-ping and other Chinese leaders said that after reunification Taiwan would be allowed to retain its higher living standards, its economic and social system, and even its armed forces. Declaratory policies can change, of course, but these are nonetheless encouraging signs.

Senator Glenn also added:

There is substantial public support for the maintenance of close relations with Taiwan. Public opinion polls, both before and after President Carter's announcement (i.e., recognizing the PRC and withdrawing recognition of Taiwan on January 1, 1979), confirm this fact. Thus, S. (Senate) 245 provides a legal mechanism to insure the continuity of ties between the people of Taiwan and the people of the United States.

Another serious discussion centers on APEC (Asia-Pacific Economic Cooperation), and the role of the United States in buttressing up its trade in that region. In addition, beyond trade issues with China and Taiwan, a variety of ocean politics and law of the sea issues, such as boundary disputes, fisheries cooperation, fisheries disputes, the protection of navigation, surveillance and enforcement of the EEZ, search and rescue at sea, control of ship-generated pollution, the transport of hazardous wastes, drug trafficking, sea lines of communication, maritime security and confidence-building measures (CBMs), naval arms control, to name a few, have been discussed during the meetings held by these three regional organizations. (Song and Keyuan, 2000, p. 332) As well, enduring challenges for the United States still exist as noted by Song and Keyuan (2000):

Major challenges for the United States include: (1) the possibility of armed conflicts erupting in the Asia-Pacific region due to territorial or maritime jurisdictional disputes, which not only have the potential to disrupt peace and stability in the region, but also affect important American national interests; (2) the existence of excessive maritime claims in the South China Sea area which will continue to affect the longstanding concerns of the United States over maintaining a public order of the oceans, in particular, the right of a state to exercise freedom of navigation on the high seas and innocent passage in the territorial waters of a coastal state; and (3) a window of opportunity for the

United States to regain its maritime leadership by acceding to UNCLOS” (United Nations Convention on the Law of the Sea). (p. 334)

A caveat, to date, the United States has not signed the treaty. Moreover, beyond sovereignty, national interests and entanglement concerns, which the United States has historically been concerned about, there appears to be other concerns as well. Ironically, as noted by Johnson (2012):

though the United States helped shape the Convention and its subsequent revisions, and although it signed the 1994 Agreement on Implementation of the Law of the Sea, on July 16, 2012, the U.S. Senate had 34 Republican Senators who have indicated their intention to vote against ratification of the Treaty if it comes to a vote. Since at least 2/3 of the 100 member Senate (at least 67 Senators) are required to ratify a treaty, consideration of the treaty was deferred again.

Furthermore, as noted by Wong (2012), “some American commentators, including former Secretary of Defense Donald Rumsfeld, have warned that ratification of the Law of the Sea Treaty might lead to its taxing authority being extended to cover the resources of outer space.” And the notion of sovereignty gets to be complicated if one relies on the most recent iteration of statehood, i.e., the Montevideo Convention on Rights and Duties of States (1933). The international law suggests that the concept of sovereignty includes territorial integrity, non-intervention, and political self-determination. If we were to use that definition, Taiwan certainly has some level of sovereignty, notwithstanding the People’s Republic of China’s position and the United States’ tricky posture. But, can we extend the sovereignty notion to statehood? Perhaps, if we rely on the Treaty or Peace of Westphalia (1648) we could argue that Taiwan fits that typology as well.

AN ONGOING TIGHTROPE THAT THE UNITED STATES HAS TO JUGGLE

Meanwhile, beyond sovereignty, entanglement and possible taxation issues, the United States must uphold its end of the deal of the Taiwan Relations Act of 1979, while not upsetting the People’s Republic of China. That is, the U.S. is obligatory in providing Taiwan with the most up-to-date military defense weaponry which includes the latest advanced fighter jets, which would strengthen Taiwan’s ageing fleet. However, President Obama (much like his predecessor, President George W. Bush) has been reluctant (or simply delaying) any sales of such aircraft, so as not to jeopardize the huge trade relationship with China. Needless to say, the United States is currently between a rock and hard place. As well, many members of the United States Congress and the Obama Administration have been at a crossroads concerning this sensitive topic. For example, noted by the Political Scene (2011):

US legislators have employed a number of maneuvers to prompt the US presidential office to finalize the sale of fighter jets. In late May (2012), 45 senators of the U.S. Senate signed a letter that was sent to Mr. Obama, urging the immediate sale of 66 F-16 fighter jets. The letter is notable not just for the number of senators that were willing to support the initiative, but also because they hailed from both main political parties.

Taiwan has long enjoyed strong bipartisan support in the U.S. legislature for reasons ranging from moral backing for a fellow democracy to the desire to bolster the U.S.’ security arrangements in East Asia to offset China’s expanding military capabilities, as well as to reverse the growing military imbalance in the Taiwan Strait. In mid-June the Committee on Foreign Affairs of the US House of Representatives convened a hearing entitled “Why Taiwan Matters,” which allowed house members to express their support

for close ties with Taiwan and to express continued support for arms sales. In her opening statement, the committee chair, Representative Ileana Ros-Lehtinen (R-FL), vowed to introduce legislation that would strengthen the Taiwan Relations Act in order to facilitate defense cooperation between the U.S. and Taiwan.

Ultimately, two years later, Representative Ros-Lehtinen did just that, she introduced H.R.419 - Taiwan Policy Act of 2013 in the 113th Congress. The bill (2013) states:

Taiwan Policy Act of 2013 - States that nothing in this Act shall be construed to amend or supersede the Taiwan Relations Act. States that it shall be U.S. policy to: (1) support Taiwan and the human rights of its people, (2) permit senior leaders of Taiwan to enter the United States under conditions of appropriate respect and permit meetings between high level Taiwanese and U.S. officials in all U.S. executive departments, and (3) sign a comprehensive extradition agreement. Authorizes the President to: (1) accept a letter of request from Taiwan for price and availability data or for a formal sales offer regarding the F-16C/D Fighting Falcon or other similar aircraft, and (2) transfer specified naval vessels to Taiwan. States that in conducting relations with Taiwan and China the United States continues to assent to the six assurances provided to Taiwan in 1982. Directs: (1) the President to appoint a Director of the American Institute in Taiwan, (2) the Department of State to continue its program to ensure meaningful participation by Taiwan in international organizations, and (3) the Secretary of State to brief Congress about any potential defense-related transfers to Taiwan. Authorizes the President to make available to Taiwan defense items or defense services, including: (1) air, maritime, and ground capabilities; and (2) capacity for partnership with friendly foreign militaries. Expresses the sense of Congress that the goal of trade negotiations with Taiwan should be the negotiation of a free trade agreement

Currently, the legislation is dormant in the U.S. House of Representatives, which may be a good thing for U.S.-People's Republic of China relations.

Nevertheless, there is a glimmer of hope in terms of rapprochement with relations between China and Taiwan, which may assuage some U.S. concerns in the region. That is, since 2008, there have been increasingly benevolent relationships between China and Taiwan. The election of Ma Ying-jeou, the Kuomintang (KMT) candidate, ushered in an era of change (ironically the same clarion call that President Obama touted in his 2008 presidential victory). President Ma Ying-jeou, declared that 'the end of this election is the beginning of change' (Schuman and Tso, 2008). A main plank of Ma's campaign platform is to improve ties with Taiwan's chief rival, China. The two separated in 1949 after Mao Zedong's Communists were victorious in a civil war with the KMT, which fled to the island of Taiwan and set up its own government. Beijing and Taipei have engaged in a military standoff ever since and the heavily armed strait that separates them remains one of Asia's hottest potential flashpoints. China still sees Taiwan as a runaway province and claims sovereignty over the island to this day. Ma, however, is proposing a wide-ranging program aimed at greatly reducing tensions between the two countries. He wants to expand Taiwan's economic ties with China by launching direct transportation links, lifting restrictions on Taiwan businessmen operating in China and opening Taiwan to Chinese tourists and investors. Ma, a Harvard-trained lawyer, also broaches the idea of setting in place "confidence-building measures" to scale back the military build-up along the Taiwan Strait. "The more we open ourselves up," Ma recently told Time Magazine, "the more we interact with the mainland, the chances of war will be less." (Schuman and Tso, 2008) The détente talking points of President Ma was bolstered by the June 30, 2010 signing between China

and Taiwan of an historic trade deal, the Economic Cooperation Framework Agreement (ECFA), which removes tariffs on hundreds of products. As noted by Hickey (2011):

Taken at face value, American statements and actions indicate that the US warmly welcomes recent developments in cross-Strait relations. In fact, it appears that the Obama administration's position toward the issue squares nicely with the policies embraced by the past two US administrations. Unlike other elements in US policy that often appear inconsistent or ambiguous, US policy has consistently supported efforts undertaken by Beijing and Taipei to engage in negotiations to ease tensions in the Taiwan Strait.

As well, there are myriad options to keep the peace in the cross-Strait relations, including Hickey's (2011) suggestions. Hickey has 3 options from the United States' foreign policy efforts: 1) Support Rapprochement between China and Taiwan; 2) Oppose Rapprochement between the two; and 3) More actively support Rapprochement by nudging Beijing and Taipei toward reconciliation. Ultimately, Hickey opines that Option 3 might be in the U.S.' best interests (as well as China's and Taiwan's), meaning a revised Taiwan Relations Act and/or opt to release another U.S.-China communique outlining changes in American policy toward the future of Taiwan policy (p. 245). In other words, the U.S. should play the role of broker (or as Chang (2010) suggests, the facilitator) between China and Taiwan. As well, Hickey suggests that the U.S.' best interest would be to continue to support dialogue and reconciliation, and not push a Washington agenda. I believe Hickey's Option 3 has potential to at least continue stabilization between China and Taiwan, but I think a broader coalition of APEC (Asia-Pacific Economic Corporation) (of which the U.S., China and Chinese Taipei are member states) countries should play a role in helping to broker long-term stability. Since APEC is the main regional trade regime, politically and economically it makes more sense to include those countries at the table of negotiations. A caveat, Beijing now refers to Taiwan as Chinese Taipei.

NURTURING U.S. FOREIGN POLICY SUSTAINABILITY WITH TAIWAN

As noted earlier, the United States does not have a formal Free Trade Agreement (FTA) with Taiwan. The U.S. does have formal trade agreements with Chile, the People's Republic of China and Singapore as well as seventeen other countries (currently). This paper chose to examine Chile and Singapore (in relation to Taiwan), as they represent broadly-speaking Latin America and Southeast Asia as great potential for U.S. economic, political and strategic interests in the twenty-first century. Moreover, China needs to be in any discussion regarding the U.S. and the Asia-Pacific Region, since China is the U.S.' second largest trading partner. "U.S. goods exports in 2012 were \$110.6 billion, up 6.4 percent from the previous year" (Joint-Commission-Commerce-and-Trade-Mid-Year-Review, 2013). Regardless, of the formality of these trade policies (or lack thereof in the case of Taiwan), there are several themes which are present in at least three cases. The themes include open economies; effective macro-economic management policies; solid economic growth over the past 15-20 years in Taiwan, Chile and Singapore; minimal to no broadly-based protectionist interests preventing liberal economic policies; "stepping stones" to multilateral liberalization; discussion and inclusion of nontrade matters like *labor standards and environmental protections* (but not in the Taiwan Relations Act); more comprehensive (at least in the case of Chile and Singapore) than the North American Free Trade Agreement (N.A.F.T.A.) in certain aspects (including e-commerce and completion policy); using conciliation and then fines instead of trade sanctions (and boycotts) to deal with labor and environmental violations; and tariff reductions. One could make the argument that

labor and environmental standards were not at the forefront of trade discussions (or domestic considerations) in the mid to late 1970s in the United States, never mind the fact that domestically, environmentalism did not begin to take off until the 1970s and the Environmental Protection Agency was not created as a federal bureaucracy until 1970. As well, the People's Republic of China at that time (and one might strongly argue even currently), was not that interested in such negotiations as the PRC had a difficult time giving the Republic of China (Taiwan), at the very least, semi-sovereign status.

Politically (like Hong Kong), Taiwan remains a special region for the People's Republic of China. But, how does this continue to play out economically, never mind the aforementioned tremendous wealth being generated via trade? But, more importantly for this paper, in regard to this paper's original question: how can the United States create foreign policies (like the Taiwan Relations Act), that can withstand Congressional turnover, Presidential biases, ideological differences, international events, etc. As well, perhaps international organizations (NGOs and IGOs) can further enhance the sustainability of the Act. The answer has to go beyond economics broadly, and trade specifically. Perhaps one of the keys to U.S. foreign policy sustainability has to include a push for more involvement in international regimes. Such a thrust would help nurture not just bilateral participation, but also international participation, whereby statehood is not always a prerequisite. For example, on July 12, 2013 President Obama signed into law H.R. 1151, an Act concerning participation of Taiwan in the International Civil Aviation Organization (ICAO). This Act allows the United States to be consistent with the one China policy of the United States, which remains unchanged, and shall determine the measures best suited to advance the overall goal of Taiwan's participation in the ICAO (President Barack Obama, July 12, 2013). By touting the "one China," President Obama is helping to balance the juggling act with Beijing. The ICAO is a specialized agency of the United Nations, it was created in 1944 to promote the safe and orderly development of international civil aviation throughout the world. The regime sets standards and regulations necessary for aviation safety, security, efficiency and regularity, as well as for aviation environmental protection. The ICAO serves as the forum for cooperation in all fields of civil aviation among its 191 Member States, which includes China.

Additionally, Taiwan's participation in the World Health Organization (W.H.O.), nurtured by the United States has helped forge sustainability in our foreign policy efforts with Taiwan. However, during the 1980s and 1990s, the People's Republic of China adamantly opposed Taiwan's participation in international organizations, including W.H.O. China opposed Taiwan's admission because of Taiwan's lack of statehood, but also one would suspect because admission would give Taiwan more leverage to vie for statehood, as well as allow Taiwan to have more international sway in general. Ironically, Taiwan was a member of W.H.O. up until 1971, when it was expelled by the United Nations and its seat given to the People's Republic of China. This was a period of heightened tensions between Taiwan and China, and after all China was one of the original P-5 (Permanent Five) U.N. member states. Taiwan still (to date) aspires to have a seat at the World Health Organization (although Taiwan did obtain observer status in 2009 at the World Health Assembly). Despite various lukewarm attempts under the Clinton Administration to more support under the George W. Bush Administration to the United Nations, for Taiwan to have a seat, the advocacy continues on the part of U.S. foreign policy efforts. One would think that the year 2003 would have been a much needed impetus for Taiwan's inclusion in W.H.O. As noted by Chang (2010), the year 2003 was critical for Taiwan's participation in the WHO because of the global panic over the outbreak of Severe Acute Respiratory Syndrome (SARS), which had been concealed by China. As a result Taiwan

became a key victim, sacrificing 73 lives and garnering the renewed attention of the international community, including the United States, which played a vital role as a facilitator in Taiwan's initial interaction with the WHO.

CONCLUSION

The continual international acceptance, legitimacy and sustainability of the Taiwan Relations Act, may in part be bolstered by Taiwan's ongoing democratization efforts. That is, it is interesting to note that democratization in Taiwan came about, ironically, due to the country's expulsion from the United Nations in 1971. This expulsion made Taiwan an outcast in the international system; henceforth Taiwan realized that it had possibly no alternatives but to democratize in order to win back international recognition, with regard to China. Added to this were structural changes in the international system: the rapprochement between China and the US in the 1970s meant that Taiwan lost its most important ally. Hence, over time, the ruling Kuomintang realized that political liberalization in Taiwan was inevitable. Subsequently, the use of democratization became crucial in Taiwan's bid to regain formal recognition in the international system. In this sense, one may argue that in the international arena, image is important for states, especially for a pariah state like Taiwan. (Ong 2010, p. 65) The pariah state notion may only (currently) be applicable to the view of the People's Republic of China.

Another international attention enhancer of TRA sustainability could be Taiwan's use of its soft power. As Ong (2010, p. 64) suggests, "using democratic credentials" and "...soft power can be employed by states to enhance their national interests. For Taiwan, this means that its recently acquired status of being a democracy can persuade other states such as the US to support its cause in the international arena." As well, Australia between 1950-1972, advocated self-determination for Taiwan's people. (Atkinson 2011) It was in Australia's best interest (at least from the point of view of maintaining cozy political and economic relations with the United States), to advocate such a position. But, after establishing official diplomatic relations with the People's Republic of China in 1972, Australia reversed its self-determination stance regarding Taiwan. And since 1972, Australia has maintained its position that China should not engage Taiwan with military force. (Jacobs 2004)

Interest groups can help nurture the sustainability of the Taiwan Relations Act. NGOs like the American Institute in Taiwan (AWT) with its offices in Taipei and Washington, D.C. and the Council on Foreign Relations, based in New York, can play a vital role in fostering sustainability of the Taiwan Relations Act. For example, on June 8, 1979, Senator John Glenn gave a speech to the Council on Foreign Relations entitled, "U.S. Policy in Asia: A View from Capitol Hill," which called on the Council to support the U.S.' efforts in insuring peace and prosperity in the Asian region. As well, Senator Glenn said, "In sum, there is at present a constantly shifting equilibrium in Asia that will require adroit diplomatic maneuvering in order to create and maintain balances and minimize the danger of military conflict." (Glenn, 1979, p. 3) Obviously, the Cold War was still churning, the residuals of the Vietnam War were still resonating, China and Japan were starting to reestablish historical ties, and there was heightened tension between North and South Korea (just as it is today), nevertheless the Asian region still plays a vital role in U.S. foreign policy efforts. Senator Glenn's forward thinking in terms of the need for U.S. foreign policy efforts in the area, actually have come to fruition. For example, Senator Glenn in that 1979 speech to the Council on Foreign Relations, suggested "...East Asia is the world's most rapidly growing region; by the year 2000, the region will have experienced the world's greatest economic surge in less than forty years." (Glenn, 1979, p. 14) In many ways, Senator Glenn's overtures were quite prophetic.

As well, other forms of soft power have helped strengthen the Taiwan Relations Act. For example, the Ministry of Foreign Affairs (MOFA) in Taiwan established the NGO Affairs Committee on October 2, 2000. “The aim is to help Taiwan’s NGOs connect with the world, develop Taiwan’s soft power and contribute to the international community. As a result, Taiwan has been more able to fulfill its roles as a “humanitarian aid provider” and a “cultural exchange promoter,” and boost its reputation and visibility worldwide” (Ministry of Foreign Affairs). Even so, the “honeymoon” (Wang 2010) between the People’s Republic of China, Taiwan and the United States is still a work-in-progress in terms of Cross-Strait relations. And the prospects for continued sustainability of the TRA, must be nurtured not only by NGOs, regional and international, but localized Taiwan-based NGOs. Additional maintenance of the U.S.-Taiwan relationship requires the current institutional mechanisms, including on-going communication channels with Washington and Beijing.

Taiwanese President Tsai Ing-wen’s “middle road” position of her commitment to maintaining the status quo is a balancing act to appease the United States and the PRC. That is, President Tsai Ing-wen has advocated neither independence, nor unification with the PRC. As well, Taiwan’s “Five plus Two” and “New Southbound Policy” are other tools to maintain the Taiwan Relations Act with the United States. The policies are economically-driven which are beneficial for the U.S. and global economy. The industrial sectors in the “Five plus Two” policy are: biotech, defense, green energy, intelligent machinery, Asian Silicon Valley, new agriculture and the circular economy. As well, the “New Southbound Policy” which includes “expediting trade, investment and cultural interactions with south east and south Asian countries. As well as with the United States.” (Rigger, et al., 2017, p. 23)

Maintenance of the U.S.-Taiwan relationship might be gradually increasing the integration of Taiwan into international organizations, like the IMF (International Monetary Fund) and the World Bank. By doing so, it would increase U.S. and Taiwanese leverage in the global economy, like the strategy used by the PA (Palestinian Authority) as a non-member, observer state at the United Nations.

Lastly, sustaining the Taiwan Relations Act might be enhanced by the ongoing negotiations to establish a Trans-Pacific Partnership. Although, under the Trump Administration, the U.S. was withdrawn from the partnership in January 2017. Thus, short and long-term impacts on the Taiwan Relations Act may not be known for some time to come. Along with Taiwan, the countries of: Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam would be part of this regional trade pact. As this paper has illustrated, maintaining trade, cultural relations and military defense in the absence of formal diplomatic relations between the United States and Taiwan should remind policymakers and students of foreign policy, that this unique case study can be used as a model, as new states come into play in this era of increased globalization and democratization. And, Richard Bush (2013) suggests “...Taiwan is the canary in the East Asian coal mine.” But, we certainly hope that is not the case.

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Notes

¹ (see for example, Keohane and Nye 1977; Doyle, 1983; Griffiths, 2011)

² (Also see CRS Report RL30341, China/Taiwan: Evolution of the “One China” Policy—Key Statements from Washington, Beijing, and Taipei, by Shirley A. Kan.)