



Taiwan's Political Status: Historical Background and Its Implications for U.S. Policy

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Summary

In 1979, official U.S. relations with Taiwan (the Republic of China) became a casualty of the American decision to recognize the government of the People's Republic of China (PRC) as China's sole legitimate government. Since then, U.S. unofficial relations with Taiwan have been built on the framework of the Taiwan Relations Act (P.L. 96-8) and shaped by three U.S.-China communiqués. Under these agreements, the United States maintains its official relations with the PRC while selling Taiwan military weapons and having extensive economic, political, and security interests there. But developments in both the PRC and Taiwan political systems mean U.S. officials continually are facing new policy choices. These developments include ongoing transformations in both Taiwan's and the PRC's political systems, economic and trade cycles and, in 2008, a renewal of contacts, talks, and agreements between the two sides.

This report is intended as a background overview of the historical and political complexity associated with Taiwan's status in the world and its continuing policy ramifications. In brief, this report discusses the civil war on China in the 1940s that resulted in the victory of communist forces and the ROC government's flight to Taiwan; reviews the Taiwan government's continued recognition as the sole government of China by much of the world and the United States until 1979; and discusses the Taiwan government's eventual loss of diplomatic relations with the United States and with all but a handful of countries. The report further discusses how the United States handles its extensive ongoing economic and security interests in Taiwan in the absence of official relations, and places in context the recurring policy complications that these interests pose for U.S. relations with the PRC. This report lays out the background and framework that affect how U.S. relations with both Taiwan and China are conducted today. This report will not be updated, and readers wishing to follow current policy issues involving Taiwan and China should consult other regularly updated CRS reports. As of the date of this report, these include CRS Report R40493, *Taiwan-U.S. Relations: Developments and Policy Implications*; and CRS Report RL30957, *Taiwan: Major U.S. Arms Sales Since 1990*.

Relevant legislation introduced in the 111th Congress as of the date of this report includes a measure that would establish diplomatic relations with Taiwan (H.Con.Res. 18, introduced January 9, 2009); a measure expressing U.S. concern over and support for peaceful resolution to Taiwan's political status (H.Con.Res. 200, introduced October 15, 2009); a provision funding democracy assistance to Taiwan (in S. 1434, the Department of State, Foreign Operations, and Related Agencies Appropriations Act for 2010, introduced July 9, 2009); and a provision requiring the Pentagon to assess and submit a report on the capabilities of Taiwan's air force and a five-year plan for fulfilling U.S. defense obligations to Taiwan under the Taiwan Relations Act (in S. 1390, the National Defense Authorization Act for FY2010, introduced July 2, 2009).

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From the Mainland to Taiwan

With the victory of Mao Tse-tung and his Communist Party military forces on mainland China in 1949, the remnants of the government of America's former World War II ally, the Republic of China (ROC) led by Generalissimo Chiang Kai-shek, fled to the island of Taiwan off the south China coast. For the next thirty years, both regimes claimed legitimacy as the sole legal government of the Chinese people. In Beijing on October 1, 1949, a victorious Mao proclaimed the creation of the People's Republic of China (PRC). Meanwhile, Chiang Kai-shek established a temporary capital for his government in Taipei, Taiwan, declaring the ROC still to be the legitimate Chinese government-in-exile and vowing that one day he would "retake the mainland" and drive out communist forces.¹

The United States initially appeared reluctant to support the ROC's claim of legitimacy, and there is evidence that President Harry Truman was prepared to abandon Chiang's government on Taiwan and deal with Mao's PRC regime.² But that U.S. position quickly evaporated with North Korea's surprise invasion of South Korea on June 25, 1950. Within a week, President Truman ordered U.S. air, naval, and ground forces to go to South Korea's aid and ordered the U.S. 7th fleet to prevent any attack on Taiwan, saying that "determination of the future status of Formosa [the island's designation as a Japanese colony] must await the restoration of security in the Pacific ..."³ U.S. support for the ROC was solidified when Chinese Communist forces entered the Korean War in support of North Korea in October-November 1950. As a result, in April 1951, the United States resumed direct military assistance to the ROC government on Taiwan, and in 1954 the United States and Chiang's government signed the U.S.-ROC Mutual Defense Treaty, making the two governments allies once again. This remained the situation for three decades: Taiwan and China remained officially at war; the United States continued to support the ROC claim as the legitimate government of all China, refused to

Figure 1. Taiwan's Location off China Coast



Source: CIA World Factbook online.

¹ At this time and for most of the next 53 years, both the PRC and the ROC claimed Taiwan as a province of China. Taiwan's provincial capital remained at Taichung.

² On January 5, 1950, for example, President Truman announced the United States "would not provide military aid or advice to [Chiang's] Chinese forces" on Taiwan. On June 7, 1950, Secretary of State Dean Acheson said in a news conference that while the United States did not support transferring Chinese representation in the United Nations to the PRC, it would not use its U.N. Security Council veto to block a move to do so.

³ "Statement by the President on the Situation in Korea," June 27, 1950. <http://www.trumanlibrary.org/publicpapers/viewpapers.php?pid=800> President Truman's reference to "Formosa" uses the name by which Taiwan was known under Japanese sovereignty (China ceded Taiwan's sovereignty to Japan under the 1895 Treaty of Shimonoseki).

recognize the legitimacy of the PRC, and maintained a defense alliance with the ROC government on Taiwan. For much of this time, the ROC government continued to represent China in the United Nations and other international organizations.⁴

Official U.S. Recognition of PRC in 1979

In the 1950s and 1960s, the U.S.-ROC Mutual Defense Treaty allowed U.S. forces to use Taiwan as a forward base against Sino-Soviet communism in Asia. But after President Nixon's diplomatic opening to Beijing in 1971-72 and the major pullback of U.S. forces in Asia under the guidelines of the "Nixon doctrine," U.S. officials began to view Beijing more as a strategic asset against the Soviet Union than as an adversary to be confronted in the Taiwan Strait.⁵ The Nixon overtures resulted in the so-called "Shanghai Communiqué" of 1972 (the first of three U.S.-China communiqués) which set the stage for the reversal of U.S. post-WWII China policy.

Figure 2. Taiwan's Location in Asia



Source: CIA World Factbook online.

⁴ The ROC was a founding member of the U.N. in 1945 as well as a permanent member of the U.N. Security Council. In the 1960s, countries sympathetic to the PRC began introducing regular resolutions in the General Assembly to remove Taiwan from that body and seat the PRC as the representative of China. U.S.-led actions successfully blocked these resolutions until October 25, 1971, when two-thirds of the members of the General Assembly passed Resolution 2758, withdrawing recognition from the ROC and recognizing the PRC as the sole legitimate government of China. Taiwan's government has reapplied for U.N. membership and/or observer status since 1991—unsuccessfully until April 29, 2009, when the WHO invited Taiwan to attend its May 18-27, 2009 meeting as an observer.

⁵ President Nixon first used the PRC's formal name in his "State of the World" report to Congress on Feb. 25, 1971, (Jones, DuPre, ed., *China: U.S. Policy Since 1945*, Congressional Quarterly Inc., 1980, pp. 321-322); National Security Advisor Henry Kissinger left for his first, secret trip to China on July 9, 1971; Nixon made his historic visit to China on February 21, 1972.

Official U.S. recognition of PRC legitimacy did not come until 1979, after the Carter Administration made a surprise announcement on December 15, 1978, that the United States would sever official relations with the ROC government on Taiwan and recognize the PRC government in Beijing on January 1 of the new year.⁶ In the Joint Communiqué on Establishing Diplomatic Relations that announced the change, the United States *acknowledged* (an important distinction in future debate on the U.S. “one-China” policy) that both the PRC and ROC governments claimed there was only one China and that Taiwan was a province of it.⁷ As part of the process of recognizing the PRC government, U.S. officials also notified the ROC government (Taiwan) that the United States intended to terminate, effective January 1, 1980, its military obligations toward Taiwan under the 1954 U.S.-ROC Mutual Defense Treaty. In a unilateral statement released on December 16, 1978, the United States declared that it “continues to have an interest in the peaceful resolution of the Taiwan issue and expects that the Taiwan issue will be settled peacefully by the Chinese themselves.”⁸

In an important historical side-note, President Carter’s unilateral decision to terminate the U.S.-ROC Mutual Defense Treaty in accordance with the treaty’s terms (which permitted either party to terminate it with one year’s notice) resulted in a landmark lawsuit over congressional constitutional prerogatives that went all the way to the Supreme Court. The suit, brought by Senator Barry Goldwater, alleged that the Senate’s constitutional role in approving treaties required President Carter to consult the Senate before ending a treaty. (The constitution is silent on how U.S. treaties can be terminated.) After decisions and reversals in Federal District Court, the District of Columbia Court of Appeals in 1979 issued a ruling which among other things stated that the President did not have to seek congressional approval before ending the U.S.-ROC Mutual Defense Treaty. Senator Goldwater appealed to the U.S. Supreme Court, which on December 13, 1979, denied his appeal, leaving the appellate court’s ruling standing.

The Taiwan Relations Act (P.L. 96-8)

While the record shows that the 96th Congress in 1979 clearly concurred with the strategic imperative of normalizing relations with the PRC, many Members were unhappy with what they saw as the Carter Administration’s minimal proposals for continued dealings with the ROC government on Taiwan. In particular, some were concerned that the package of legislation the White House submitted to Congress to govern future unofficial relations with Taiwan—the “Taiwan Enabling Act”—did not go far enough in protecting either Taiwan’s or U.S. interests. Congressional debate on the legislation in 1979 was extensive and complicated. The end result was passage of a much amended version of the Administration’s proposal—the Taiwan Relations Act (TRA—P.L. 96-8)—which remains the domestic legal authority for conducting unofficial U.S. relations with Taiwan today.⁹ Much of the TRA deals with the logistics of U.S.-Taiwan

⁶ In recognizing the legitimacy of the PRC government, the United States fulfilled 3 conditions that Beijing had consistently placed on normalization of relations: withdrawal of all U.S. military forces from Taiwan; severing of diplomatic relations with Taiwan; and termination of the U.S.-Taiwan defense treaty.

⁷ Widely and over-simplly referred to as the “one China policy,” this and other “one-China”-like statements for decades have been parsed and dissected by each involved government for every conceivable nuance. The various iterations of “one-China” policy formulations can be found in CRS Report RL30341, *China/Taiwan: Evolution of the “One China” Policy—Key Statements from Washington, Beijing, and Taipei*, by (name redacted).

⁸ Jones, DuPre, ed., p. 342.

⁹ For more detailed discussions of congressional actions at the time, see “Congress and U.S. policy in Asia: New relationships with China and Taiwan,” in *Congress and Foreign Policy—1979*, House Committee on Foreign Affairs, U.S. Government Printing Office, Washington D.C. 1980, pp. 54-71; Wolff, Lester L. And Simon, David L., eds., (continued...)

relations: the establishment of the American Institute in Taiwan (AIT) as the unofficial U.S. representative for diplomatic interactions with Taiwan, including details about its staffing, functions, and funding.¹⁰ Of particular relevance for long-term U.S. policy are Section 2 (b) and Section 3 of the TRA, dealing with U.S. strategic interests in and arms sales commitments to Taiwan; and Section 4, allowing for the continued application of existing U.S. laws and treaties with Taiwan in the absence of official diplomatic ties.

Infrastructure of U.S.-Taiwan Relations Under the TRA

The dissolution of U.S. diplomatic relations with Taiwan placed Taiwan into a unique legal no-man's land that the TRA was designed to redress. One set of considerations involved how Taiwan—essentially rendered a legal “non-state” by the severing of relations—was to be treated under U.S. law after 1978. Many of these issues are addressed in Section 4 of the TRA, which specifies that in matters of U.S. law, Taiwan is to be treated in a manner consistent with the way that “foreign countries, nations, states, governments, or similar entities” are treated, irrespective of other provisions in U.S. law concerning the requirements of maintaining diplomatic relations. The TRA specifically includes in this treatment the maintenance of all treaties (agreements between sovereign states); the continuation of “the ownership of or other rights or interests in properties, tangible and intangible, and other things of value” owned by the governing authorities on Taiwan prior to December 31, 1978; immigration laws; and the capacity of Taiwan to sue and be sued in U.S. courts.

In another key issue, the severing of diplomatic relations with Taiwan left both the Taiwan and U.S. governments with no practicable official way of managing programs, transactions, financial arrangements, consular services, or other relations with each other. Sections 6 through 9 of the TRA, then, established a non-profit, tax-exempt corporation separate from the U.S. government—the American Institute in Taiwan (AIT)—to handle those issues with Taiwan that would have been conducted by U.S. government authorities such as the State Department if diplomatic relations existed. The AIT is funded through an annual U.S. government appropriation and has offices in Taiwan (in Taipei and Kaohsiung) as well as in Washington, DC (headquartered in Arlington, Virginia). In providing for staffing for the AIT, Section 11 of the TRA states that U.S. government officers or employees may separate from the U.S. government in order to take a position with AIT. Upon completion of their service with AIT, such U.S. government employees are entitled to return to comparable positions in the U.S. government with no loss of “attendant rights, privileges, and benefits ...”¹¹ The title of the head of the U.S. AIT is “Director.”

The TRA provided for a comparable “Taiwan Instrumentality” in Section 10, authorizing the President to extend similar privileges and immunities to Taiwan officers of this instrumentality as Taiwan extended to AIT officials. Originally established as the Coordination Council for North American Affairs, (or CCNAA), the Taiwan office in Washington, DC, has been known as the Taipei Economic and Cultural Representative’s Office (TECRO) since 1994. In addition, TECRO oversees twelve other offices throughout the United States, known as Taiwan Economic and Cultural Offices (TECO); these are in Atlanta, Boston, Chicago, Guam, Honolulu, Houston,

(...continued)

Legislative History of the Taiwan Relations Act, American Association for Chinese Studies, Jamaica, New York, 1982; Jones, DuPre, ed., *China: U.S. Policy Since 1945*, Congressional Quarterly Inc., 1980.

¹⁰ See the American Institute in Taiwan (AIT) website at <http://www.ait.org.tw/en/>.

¹¹ Taiwan Relations Act, P.L. 96-8, Section 11 (2).

Kansas City, Los Angeles, Miami, New York, San Francisco, and Seattle. The title of the head of TECRO is “Representative.” AIT and TECRO officials operate on behalf of their governments in dealing with each other’s governments.

U.S. Arms Sales Commitments to Taiwan

Although it is a common misperception that the TRA mandates the United States to defend Taiwan in case of attack, nothing in the TRA specifically obligates the United States to come to Taiwan’s defense or to resort to military conflict on Taiwan’s behalf. Section 2 of the TRA speaks in broad terms about U.S. interests in peaceful resolution to the Taiwan question, saying that any forceful resolution would be of “grave concern to the United States,” and further states that U.S. policy is to “maintain the capacity of the United States to resist ... coercion” in addressing the Taiwan issue. Section 3 provides for the sale of U.S. defense articles and services to Taiwan, but it is non-specific about the nature of these articles. It merely calls for “such defense articles and services ... as may be necessary to enable Taiwan to maintain a sufficient self-defense capability.” Section 3 gives Congress a role in determining what needs Taiwan may have.

Much of the U.S. debate on Taiwan arms sales since the TRA was enacted has involved differing judgments—often between Congress and the White House—about what should be the capabilities and quantities of the “necessary” articles and services provided for in Section 3 of the TRA.¹² A more recent U.S. debate has evolved since 2001, after Taiwan itself began to appear increasingly hesitant (for domestic political reasons) to invest in some of the weapons systems that the United States offered for sale under the TRA. This latter development—undoubtedly unforeseen at the time of the TRA’s enactment—raises potentially consequential questions for Congress about how, or even if, the United States can honor its commitments under Section 3 of the TRA if Taiwan seems unwilling to participate meaningfully in expanding or at least in maintaining its own self-defense capacity, particularly in the face of significant and ongoing military improvements in the PRC.¹³

Strategic Ambiguity

After normalization of Sino-U.S. relations and the severing of the U.S.-ROC military alliance, the PRC was largely satisfied with U.S. “one-China” formulations alluding to Taiwan’s political status. But upon Congress’ passage of the TRA, PRC leaders objected strenuously to the act’s provision for continued U.S. arms sales to Taiwan, regarding it as a violation of U.S. commitments to end its military alliance with Taipei. After two years of bilateral tensions, a U.S.-PRC joint communiqué—the third and final Sino-U.S. communiqué since Nixon’s opening to China in 1972—addressed this point on August 17, 1982. In that communiqué, the PRC cited it had a “fundamental policy” of striving for a peaceful solution to the Taiwan question, while Washington stated that the United States did not:

¹² CRS Report RL30957, *Taiwan: Major U.S. Arms Sales Since 1990*, by (name redacted).

¹³ In a 2005 speech to the U.S.-Taiwan Business Council-Defense Industry Conference 2005, Ed Ross, Director of DOD’s Defense Security Cooperation Agency, strongly criticized Taiwan’s foot-dragging on passage of a defense budget that would allow purchases of U.S. weapons, saying it was reasonable in such a situation to question the level of U.S. commitment to Taiwan’s self-defense. Agence France-Presse, “Pentagon official warns Taiwan on defense spending,” September 21, 2005.

seek to carry out a long-term policy of arms sales to Taiwan, that its arms sales to Taiwan will not exceed, either in qualitative or quantitative terms, the level of those supplied in recent years since the establishment of diplomatic relations between the United States and China, and that it intends to reduce gradually its sales of arms to Taiwan.¹⁴

The three U.S.-PRC communiqués and the 1979 Taiwan Relations Act for decades served as the framework by which U.S. officials balanced two competing policy objectives—widely referred to as U.S. “strategic ambiguity” about Taiwan. On the one hand were three communiqués in which U.S. policymakers recognized the legitimacy of the PRC government, appeared to acknowledge there was only “one China,” and suggested an eventual ending point to U.S. weapons sales to Taiwan. On the other was the TRA in which the United States established a statutory framework for maintaining extensive unofficial contacts with Taiwan and which committed the United States to providing weapons for Taiwan’s defense against what most saw as Taiwan’s only potential enemy—the PRC. “Strategic ambiguity” remained the basis of U.S. Taiwan policy throughout the 1980s and well into the 1990s, and many observers give it much of the credit for helping to facilitate U.S.-China relations, preserve U.S.-Taiwan contacts, and protect Taiwan’s own political and economic interests.

Policy Implications and Issues for Congress

Despite the policy framework of the TRA and the three communiqués, Taiwan continues to be a particularly complex issue for U.S. policy and a recurring issue for Congress. Some of these complicating factors are old issues arising from the political compromises that the 1979 normalization process demanded—notably, the “one-China” formulation, U.S. security interests in and arms sales to Taiwan, and the U.S. position on Taiwan’s status in key international organizations. Other complications are the result of changing political trends, particularly in Taiwan, that have presented increasing challenges for the policy framework. These issues crop up periodically in congressional debate in ways that occasionally prompt comment from U.S. government officials.

One such recurring issue concerns the U.S. position on Taiwan’s membership in international organizations, such as the World Health Organization and the United Nations. The policy parameters in Section 4(d) of the Taiwan Relations Act make the following specific pronouncement on this point: “Nothing in this Act may be construed as a basis for supporting the exclusion or expulsion of Taiwan from continued membership in any international financial institution or any other international organization.” But nuance has crept into this TRA formulation in subsequent U.S. Administrations. In his “three no’s” statement of June 30, 1998, for example, President Bill Clinton said “... we don’t believe that Taiwan should be a member of any organization for which statehood is a requirement.” Some claim that this phraseology is a misinterpretation of the relevant provision in the TRA.

¹⁴ While the 1982 communiqué was being negotiated, the Taiwan government presented the United States with six points it proposed be used as guidelines in conducting U.S.-Taiwan relations. According to former Ambassador John Holdridge, the United States agreed to these points—the so-called “six assurances.” The six points included assurances that the United States would not set a date for termination of arms sales to Taiwan, would not alter the terms of the Taiwan Relations Act, and would not pressure Taiwan to negotiate with China or act as mediator between Taiwan and China. See CRS Report 96-246, *Taiwan: Texts of the Taiwan Relations Act, the U.S. - China Communiqués, and the “Six Assurances”*, by (name redacted), for text of the “six assurances.”

Another such issue concerns the U.S. “one-China” policy formulation. Although the United States has never repudiated and in fact has continued forcefully to restate that commitment, purists can argue that the U.S. iterations of the “one China” policy over the years have departed from the original formulation in subtle but significant ways. The first two joint communiqués, below, address the “one China” issue in a similar manner, in contrast to the third communiqué, which injects more nuance into the formulation:

- “The United States acknowledges that all Chinese on either side of the Taiwan Strait maintain there is but one China and that Taiwan is a part of China. The United States Government does not challenge that position.” – *The Joint U.S.-China Communiqué, Shanghai, February 1972*
- “The Government of the United States of America acknowledges the Chinese position that there is but one China and Taiwan is part of China.” – *The Joint Communiqué on the Establishment of Diplomatic Relations Between the United States of America and the People’s Republic of China, January 1, 1979*
- “In the Joint Communiqué [of January 1, 1979]... the United States of America ...acknowledged the Chinese position that there is but one China and Taiwan is part of China.... The United States Government attaches great importance to its relations with China, and reiterates that it has no intention of infringing on Chinese sovereignty and territorial integrity, or interfering in China’s internal affairs, or pursuing a policy of ‘two Chinas’ or ‘one China, one Taiwan.’” – *The U.S.-China Joint Communiqué, August 17, 1982.*

Enacted between the second and third communiqué, the Taiwan Relations Act of 1979 leaves the “one-China” question unaddressed. But language in the Conference Report suggests that the 96th Congress wanted to emphasize the “one-China” formulation contained in the first two communiqués. As the Conference Report states: “[The U.S. Administration] has acknowledged the Chinese position that Taiwan is a part of China, but the United States has not itself agreed to this position.” Subsequent iterations by a series of U.S. Administrations concerning U.S. policy on Taiwan almost always have adhered to bare-bones statements, with each being parsed and dissected meticulously by the parties involved for any hidden nuance or perceived change.¹⁵

A third issue is the question of U.S. arms sales to Taiwan, for which the TRA makes provision. Despite the 1982 communiqué in which the United States expressed intent to reduce and eventually end annual arms sales to Taiwan, such sales not only have continued but in some years have increased substantially—notably, with the George W. Bush Administration’s April 2001 weapons sale package to Taiwan that included, among other systems, four decommissioned Kidd-class destroyers, 12 anti-submarine warfare P-3 aircraft, and eight diesel submarines. This sale was surpassed in size and value only by the 1992 sale of 150 F-16 aircraft to Taiwan by the George H. W. Bush Administration.

Debate also regularly recurs over what the United States should do if the PRC uses force against Taiwan. Some observers focus on the lack of any mandate in the TRA for U.S. military intervention, while others point out that the TRA bases the entire foundation of U.S.-PRC official

¹⁵ The convoluted evolution of “one-China” policy statements among all three governments can be found in CRS Report RL30341, *China/Taiwan: Evolution of the “One China” Policy—Key Statements from Washington, Beijing, and Taipei*, by (name redacted).

relations on the premise that Taiwan's future will be resolved peacefully.¹⁶ Some believe that the potential for U.S. military conflict with China over Taiwan has grown given the PRC's military build-up opposite Taiwan, Beijing's refusal to renounce using force against the island, and intermittent but troubling U.S.-PRC naval encounters in the western Pacific and the South China Sea. Others suggest the potential for conflict has been minimized given the growing rapprochement, renewed negotiations, and cross-Strait ties between the PRC and Taiwan that have occurred after the 2008 election of Taiwan President Ma Ying-jeou. In the years ahead, U.S. officials also are likely to continue to debate the medium and longer-term implications of China's military buildup on the PRC-Taiwan strategic military balance, particularly as it affects U.S. responsibilities under the TRA to assist Taiwan's self-defense.

The biggest complicating factor for U.S. policymakers today may come from Taiwan's own political circumstances, which have changed dramatically since Congress passed the 1979 TRA.¹⁷ Under the authoritarian rule of Chiang Kai-shek's Nationalist Party (also known as the KMT), Taiwan's political decisions were predictable, closely aligned with U.S. interests, and dependent largely on U.S. support. But several decades of political reforms have made Taiwan politics not only more democratic and more nationalistic, but more fluid and harder to predict.

Given the historical record and with continuing transformations in both the PRC and Taiwan political systems, U.S. officials may be facing new and more difficult policy choices concerning Taiwan in the coming years. While many consider Taiwan's continuing democratic maturation, most recently demonstrated by the 2008 presidential election, to be a validation of U.S. goals for the spread of democratic values, that democratization also further emphasizes the unique and delicate challenges for U.S. policy that Taiwan poses. The U.S. government continues to embrace the efficacy of the fundamental U.S. policy framework on Taiwan—defined by one observer as “one-China, peaceful resolution, U.S. arms sales, the Taiwan Relations Act, and the three communiqués.” But other observers, including some Members of Congress, appear critical of what they see as excessive U.S. secretiveness and substantive “inflexibility” on Taiwan issues.

Criticism has been leveled especially at the secretive set of “Taiwan Guidelines”—a lengthy and closely held State Department memo written in 1979-1980 purporting to govern what U.S. officials can and cannot do or say with respect to Taiwan after the severance of official U.S.-Taiwan relations.¹⁸ Under the “Guidelines,” for instance, the U.S. government maintains that senior U.S. officials are unable to have any contact with senior Taiwan officials, and that Taiwan officials cannot be received in U.S. government buildings, because the United States does not recognize the government in Taiwan as the legitimate Chinese government. The full “Guidelines” reportedly are extremely confidential even within the U.S. government apparatus, although officials in relevant U.S. government departments are reminded of their basic premises periodically in an abbreviated memo. Reportedly, the only official modification of the “Guidelines” since their original inception occurred during the Clinton Administration in 1993-1994, the principal change being the initiation of U.S. high-level engagement with Taiwan for

¹⁶ Section 2(b)(3) of the TRA states that it is U.S. policy “to make clear that the United States decision to establish diplomatic relations with the [PRC] rests upon the expectation that the future of Taiwan will be determined by peaceful means.”

¹⁷ See CRS Report R40493, *Taiwan-U.S. Relations: Developments and Policy Implications*, by (name redacted).

¹⁸ According to one former U.S. government official interviewed on July 5, 2006, much pertaining to the “Guidelines” is simply commonly understood practice—such as that high State Department and other senior U.S. government officials cannot go to Taiwan.

economic entities.¹⁹ The only public issuance of these modifications appears to have been given in the 1994 testimony of Winston Lord, Assistant Secretary of State for East Asia, before the Senate Foreign Relations Committee.²⁰

As of the date of this report, evidence suggests that the administration of President Barack Obama will continue to pursue the overall policy direction toward the PRC and Taiwan that past U.S. administrations have followed. But within this broad framework, it still is unclear what shading, if any, the Administration may give to the U.S. policy direction or whether administration officials will undertake another Taiwan policy review to respond to new developments.

Some Members of Congress and former U.S. government officials, for instance, have suggested that there is room for more flexibility on the logistics of daily U.S. interaction with Taiwan. In this view, the United States could ease the constraints on U.S. interaction with Taiwan and make clear that routine practical interactions—such as higher-level working visits, permitting Taiwan officials to enter the premises of the State Department and the National Security Council, or more routine treatment of requests for U.S. visits by senior Taiwan officials—have no implications for the U.S. “one China” policy. A few have taken the notion of flexibility even farther, arguing that the United States should scrap the “one China” policy altogether, despite the potentially grave costs to U.S.-China relations, and establish diplomatic relations with Taiwan.

Reflecting these views, Members of Congress in recent years have introduced a number of measures calling for changes or for greater flexibility in U.S. policy on Taiwan. Measures introduced in the 111th Congress as of this writing include:

- A bill establishing diplomatic relations with Taiwan: H.Con.Res. 18 (introduced January 9, 2009, by Representative John Linder);
- A measure expressing U.S. concern over and support for peaceful resolution to Taiwan’s political status: H.Con.Res. 200 (introduced October 15, 2009, by Representative Robert Andrews);
- A provision funding democracy assistance to Taiwan: in S. 1434, the Department of State, Foreign Operations, and Related Agencies Appropriations Act for 2010 (introduced July 9, 2009);
- And a provision requiring the Pentagon to assess and submit a report on the capabilities of Taiwan’s air force and a five-year plan for fulfilling U.S. defense obligations to Taiwan under the Taiwan Relations Act: in S. 1390, the National Defense Authorization Act for FY2010 (introduced July 2, 2009).

¹⁹ Some observers point out that the Taiwan Guidelines seem to have been bent on at least two other occasions without official modification—when U.S. Trade Representative Carla Hills, a cabinet officer, went to Taiwan in December 1992 to discuss U.S.-Taiwan trade ties, and when Taiwan President Lee Teng-hui in 1995 became the first Taiwan president since 1979 permitted to make a landmark “unofficial” visit to the United States.

²⁰ Hearing on Taiwan Policy, Senate Foreign Relations Committee/East Asian and Pacific Affairs, September 27, 1994.

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