

**The Risk,
and Costs,
of China
Choosing
Conflict**

Taking Taiwan

Cover Story

Not since the late 1990s has the situation in the Taiwan Strait been so fraught. Against the backdrop of Russia's invasion of Ukraine, the perils of a possible military contingency in the Taiwan Strait are front and center in the calculations of countries throughout the region, and in much of the world. What are the stakes and what are the possible scenarios?

ESSAYS BY

Introduction: John Delury,	8
Stephan Haggard & James Lee	14
Zhang Tuosheng	20
James Lee	24
Bonny Lin	30
Jaw-Ling Joanne Chang	36
Hsin-Hsin Pan, Wen-Chin Wu	42
& Chien-Huei Wu	48
Noboru Yamaguchi	54
Jungsup Kim & Kwang-Jin Kim	60
Iain D. Henry & Evelyn Goh	65
Zsuzsa Anna Ferenczy	70
Robert Thomas	
T.J. Pempel	

What the Taiwan Relations Act Really Means for US Policy

By James Lee

Received wisdom has it that Washington practices 'strategic ambiguity' on Taiwan, meaning it isn't clear whether a move by Beijing to unify the island with the PRC would trigger US intervention. Supposedly, this is categorically different from strategic clarity, as in the United States' commitments to its treaty allies.

In reality, writes James Lee, the Taiwan Relations Act differs in ambiguity from the North Atlantic Treaty by degree, not by kind — and it contains far greater scope for US action than widely recognized.

IN RECENT YEARS, strategic ambiguity has been the most controversial aspect of Washington's One China policy. It means the United States does not say whether, or under what conditions, it would intervene in the defense of Taiwan. The alternative is strategic clarity, under which the US would make a clear commitment to Taiwan as it does to its treaty allies. This distinction exaggerates the differences between these alternatives, and analysts on both sides of this debate rarely acknowledge that the Taiwan Relations Act (TRA) is more expansive than an alliance treaty.¹ It may not commit the US to defend Taiwan in the event of a military contingency, but it does define an extraordinarily wide range of conditions under which Washington could intervene — wider, in fact, than those specified in the North Atlantic Treaty. And while the TRA uses ambiguous language about how exactly the US would react, that kind of ambiguity is also present in the North Atlantic Treaty, only to a lesser degree. The TRA's language shows it is closer to an alliance treaty than many realize.

This does not mean that all aspects of the existing policy are adequate, however. The TRA only defines Taiwan as including the main island of Taiwan and the Penghu Islands. It is silent on Taiwan's outlying islands: Kinmen and Matsu (Jinmen/Quemoy and Mazu) off the coast of China; and Pratas and Itu Aba (Dongsha and Taiping) in the South China Sea. These could be targeted by Beijing, as shown by recent incursions by Chinese civilian drones in the territorial airspace of Kinmen County (Taiwan's military shot one down on Sept. 1), and there is evidence that Beijing has previously debated seizing Pratas.² Taipei would suffer a severe blow from the loss of Kinmen and Matsu, which would also

¹ Exceptions include Richard Bush, *At Cross-Purposes: US-Taiwan Relations since 1942* (New York: Routledge 2015, first edition M.E. Sharpe 2004), pp.150-160, esp. p.154; and Jay Taylor, *The Generalissimo's Son: Chiang Ching-kuo and the Revolutions in China and Taiwan* (Cambridge: Harvard University Press, 2000), p.342.

² Oriana Skylar Mastro, "The Taiwan Temptation: Why Beijing Might Resort to Force," *Foreign Affairs*, July/August 2021, www.foreignaffairs.com/articles/china/2021-06-03/china-taiwan-war-temptation; ; Keoni Everington, "Taiwan Troops Shot Down Intruding Drone," *Taiwan News*, Sept. 1, 2022, www.taiwannews.com.tw/en/

trigger a humanitarian crisis as tens of thousands of people would need to be evacuated to the main island of Taiwan. If Beijing seized control of Pratas and Itu Aba, it would set an alarming precedent not only in the dispute over Taiwan, but also in the disputes over the South China Sea. The US would have to decide how to respond, but the TRA does not define a policy on any of the outlying islands.

Comparing the Taiwan Relations Act and the North Atlantic Treaty

The TRA is a cornerstone of Washington's One China policy, under which the US maintains unofficial relations with Taiwan and opposes unilateral changes to the status quo. It may not be an alliance treaty signed and ratified among multiple states, but that does not mean that it defines a uniformly weaker US role in Taiwan's security compared to an alliance treaty. In comparison with the North Atlantic Treaty, the TRA is *broad* and *shallow*, while the North Atlantic Treaty is *narrow* and *deep*. Some exemplary language from the TRA makes the point:

It is the policy of the United States ... to maintain the capacity of the United States to resist any resort to force or other forms of coercion that would jeopardize the security, or the social or economic system, of the people on Taiwan. (TRA 2(2)(f))

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. (TRA 3(3))³

This language lays out an expansive set of conditions that might trigger a US response, such as a blockade, a boycott, a cyberattack, subversion, a limited military campaign or a full-scale invasion — essentially any scenario that could be interpreted as an attempt by Beijing to unilaterally change the status quo. That is why it is broad.

It is also shallow, however, because it does not say what the US would actually do in a contingency. Subsection 2(2)(f) says the US will "maintain the capacity" to intervene, but it does not commit the US to exercise that capacity, and Subsection 3(3)

only says that the president and the congress "shall determine ... appropriate action." A Senate report during the drafting of the TRA noted that "it may be the judgment of the United States that the most effective action, from the standpoint of the United States or the people on Taiwan or both, is no action."⁴

Compared to the relevant subsections of the TRA, Article 5 of the North Atlantic Treaty defines a limited set of conditions under which the US could intervene to support its NATO allies, but it states that the US would do so:

The Parties agree that an armed attack against one or more of them in Europe or North America shall be considered an attack against them all and consequently they agree that, *if such an armed attack occurs*, each of them, in exercise of the right of individual or collective self-defence recognised by Article 51 of the Charter of the United Nations, will assist the Party or Parties so attacked by taking forthwith, individually and in concert with the other Parties, *such action as it deems necessary, including the use of armed force, to restore and maintain the security of the North Atlantic area.*⁵ (Emphasis added.)

The condition under which the US would intervene is specifically defined as an armed attack, and it does not explicitly include non-military threats like boycotts, embargoes or subversion. That is why the North Atlantic Treaty is narrow. It is also deep because it says that if that condition is fulfilled, the US (and all other NATO members) will assist the party or parties under attack. It also defines the response by the end state it is meant to achieve, namely "to restore and maintain the security of the North Atlantic area." In contrast, the TRA does not say that the US will assist Taiwan in the event of a contingency, nor that the US will define appropriate action in reference to restoring and maintaining security in the Taiwan Strait or the Western Pacific.

But even the North Atlantic Treaty is ambiguous about what each party would do. It commits each party to take "such action as it deems necessary, including the use of armed force." The reference to armed force is more pointed than the language of the TRA, but it is only listed as a possibility; Article 5 does not express an *ex ante* commitment to use force. As Michael Glennon has explained, one of the reasons why US alliance treaties don't provide absolute clarity is the fact that that kind of guarantee would be questionable under

news/4644541; Sarah Wu, "China has debated attacking Taiwan-controlled islands, Taiwan Official Says," *Reuters*, Nov. 4, 2021, www.reuters.com/world/china/china-has-debated-attacking-taiwan-controlled-islands-taiwan-official-says-2021-11-04/

3 American Institute in Taiwan, "Taiwan Relations Act [January 1

1979]," www.ait.org.tw/policy-history/taiwan-relations-act/

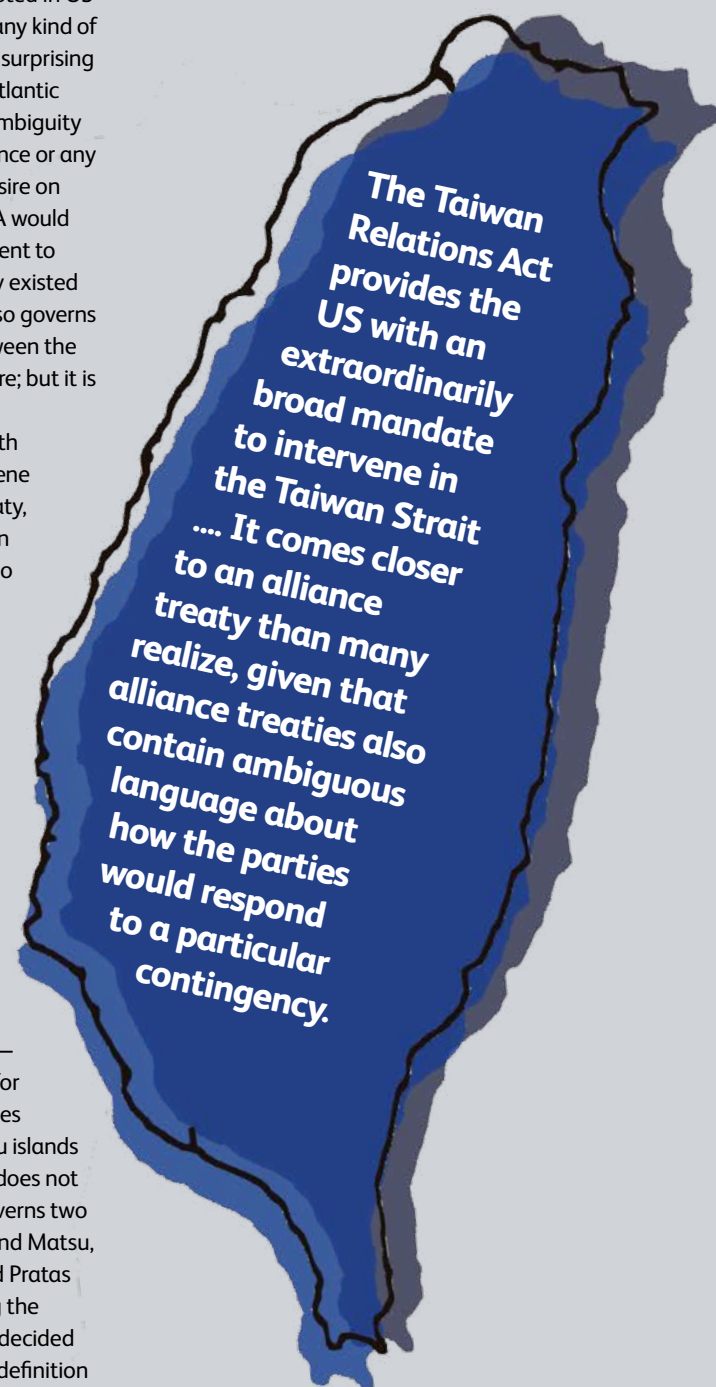
4 Lester L. Wolff and David L. Simon, eds., *Legislative History of the Taiwan Relations Act: An Analytic Compilation with Documents on Subsequent Developments* (Jamaica: American Association for Chinese Studies, 1982), pp.141-142.

constitutional law, which invests Congress with the power to declare war.⁶ Because they are rooted in US domestic politics, these legal issues affect any kind of US military intervention abroad, so it is not surprising that there is ambiguity in both the North Atlantic Treaty and the TRA. In fact, the strategic ambiguity in the TRA did not originate in dual deterrence or any kind of international strategy, but in the desire on the part of Congress to ensure that the TRA would not provide greater authority for the president to deploy US forces abroad than what already existed under the War Powers Resolution, which also governs alliance treaties.⁷ There is a difference between the TRA and the North Atlantic Treaty, to be sure; but it is not the difference between night and day.

In summary, the TRA provides the US with an extraordinarily broad mandate to intervene in the Taiwan Strait. It is not an alliance treaty, but it comes closer to an alliance treaty than many realize, given that alliance treaties also contain ambiguous language about how the parties would respond to a particular contingency. Arguably, the TRA more than compensates for its lack of depth through the breadth of US support for Taiwan's security. This breadth is well suited to the multidimensional nature of the threat that Beijing poses to Taiwan. It shows that the US is prepared to respond to the full spectrum of economic, kinetic and grey-zone threats to "the security, or the social or economic system" of Taiwan.

Trouble in the Outlying Islands?

Yet some aspects of the status quo policy — or rather the lack of a policy — give cause for concern. In Subsection 15(2), the TRA defines Taiwan as including Taiwan and the Penghu islands (also known as the Pescadores). But Taipei does not only control Taiwan and Penghu. It also governs two sets of so-called outlying islands: Kinmen and Matsu, off the coast of China's Fujian Province, and Pratas and Itu Aba in the South China Sea. During the drafting of the TRA, members of Congress decided not to include these outlying islands in the definition of Taiwan because of fears of entrapment.⁸ But that was a reaction to the crises of the 1950s, when



5 North Atlantic Treaty Organization, "The North Atlantic Treaty [April 4, 1949]," www.nato.int/cps/en/natohq/official_texts_17120.htm

6 Michael Glennon, "A Guarantee is Legally Dubious," *Foreign Affairs*, Sept. 24, 2020, www.foreignaffairs.com/articles/united-states/2020-09-24/dire-straits

7 Wolff and Simon, *op. cit.*, pp.140-142; pp.145-146.

8 *ibid.*, pp.281-283.

9 Kai-yang Huang, "The 'Lost Outlying Island' of the Tachen Diaspora," *Taiwan Insight*, Sept. 17, 2021, taiwaninsight.org/2021/09/17/the-lost-outlying-island-of-the-tachen-diaspora/

Kinmen and Matsu were heavily militarized and used to launch raids against the mainland. Today, different issues surround the outlying islands, and the US needs a contingency plan.

The loss of these islands to the People's Republic of China would set an alarming and dangerous precedent for the security of the Taiwan Strait and the South China Sea. With more than 150,000 Republic of China citizens living in Kinmen County and Lienchiang County (Matsu), a military contingency would also set off a humanitarian crisis. Many would have to be evacuated or resettled in Taiwan or Penghu — a formidable challenge in any event, and especially challenging in a military crisis in which PLA and Taiwanese forces would be engaged in the vicinity. Taipei would likely ask Washington for assistance to protect the humanitarian corridors to evacuate residents of Quemoy and Matsu. A historical parallel may be found in the First Taiwan Straits Crisis, when the US Navy provided ships for Taipei to evacuate 28,000 people from the Tachen islands, the last foothold of the Republic of China in Zhejiang, and resettle them in Taiwan.⁹

For Pratas and Itu Aba, PLA annexation would mark a new phase in the South China Sea disputes, as China would go beyond building and militarizing artificial islands and making expansive maritime claims to seizing territory from another claimant. How the US would respond, and what changes this might require to US policy in the South China Sea, remains an open question. Would the US be prepared to use force to expel the PLA from Pratas and Itu Aba to deter Beijing from annexing other features in the sea? If so, how would the US manage the risk of escalation? Tiny though Taiwan's outlying islands are, they raise a number of strategic, political and economic questions for the US.

Conclusion

I have argued in this essay that the Taiwan Relations Act provides greater scope for the US to support Taiwan in a military contingency than many realize. The debate on strategic ambiguity creates the impression that it is a weaker policy of support for Taiwan than a policy of strategic clarity would be. But if one examines the actual text of the TRA, the statement of US policy is not objectively

"better" or "worse" than Washington's commitment to its NATO allies. Compared to the North Atlantic Treaty, the TRA has greater breadth but less depth in terms of defining when the US could and would intervene. Given that Beijing has confronted Taiwan with a range of threats that go far beyond "armed attack," the TRA is well suited to addressing a range of actions in the Taiwan Strait. And even though it has less depth than the North Atlantic Treaty, the contrast is not as stark as recent policy debates have suggested. Even in the North Atlantic Treaty, there is an element of ambiguity.

Strategic clarity would strengthen US support for Taiwan, but only at the margins, and it could come with wider risks. As well as complicating US efforts at dual deterrence, it could raise serious concerns — not only in Beijing, but also in Tokyo, Seoul, Canberra and Brussels — that Washington was changing the status quo in the Taiwan Strait. There is an emerging international coalition of democracies that have voiced support for Taiwan in recent years, but that coalition is still fragile. If the US and Taiwan want to secure the support of like-minded countries, they need to convince those countries that they are upholding the status quo and that Beijing is the revisionist power. That means deepening co-operation within the scope of the One China policy, of which the TRA is an essential part.

But not all aspects of the existing policy are satisfactory, and the TRA only helps to maintain peace and security where it applies. The omission of the outlying islands in the definition of Taiwan means that the US is not fully prepared, at a political and strategic level, for responding to a contingency. A full-scale PLA invasion of Taiwan may not be likely in the near term, but Beijing could still try to annex territory by launching an attack on Kinmen, Matsu, Pratas or Itu Aba. It is unlikely that Taipei could maintain control of these islands, even with Washington's assistance, but defining a policy would enable the US to plan effectively for this kind of contingency.

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