

How Congress Can Help to Deter Chinese Coercion of Taiwan  
and Clarify U.S. Definitions of “One China”

Testimony of

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Introduction and summary

I would like to thank the Chairman, the Ranking Member, and the distinguished members of this Committee for inviting me to participate in today’s hearing.

I am a professor of law at Hofstra University in New York teaching both constitutional and international law subjects. Much of my academic research in recent years has focused on how domestic and international laws affect and shape U.S. relations with China and Taiwan. I have been particularly interested in the way in which Congress has sought to influence U.S. policy toward Taiwan via enactment of the Taiwan Relations Act as well as other laws such as the Taiwan Travel Act.

Many supporters of Taiwan in the U.S. have rightly focused on bolstering Taiwan’s ability to defend itself against military coercion by the People’s Republic of China. I want to focus the first part of my testimony today, however, on ways in which the U.S. can and should support Taiwan against non-military coercion. Such non-military coercive means is an important part of China’s strategy for pressuring Taiwan to accept reunification on its terms. As I will explain, U.S. support for Taiwan against such non-military coercion, in my view, is both required by the Taiwan Relations Act and a crucial component of how the U.S. can support Taiwan.

I will also suggest that Congress can make an important contribution to supporting Taiwan by clarifying what the U.S. government’s “One China” policy means and how it differs from China’s definition of “One China.” Such clarity will help guide U.S. government relations with Taiwan as well as make clear to China and the rest of the world that the U.S. has not accepted China’s definition of “One China.”

## A. Background: The Taiwan Relations Act and U.S. Taiwan Policy

The Taiwan Relations Act<sup>1</sup> (the TRA) has guided U.S. policy toward Taiwan for nearly 40 years. In addition to providing legal mechanisms allowing the U.S. and Taiwan to maintain robust unofficial relations, it also sets forth the goals of U.S. Taiwan policy with admirable clarity. These goals can be summarized as 1) maintaining peace and stability in the Western Pacific and especially between China and Taiwan; and 2) deterring any violent or coercive resolution of the status of Taiwan.

As an initial matter, it is worth noting that statutory declarations of policy in the TRA are not mere hortatory statements without any legal force. Unlike concurrent resolutions that are never presented to the President for his signature, the TRA was passed by both houses of Congress and signed by the President. As such it is the supreme law of the land under Article VI of the Constitution. Moreover, Congress frequently uses statutory declarations of “policy of the United States” to shape and guide U.S. foreign policy actors throughout the U.S. foreign policy bureaucracy. This is true of the TRA and, as I have written elsewhere, this is also true of the recently enacted Taiwan Travel Act.<sup>2</sup>

Thus, when the TRA declares that it is U.S. policy to “provide Taiwan with arms of a defensive character,” and to “maintain the capacity of the United States to resist any resort to force or coercion” that would jeopardize Taiwan’s security, this has legal as well as policy significance. It means that the U.S. has a core commitment to ensuring Taiwan’s ability to defend itself, and to maintaining the U.S. military’s capacity to assist in Taiwan’s self-defense.

But the TRA is not wholly focused on military threats. Section 4 declares that U.S. policy will “consider any effort to determine the future of Taiwan by other than peaceful means, including by boycotts or embargoes, a threat to the peace and security of the Western Pacific Area and of grave concern to the United States.” Section 4 makes clear that the U.S. will consider even non-military coercive measures such a boycott as “other than peaceful means” and a “threat to peace and security.” This means that the drafters of the TRA were concerned that Taiwan could be coerced toward an undesired reunification through non-military means. Such non-military coercion could include embargos and boycotts, but it can also include influence operations aimed at weakening Taiwan’s social, economic and political stability and cyber-operations against Taiwan government entities.

While military force against Taiwan represents the most serious threat to the U.S. goal of ensuring a peaceful resolution of the Taiwan question, Section 4 reminds us that non-military means of coercion also can be dangerously effective and a “grave concern” of the United States. For this reason, the U.S. government should make sure that the timing and content of

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<sup>1</sup> Pub.L. 96–8, 93 Stat. 14, enacted April 10, 1979; H.R. 2479, 22 U.S.C. ch. 48 § 3301 et seq.

<sup>2</sup> See Julian Ku, “Ignore the Hype: The Taiwan Travel Act is Legally Binding,” *Lawfareblog.com* (March 20, 2018). <https://www.lawfareblog.com/ignore-hype-taiwan-travel-act-legally-binding>

arms sales does not crowd out efforts to assist Taiwan in counteracting these non-military coercive measures.

## **B. Non-Military Coercion of Taiwan**

Taiwan faces Chinese non-military coercion of all kinds including, reportedly, millions of hostile cyberattacks per month<sup>3</sup> and a sophisticated “United Front” influence operation within its domestic political system.<sup>4</sup> Although serious, the U.S. has a limited ability to assist on these types of coercion taking place within Taiwan although it can and should provide assistance if possible. But, in my opinion, the U.S. government can be most helpful in supporting Taiwan against non-military coercion occurring at the international organizations and in the United States.

### **1. Diplomatic Coercion at International Organizations**

Perhaps the most important way that China has exercised non-military coercion on the international stage is by working to systematically bar Taiwan’s official and unofficial participation in any and all international organizations. While Taiwan has always faced an uphill battle seeking to participate in international organizations as a member state since it was ejected from the United Nations in 1971, China has also worked to ban even unofficial Taiwanese participation in what I call “technical” international organizations such as the World Health Assembly, the International Civil Aviation Organization, and the International Criminal Police Organization (INTERPOL). China’s relentless effort to exclude Taiwan from these technical organizations is a form of coercion because exclusion in these cases is not merely aimed at protecting China’s legal claim to sovereignty over Taiwan. Rather, Chinese efforts to prevent even unofficial or non-member participation is intended to make life harder and more dangerous for residents of Taiwan on matters of health, air travel, and crime. And by making life harder and more dangerous for Taiwanese people, China is effectively coercing them toward choosing unification on its terms.

#### **a. The World Health Assembly**

The World Health Assembly is the decision-making body of the World Health Organization, a specialized agency of the United Nations. The WHO serves to direct and coordinate international health within the United Nations system. It plays a crucial role in setting norms and standards for matters of public health as well as monitoring implementations of those standards. It also provides technical support to states and private organizations seeking to respond to international public health crises or to coordinate and manage existing public health issues.<sup>5</sup>

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<sup>3</sup> Taiwanese under siege from blitz of Chinese cyberattacks, Asia Times (April 6, 2018) (available at <http://www.atimes.com/article/taiwanese-siege-blitz-chinese-cyberattacks/>)

<sup>4</sup> See Lauren Dickey, Defending Taiwan against China’s united front, Taiwan Insight (March 27, 2018) (available at <https://taiwaninsight.org/2018/03/27/defending-taiwan-against-chinas-united-front/>).

<sup>5</sup> See “About WHO,” <http://www.who.int/about/en/>

It is this last role where the WHO often draws public attention. When a public health crisis spreads across national borders, the WHO can lead and coordinate the multinational health response that is usually needed. It can also provide critical technical guidance to states where needed. The WHO served in this important role during the 2004 Severe Acute Respiratory Syndrome (SARS) crisis that affected many places in Asia, including Taiwan.<sup>6</sup>

Taiwan has long sought to participate in the WHA, which would allow Taiwan to contribute to the formulation of WHO policy and contribute to WHO programs. After being rebuffed for many years, the Director General of WHO agreed in 2009 to invite Taiwan to participate in WHO as an “observer” under the name “Chinese Taipei.” It was understood at the time that China acquiesced to this participation in light of warming cross-straits ties under the Nationalist Party Ma Ying-jeou administration.<sup>7</sup> China’s decisive role seems confirmed by the failure of the WHO Director General to invite Taiwan in 2016 after the election of the Democratic Progressive Party’s candidate Tsai Ing-wen.<sup>8</sup>

This diplomatic skirmish between Taiwan and China over participation in the WHA reveals China’s coercive intent. While Taiwan obviously sought full membership in the WHA, it had compromised by agreeing to participate as “Chinese Taipei” since the functional benefits of technical cooperation with the WHO was still valuable. China’s choice to bar even this limited participation of Taiwan as an observer non-state suggests that it seeks to pressure and exclude Taiwan whether or not Taiwanese participation implicated China’s legal position.

#### b. The International Civil Aviation Organization

Taiwan has also sought to participate more directly in activities of the International Civil Aviation Organization (ICAO). The ICAO is an international organization authorized by its member states to administer and manage the Chicago Convention on Civil Aviation. The Chicago Convention serves the legal foundation for international cooperation in the management of international civil aviation. The ICAO serves to create regulations and standards related to civil aviation and facilitates agreements between countries on international flight routes that affect national airspace.<sup>9</sup>

It is important to note that countries have not delegated to the ICAO any specific authority to designate flight routes over international airspace. But the ICAO is the key institution where technical experts work together to develop flight routes that are eventually implemented by

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<sup>6</sup> See “SARS outbreak contained worldwide” (5 July 2003), News Release, <http://www.who.int/mediacentre/news/releases/2003/pr56/en/>

<sup>7</sup> For background see Jacques deLisle, “Taiwan in the World Health Assembly: A Victory, With Limits,” Brookings, (May 13, 2009). <https://www.brookings.edu/opinions/taiwan-in-the-world-health-assembly-a-victory-with-limits/>

<sup>8</sup> J.R. Wu, “Uninvited Taiwan says going to U.N. health meeting, warns China on ties,” Reuters, (May 8, 2017). <https://www.reuters.com/article/us-taiwan-china/uninvited-taiwan-says-going-to-u-n-health-meeting-warns-china-on-ties-idUSKBN1841CM>

<sup>9</sup> See History, ICAO <https://www.icao.int/secretariat/TechnicalCooperation/Pages/history.aspx>

national authorities. Taiwan has been excluded from the ICAO since 1971, when it lost its seat at the United Nations to China. Like its limited participation in the WHA, Taiwan's representatives have sometimes participated in ICAO meetings as a "guests" of the ICAO president,<sup>10</sup> but Taiwan does not otherwise have any formal role in the ICAO, even though its civil aviation agency follows ICAO rules and standards as closely as possible.

In January, China sparked controversy when it opened new flight routes through the Taiwan Straits without consulting Taiwan. When Taiwan protested, since those routes complicated its air defenses systems, China simply brushed off Taiwan by noting it did not need any approvals from Taiwan. The controversial flight route had been developed in consultation with an [ICAO Working Group](#). The ICAO's support for the flight route gives China international legitimacy for its decision on M503 even if China is not strictly required by the Chicago Convention or international law to seek ICAO approval.

Taiwan's exclusion from the ICAO, a technical agency tasked with practical rather than political issues, made it more difficult to have its concerns over matters of air safety and national security considered in the ICAO's flight route development process. Indeed, Taiwan's diplomats have noted that Taiwan is a significant air traffic hub and that it has technological expertise it can share with other countries through the ICAO. But China insists on excluding Taiwan's participation, even as a guest non-state member. This again suggests that China's goal is to pressure and coerce Taiwan and limit its ability to coordinate on technical matters such as commercial air traffic.

### c. INTERPOL

To some degree, Taiwan's exclusion from the WHA and ICAO flows from its overall exclusion as a member state from the UN. But China has also worked to exclude Taiwan from participating in a non-UN affiliated organization: INTERPOL. As the largest "police organization in the world," INTERPOL serves as a mechanism for assisting domestic law enforcement organizations in their efforts to combat transnational crime and terrorism.

INTERPOL bills itself as a neutral international organization that seeks "to facilitate international police cooperation even where diplomatic relations do not exist between particular countries."<sup>11</sup> The founding INTERPOL document prohibits "any intervention or activities of a political, military, religious or racial character." The idea here is that INTERPOL's political neutrality allows law enforcement authorities in different countries to cooperate against the common enemy – transnational criminals and terrorists – without allowing politics to intrude. INTERPOL members thus get very real practical benefits of access to its global network of law enforcement authorities and its sophisticated mechanisms for transnational law enforcement cooperation. INTERPOL boasts 192 countries as members.

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<sup>10</sup>Shih Hsiu-chuan, "Taiwan only 'guest' due to China: ICAO", Taipei Times (September 26, 2013).

<http://www.taipetimes.com/News/front/archives/2013/09/26/2003573020>

<sup>11</sup> See Overview (<https://www.interpol.int/About-INTERPOL/Overview>)

Taiwan has been excluded from INTERPOL since 1984 when it was replaced by China. In 2016, Taiwan applied to participate in INTERPOL's General Assembly meetings as an observer. Taiwan did not initially seek, according to reports, to join as a member state. It also sought access to INTERPOL's I-24/7 global police communications system and the Stolen and Lost Travel Documents database in preparation for its hosting of an international university athletics competition in 2017. Yet its 2016 bid to attend as an observer, and its bid for technical access, was rejected by INTERPOL's president and secretariat.<sup>12</sup>

Chinese opposition was not public, but it was widely blamed for INTERPOL's decision. As in the WHA and ICAO cases, Taiwan was willing to forego its claim to participate as a full member state in order to facilitate access to technical cooperation in areas of public health, commercial aviation, and now transnational crime-fighting. China's opposition to even this access to technical services should be called out for what it is: non-military coercion.

#### d. The Surprisingly Ineffective Role of United States Diplomacy

Although Congress has repeatedly passed legislation expressing its support for Taiwan's participation in international organizations like the WHA, INTERPOL, and the ICAO and sometimes requiring reports on U.S. government efforts in this regard, U.S. support has not resulted in successful outcomes. Taiwan has been uniformly rejected from even observer access at international organizations. The U.S. is not responsible for Taiwan's rejections, but it is striking how the U.S. has been unable to exercise its own considerable leverage within these same international organizations.

In all 3 international organizations discussed above, the U.S. is the more senior member of the international organization as well as that organization's largest financial contributor, far outstripping Chinese financial contributions. As a matter of statutory contributions to INTERPOL, the U.S. is required to contribute 10.5 million euros a year whereas China contributes 2.0 million euros annually.<sup>13</sup> Similarly, the U.S. has a statutory biennial obligation of over \$59 million to the WHO whereas China owes about \$20 million annually.<sup>14</sup>

To be sure, there are many factors affecting the level of U.S. contributions to these organizations and the U.S. receives many benefits from participating and funding them. But it is striking how despite its outsized financial contributions, the U.S. seems to have remarkably little influence over the staff and administration of these organizations. In all three of the cases outlined above, Taiwan was not excluded as a result of the vote of member states against it. Rather, the decision to reject Taiwan's bid for guest or observer participation was made by the secretariat or the appointed administrators of those organizations. It is striking how

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<sup>12</sup> Taiwan barred from Interpol assembly, Taipei Times (Nov 06, 2016)

<http://www.taipeitimes.com/News/front/archives/2016/11/06/2003658663> -

<sup>13</sup> <https://www.interpol.int/About-INTERPOL/Funding/Member-country-contributions>

<sup>14</sup> See WHO, Assessed Contributions as of March 31, 2018 ([http://www.who.int/about/finances-accountability/funding/AC\\_Status\\_Report\\_2018.pdf](http://www.who.int/about/finances-accountability/funding/AC_Status_Report_2018.pdf)).

unsuccessful U.S. diplomacy has been at influencing the decisions of those international bureaucracies despite the fact that the U.S. remains the number one financial contributor to the same bureaucracies.

US government failures in this regard are even more striking when compared to the ability of other controversial states to win places in international organizations. The Palestinian Authority, which is not recognized by the United States or Israel, is a full member of the United Nations Educational, Scientific, and Cultural Organization (UNESCO). U.S. opposition could not keep Palestine out of UNESCO, but Chinese opposition can keep Taiwan out of that same organizations as well as the WHA, the ICAO, and INTERPOL. There are many differences between the two situations, but it is still an interesting point of comparison and a yardstick for measuring the effectiveness of U.S. diplomacy in this area.

## 2. Economic Coercion Against Taiwan

China's diplomatic successes also reflect China's large economic influence and leverage over small trading partners and the private sector. Thus far, China has been careful to limit its use of economic statecraft to coerce Taiwan, no doubt because of its own deep economic relationship with Taiwan. Nonetheless, China has not hesitated to use tools of economic statecraft, usually unofficial boycotts, to pressure foreign countries or foreign businesses in service of Chinese foreign policy goals.

For instance, China used unofficial boycotts of products from South Korea to pressure that country over its deployment of the U.S. THAAD missile defense system.<sup>15</sup> It used an unofficial boycott of Filipino produce after a dispute flared over the South China Sea.<sup>16</sup> Most observers also agree the striking decrease in the number of mainland Chinese tourists to Taiwan since the election of President Tsai is another example of China exerting its economic power against Taiwan.<sup>17</sup> The Chinese government may also be behind pressure on foreign businesses to de-recognize Taiwan as a separate entity. In a well-reported incident, Dubai-based Emirates Airlines, citing the Chinese government, ordered its Taiwanese cabin crews to stop wearing Taiwan flag lapel pins and replace them with Chinese flag lapel pins. After a public uproar in Taiwan, the airline reversed itself by dropping its requirement for cabin crew to wear any country's flag lapel pin. This allowed the airline to comply with China's demands while not forcing its Taiwanese crew to wear Chinese flags.<sup>18</sup>

The Chinese government's ability to coerce foreign companies, even those with large international operations, was highlighted in 2018 when it forced Marriott Corporation to

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<sup>15</sup> See Echo Huang, "China inflicted a world of pain on South Korea in 2017," Quartz.com (December 21, 2017).

<sup>16</sup> Andrew Higgins, "In Philippines, banana growers feel effect of South China Sea dispute," Washington Post (June 10, 2012).

<sup>17</sup> Nicola Smith, "China Is Using Tourism to Hit Taiwan Where It Really Hurts," Time.com (Nov. 17, 2016). <http://time.com/4574290/china-taiwan-tourism-tourists/>

<sup>18</sup> Benjamin Haas, Emirates tells cabin crew to swap Taiwanese flag pins for Chinese ones, The Guardian (31 May 2017). <https://www.theguardian.com/world/2017/may/31/emirates-taiwanese-chinese-flag-pins-one-china-policy>

abjectly apologize for listing Taiwan (as well as Hong Kong and Macau) as separate countries on its websites.<sup>19</sup> Similarly, a Marriott employee in Nebraska was fired under Chinese pressure after he “liked” a tweet advocating Tibetan independence.<sup>20</sup> There is little doubt that the Chinese government can, and will, use its considerable economic leverage over the private sector to isolate Taiwan.

The Marriott or Emirates incidents do not amount to boycotts or embargos. But the U.S. should make clear that if China does ever escalate its actions in a way that amounts to a boycott, any U.S. company implicitly or explicitly cooperating in a boycott of Taiwan will face repercussions in the U.S.

Indeed, U.S. law may already provide for protection against boycotts of Taiwan. Under the anti-boycott provisions of the Export Administration Regulations,<sup>21</sup> U.S. and foreign companies may not participate in a boycott of other countries unless that boycott is sanctioned by the United States. Principally aimed at deterring the boycott of Israel by certain Middle Eastern nations, the EAR’s anti-boycott provisions are phrased broadly and could be read to apply to attempts by China to force U.S. companies to boycott Taiwan. These provisions impose criminal or administrative penalties for anti-boycott violations. These EAR anti-boycott provisions are buttressed by provisions of the 1976 Tax Reform Act, which imposes tax penalties for certain agreements that comply with unsanctioned boycotts.

In 2008, reports surfaced that China had threatened economic penalties on U.S. companies Boeing and Sikorsky if those companies continued to sell arms and military equipment to Taiwan. If those companies had complied with this threat, it is possible that those companies would be in violation of the anti-boycott provisions of the EAR. Even a failure to report the Chinese threat would arguably violate the EAR’s antiboycott reporting provisions.<sup>22</sup>

However, the applicability of the antiboycott provisions to Taiwan has never been definitively established. As far as I can tell, the U.S. government has made no official pronouncement on this question and it has never imposed any penalties for complying with a Chinese boycott of Taiwan. This ambiguity also means it is not clear to most companies doing business with China that they must ensure that their antiboycott compliance obligations run toward Taiwan as well as more clearly protected countries like Israel.

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<sup>19</sup> Benjamin Haas, “Marriott apologises to China over Tibet and Taiwan error,” The Guardian (12 January 2018). <https://www.theguardian.com/world/2018/jan/12/marriott-apologises-to-china-over-tibet-and-taiwan-error>

<sup>20</sup> Wayne Ma, “Marriott Employee Roy Jones Hit ‘Like.’ Then China Got Mad,” The Wall Street Journal (March 3, 2018).

<sup>21</sup> 50 U.S.C. App. 2407(a); 15 C.F.R. § 760.2.

<sup>22</sup> John Tkacik, “American Companies, Taiwan, and U.S. Anti-boycott Law,” Heritage (June 19, 2008).

For this reason, Congress could help clarify this issue by eliciting a clear statement from Department of Commerce officials that existing U.S. anti-boycott provisions apply to Taiwan.<sup>23</sup> This would fulfill the TRA's requirement that the U.S. act against boycotts of Taiwan. It would also help U.S. companies stand up to Chinese economic pressure by requiring them to report Chinese demands and deterring U.S. companies for acquiescing to them.

### 3. Summary of Part II

In sum, the Taiwan Relations Act requires the U.S. to treat non-military coercion of Taiwan as a grave concern and a threat to international peace and security. Such coercion can be seen in China's refusal to allow Taiwan to participate, even in an observer capacity, in the work of technical international organizations like the WHO, the ICAO, and INTERPOL. The U.S. has had surprisingly little influence over these organizations despite being founding members and the largest financial contributors to all of them. While China has thus far not focused all of its economic power on Taiwan, it is not unlikely it will seek to enlist private U.S. companies to support its attempt to coerce Taiwan. Congress can act to clarify that existing U.S. law protects Taiwan from such boycotts in the same manner that those laws protect Israel.

### III. Clarifying the U.S. One China Policy

In my final section, I would like to address a broader, overarching issue in U.S.-Taiwan relations that is not directly addressed or resolved by the TRA. In the series of "joint communiques" leading to the re-establishment of diplomatic relations, the U.S. and China addressed the issue of Taiwan. But each side has a different view on whether the U.S. and China agreed to a joint position on Taiwan's status. I believe Congress can and should help to clarify the U.S. government's position on the final status of Taiwan.

According to China, the U.S. and China agreed in the 1972 Joint Communiqué (1972 JC) to a "One China" principle encompassing Chinese sovereignty over Taiwan. In particular, it points to this language in the 1972 JC: "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 Chinese government has frequently relied on this language as evidence that the U.S. has recognized Chinese sovereignty over Taiwan and is violating its promises to China by selling weapons to Taiwan.<sup>24</sup>

The language in the 1972 JC could also be interpreted, however, to mean that the U.S. "acknowledges" but does not endorse the Chinese view that "Taiwan is part of China." In this view, when the U.S. further states that the U.S. "does not challenge" the view that "Taiwan is

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<sup>23</sup> Congress could also enact legislation to make the applicability of the anti-boycott provisions to Taiwan clear, but that seems unlikely unless Congress decides to revisit the authorization of the now-expired Export Administration Act.

<sup>24</sup> Ministry of Foreign Affairs of the People's Republic of China, Foreign Ministry Spokesperson Lu Kang's Regular Press Conference on June 30, 2017.

[http://www.fmprc.gov.cn/mfa\\_eng/xwfw\\_665399/s2510\\_665401/t1474637.shtml](http://www.fmprc.gov.cn/mfa_eng/xwfw_665399/s2510_665401/t1474637.shtml)

part of China,” the U.S. is simply stating it is not going to question that view at that time. Indeed, the idea that Taiwan was part of China was the position of both the Republic of China government in Taiwan and the People’s Republic of China government at that time.

The U.S. government’s own position on Taiwan’s legal status, however, is not fully settled by this language from the 1972 JC. Putting aside the fact that the 1972 JC was not a legally binding international agreement, the U.S. did not specifically commit to recognizing China’s sovereignty over Taiwan in that document. Instead, the U.S. position on Taiwan is better understood as one of neutrality: it takes no view on whether Taiwan is part of China. If the two sides agree that Taiwan is part of China, however, the U.S. will not challenge that shared Taiwanese-Chinese view. Rather, the U.S. goal (as stated in the TRA) is to ensure that any final resolution of the status of Taiwan is made through peaceful means free from military or non-military coercion.

The idea that the U.S. will not take sides in a sovereignty dispute is not new. In fact, this is the approach that the U.S. has adopted toward numerous other territorial disputes in Asia. For instance, the U.S. has refused to take a position on whether China or Japan has sovereignty over the Senkaku (or Diaoyu) Islands, currently administered by Japan. The U.S. also has no view the dispute between Korea and Japan over sovereignty over the Dokdo Islands. The U.S. is also neutral on which countries have sovereignty over which land features or waters in the South China Sea.

The U.S. government’s agnosticism on the merits of these territorial sovereignty disputes does not mean it will stand on the sidelines if one side of the dispute tries to use force to resolve the dispute. For instance, the U.S. government has repeatedly made clear it considers the disputed Senkaku Islands to fall within the ambit of the U.S.-Japan Mutual Defense Treaty even though it refuses to side with Japan on the sovereignty question.<sup>25</sup>

This neutral approach to sovereignty questions can also govern U.S. treatment of Taiwan and is consistent with its statements in the various joint communiqués with China and the TRA. The U.S. government should make clear that it believes that the legal status of Taiwan is unresolved but that any resolution of that status must be peaceful and non-coercive. Like its approach to the Senkakus and the South China Sea, the primary U.S. interest is ensuring a peaceful resolution of the Taiwan question rather than resolving it one way or the other.

Although the U.S. has not and does not take a position on whether Taiwan is part of China, the Chinese do not agree that this is the U.S. position. To be fair to China, the language of the 3 Joint Communiqués and statements from different presidential administrations have sometimes clouded this issue. As I have argued in prior writings, the adamant statements of prior U.S. administrations opposing Taiwanese independence, when combined with the language of the JC, could undermine the legal basis for U.S. defense of Taiwan in a military

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<sup>25</sup> Ankit Panda, “Mattis: Senkakus Covered Under US-Japan Security Treaty,” *The Diplomat* (February 6, 2017) <https://thediplomat.com/2017/02/mattis-senkakus-covered-under-us-japan-security-treaty/>

conflict.<sup>26</sup> Congress can help to avoid such implications and clarify the U.S. “not taking sides” position by statute. Such a statutory declaration can coordinate policy across the U.S. government’s bureaucracy as well as across presidential administrations of both parties. It should guide any revision to internal U.S. governments such as the guidelines on Taiwan set forth by the State Department.<sup>27</sup>

This will help to clarify Taiwan’s status within U.S. law and policy as well as for China and the rest of the world. Like many other territorial disputes around the world, the U.S. recognizes that the question of Taiwan’s status is unresolved. While the U.S. is not taking sides, the U.S. needs to make clear that it is strongly committed to do everything possible to ensure no force or coercion is used to settle this question.

#### IV. Conclusion

I believe the U.S. Congress has a central role to play in shaping and overseeing U.S. policy toward Taiwan. In this testimony, I have recommended that Congress use this oversight power to ensure the U.S. government fulfills its duty under the Taiwan Relations Act to support Taiwan against non-military as well as military forms of coercion. This non-military coercion can be seen in Chinese efforts to bar Taiwan from access to international organizations facilitating technical cooperation in areas such as public health, transnational crime, and air traffic. It may also occur in Chinese boycotts against U.S. businesses that also do business with Taiwan. Congress can act to encourage the U.S. government to improve its diplomatic support for Taiwan on the international stage and to apply U.S. anti-boycott laws to protect Taiwan.

Finally, I believe Congress should help to clarify the U.S. position on the legal status of Taiwan. Contrary to Chinese assertions, the U.S. has not and should not commit to recognizing Taiwan as part of China. Rather, the U.S. should reiterate its longstanding view that while it takes no position on whether Taiwan is part of China, it believes that the final status of Taiwan must be peacefully settled through non-violent and non-coercive means.

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<sup>26</sup> Julian Ku, “Why Defending Taiwan Is Illegal,” *The Diplomat* (Jul 12, 2014) <https://thediplomat.com/2014/07/why-defending-taiwan-is-illegal/>

<sup>27</sup> Ted Yoho, *The Marginalization of Taiwan Must End* (March 25, 2018) <http://nationalinterest.org/feature/the-marginalization-taiwan-must-end-25065>