

2010

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Repository Citation

D'Amato, Anthony, "Purposeful Ambiguity as International Legal Strategy: The Two China Problem" (2010). *Faculty Working Papers*. Paper 94.

<http://scholarlycommons.law.northwestern.edu/facultyworkingpapers/94>

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Purposeful Ambiguity as International Legal Strategy: The Two China Problem,
by Anthony D'Amato*, *in* Jerzy Makarczyk (ed.)
Theory of International Law at the Threshold of the 21st Century:
Essays in honour of Krzysztof Skubiszewski 109-121 (Kluwer, 1996)

Abstract: For every definable term in international law there are clear cases and fuzzy cases. Everyone accepts that the term "state" applies to Paraguay, Poland, Portugal and over a hundred other clear cases, but does it apply to Puerto Rico, Western Samoa, the Isle of Man, the Channel Islands, Gibraltar, or the Vatican City? The word "treaty" has thousands of clear applications, but does it apply to an exchange of faxes between two governments or a handshake between two diplomats at a cocktail party? In addition to ambiguities of this kind, international law is replete with deliberately created ambiguities. One of the most interesting situations in recent years that illustrates in several important ways the role of deliberate ambiguity in international law is the Two China Problem.

Tags: Two China Problem, Taiwan Relations Act of 1979, Show of force in the Taiwan Strait (1996), Unilateral treaty, Ambiguity, Treaties

[pg109]** For every definable term in international law there are clear cases and fuzzy cases. Everyone accepts that the term "state" applies to Paraguay, Poland, Portugal and over a hundred other clear cases, but does it apply to Puerto Rico, Western Samoa, the Isle of Man, the Channel Islands, Gibraltar, or the Vatican City? The word "treaty" has thousands of clear applications, but does it apply to an exchange of faxes between two governments or a handshake between two diplomats at a cocktail party? In addition to ambiguities of this kind, international law is replete with deliberately created ambiguities. Most treaty provisions are ambiguous because the parties were able to agree only on studied ambiguity instead of concrete particularity. Sometimes the treaty itself is deliberately ambiguous: the Helsinki Final Act, with its parts strangely and symbolically called "baskets," is neither clearly a treaty nor clearly a nontreaty. Its signatories were unable to agree on having an actual treaty under international law, but they were able to agree on having some sort of agreement that occupied the nether world between treaty and nontreaty.

One of the most interesting situations in recent years that illustrates in several important ways the role of deliberate ambiguity in international law is the Two China Problem. I will focus primarily upon the purposeful military, political, and legal ambiguities in the incident that has just come to an end as I write these words—the "war games" conducted in the Taiwan Strait in March, 1996. But I will lead up to that situation by a more general account of the history of ambiguities of the Two China Problem. Even though my account will be general, if one were to dig deeper into the historical facts, one will find further ambiguities underneath the general ones. For each ambiguity uncovered, there is another one inside, like a set of nested Chinese boxes.

The Two China Problem had its origin in the Chinese civil war that began in the 1930s between two competing governmental claimants. By 1949 the [pg110] Communists under Mao Zedong defeated the Nationalists under Chiang Kai Shek, and substantial portions of the Nationalist armed forces and supporters fled to the island province of Taiwan (Formosa), located across the Taiwan Strait from the South China province of Fujian. The mainland Communist government calls itself the People's

Republic of China (PRC) and claims Taiwan as part of its territory. The Taiwan government calls itself the Republic of China (ROC) and claims the mainland as part of its territory. FN1

However, the opposing claims are not quite the mirror images of each other. Although there is no doubt that mainland China, considered separately from Taiwan, is an independent sovereign state under international law, there is considerable doubt that Taiwan, considered separately from mainland China, is an independent sovereign state. Prior to 1895 China claimed sovereignty over Taiwan, but then ceded it to Japan following the Sino-Japanese War of 1895. In 1951 Japan relinquished sovereignty over Taiwan as part of the U.S.-Japan Peace Treaty of that year, but the treaty was silent as to whom the sovereignty was relinquished. Accordingly there have been, and are, two claimants to sovereignty over Taiwan. Mainland China claims that Taiwan is an "integral part of China," FN2 whereas the Taiwanese government's broad claim that its own authority extends to all of China is logically inclusive of its claim of authority over Taiwan.

Whether a territory constitutes a state is not under the territorial government's control; rather, it depends upon the international community's decision to recognize the territory as a state. On this aspect of the Two China Problem there has been a temporal ambiguity. Between 1945 and 1971, the China seat in the United Nations was occupied by the ROC; in 1971, PRC delegates (after complex UN resolutions) took the seat. Since both delegations claimed to represent all of China, including Taiwan, we might be led to conclude that the PRC's claim, coming later in time, trumps that of the ROC. But an equally plausible interpretation is that the world community came to recognize that the ROC was in effective control of Taiwan, the PRC was in effective control of mainland China, and that the latter was bigger and far more important and hence "deserved" the China seat (including its veto in the Security Council) in the UN. On this interpretation, the fact that the ROC held the China seat from 1945 to 1971 counts in its favor, rather [pg111] than against it. Hence the temporal ambiguity: do the years 1971-1996 "trump" the years 1945-1971, or do they validate them?

The role of the United States in the Two China Problem may be viewed more as a spacial ambiguity than as a temporal one. In 1971, Secretary of State Henry Kissinger made a secret visit to China, and President Richard Nixon followed with a formal visit in 1972. The United States, for reasons of its own, decided to tilt toward mainland China; those reasons certainly included creating a buffer in Southeast Asia against the Soviet Union, and a farsighted sense that a more internationally involved China might encourage domestic Chinese pressures toward capitalism and even democracy. The United States terminated its Mutual Defense Treaty with the ROC, and in an ambiguously titled instrument, the "Joint Communique" issued in Shanghai on February 28, 1972, the US and the PRC set forth their views on various issues of mutual interest.FN3 The position of the "Chinese side" was stated to be that the PRC is the sole legal government of China, that Taiwan is a province of China, and that the PRC

"firmly opposes any activities which aim at the creation of "one China, one Taiwan," "one China, two governments," "two Chinas" and "independent Taiwan" or advocate that "the status of Taiwan remains to be determined."

The US side declared:

“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. It reaffirms its interest in a peaceful settlement of the Taiwan question by the Chinese themselves.”

The ambiguities in these statements are purposeful and masterful. The underlying ambiguity in the Chinese statement is that no meaning is given to the key phrase "firmly opposes." There is no indication whether this opposition is a matter of ideological preference or military determination, or any shade in between. The first sentence of the US statement makes no commitment; it simply recites the fact, known to all, that both the PRC and the ROC maintain that there is but one China and that Taiwan is part of China. The second sentence is blatantly ambiguous. By saying that the US does not challenge "that position," the statement leaves it indeterminate whether [pg112] "that position" refers to what the Chinese acknowledge or what the underlying reality is. Finally, if there were any lingering doubts about the ambiguity of the second sentence, the third sentence reinforces the ambiguity by referring to a "peaceful settlement of the Taiwan question." How can there be a "Taiwan question" at all if both sides agree that the first two sentences in the US statement removed all remaining questions?

It is clear that both sides would have been hard pressed to conclude an agreement or a treaty instead of the Shanghai communique. It would have been very difficult for them to agree on any text addressed to the Taiwan question. Instead, they hit upon an expedient of issuing a "communique" that contained the positions of both sides with all the ambiguities that each side desired. The Shanghai communique was, in short, an ambiguous instrument replete with ambiguous provisions; in that respect it anticipated the Helsinki Final Act.

But behind the diplomatic doubletalk in Shanghai was the reality of the US interest in preventing a Chinese communist takeover of the government of Taiwan. While both the US and the PRC may have created a spacial ambiguity about the competing extent of PRC and ROC claims of governance, from a national security perspective (including the perception that US national security is fostered by the increasing democratization of other countries) there was never any ambiguity in the interests of the US. Hence, although the US in 1979 terminated its Mutual Defense Treaty FN4 with Taiwan and gradually withdrew its soldiers who were stationed on that island, it continued its policy of arms transfers to Taiwan. Perhaps US military strategists perceived that arming the Taiwanese was more effective in discouraging aggressive impulses by the PRC than leaving US troops on the island as a trip-wire. After all, a future US administration might withdraw the troops; perhaps even in the course of a Chinese invasion the American public would not tolerate the loss of American soldiers defending the Taiwanese, and would want them brought home. Moreover, military self-defense has a huge battlefield advantage. If the PRC were to send fleets of soldiers across the Taiwan Strait, under standard military theory, they would need at least 20 attacking personnel for every Taiwanese defender. In addition, the preparations for any such attack from the mainland would be visible months in advance, giving the US and other countries

ample opportunity to come to the rescue of Taiwan. The 1992 sale to Taiwan of 150 F-16 advanced jet fighters was dramatic corroboration of this aspect of US policy. [pg113] The PRC repeatedly and bitterly denounced US arms transfers to Taiwan, but could do nothing about it.

If the Shanghai Communique was neither a treaty nor a nontreaty, a new and even more ambiguous instrument was invented by the United States in 1979 to deal with the Taiwan problem: the Taiwan Relations Act.FN5 It declares in that

“it is the policy of the United States to consider any effort to determine the future of Taiwan by other than peaceful means, including boycotts or embargoes, a threat to the peace and security of the Western Pacific area and of grave concern to the United States, FN6

and also

“ to provide Taiwan with arms of a defensive character.” FN7

The Act specifies that the United States will make available to Taiwan

such defense articles and defense services in such quantity as may be necessary to enable Taiwan to maintain a sufficient self defense capability.”FN8

and further directs the President

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. FN9

Although the Act begins by referring not to Taiwan as a state but to the "people on Taiwan," it goes on to provide that Taiwan is a state in every respect but the name:

“Whenever the laws of the United States refer or relate to foreign countries, nations, states, governments, or similar entities, such terms shall include and such laws shall apply with respect to Taiwan.” FN10

And further:

[pg114] The capacity of Taiwan to sue and be sued in courts in the United States, in accordance with the laws of the United States, shall not be abrogated, infringed, modified, denied, or otherwise affected in any way by the absence of diplomatic relations or recognition. FN11

Additionally, the Act permits all relations, programs, and transactions conducted or carried out by the United States and its agencies with respect to Taiwan to be conducted and carried out by or through the American Institute in Taiwan, a nonprofit corporation incorporated under the laws of the District of Columbia. The Act gives the President power to authorize the American Institute in Taiwan to perform all acts that an overseas American consulate might perform.FN12

The Taiwan Relations Act of 1979, in brief, extends to Taiwan the typical rights and privileges that normally are found in a treaty of amity, commerce, and navigation. In

addition, it comes close to a mutual defense pact by its allowance of sales to Taiwan of "defense articles and defense services" and its statement that the US will be gravely concerned by any effort to determine the future of Taiwan by other than peaceful means. Most mutual defense pacts signed by the United States do very little more, if at all, than this. FN13 And indeed that was the outraged reaction of the PRC. Professor Lihai Zhao wrote that the Taiwan Relations Act

“is thus merely another version of the Mutual Defense Treaty signed between the United States and Taiwan on December 2, 1954. As such, the Act violates the principles of the Shanghai Communique and unduly interferes with Chinese internal affairs.” FN14

My own assessment of the Taiwan Relations Act of 1979 is that it may be the first full fledged example in international law of a Unilateral Treaty.

Of course, putting it that way underscores the deep and deliberate ambiguity of the Two China Problem. This ambiguity was in the background when PRC in March 1996 began a dramatic and frightening show of force in the Taiwan Strait.

By February 13, 1996, there were some Chinese military maneuvers from inland toward the Chinese coast opposite Taiwan. At a White House Press briefing, the following exchange took place:

[pg115] **Q.** Has China been given an ambiguous answer on what we would do if it did attack Taiwan?

Press Secretary Mike McCurry. Oh, I doubt very much, given the PRC's understanding of the Taiwan Relations Act, that they have much doubt.

Q. I thought you said earlier that we were being deliberately ambiguous.

Mr. McCurry. Well, we've not—we've never specified the exact response consistent with the exact wording of the Taiwan Relations Act. But if you look at that act, if you look at the requirement for peaceful resolution of issues related to the Straits, it's quite clear what the view of the international community would be of any unnecessary provocation.

Q. What would that be?

Mr. McCurry. It's very clearly specified in the Taiwan Relations Act.

Q. Which is?

Mr. McCurry. Which I don't have in front of me.” FN15

One may note a theoretical equivalence between a government spokesperson's statements "our policy is ambiguous" and "our policy is clear but I don't know what it is." The important point is that the US was not willing to reveal any of its military contingency plans in advance of China's intentions becoming clearer. At the same time it was sending a message to the Chinese leadership that the Taiwan Relations Act not only indicated what the US response would be, but also incorporated the anticipated response of the international community. Of course, under international law, unilateral legislation

does not constitute an international norm. Yet the Press Secretary was making an intentional mistake of law. It was a signal to China not just that the US would adhere to the Taiwan Relations Act, but that the US would actively seek support from other countries in enforcing the principles of the Act.

A month later, the US government, through its spokesperson, opted in favor of calling its policy ambiguous:

“Q. Do you think the United States would be bound by the 1979 Act to defend Taiwan against Chinese aggression?

Mr. McCurry. The 1979 Taiwan Relations Act does not answer that question specifically and, indeed, there is merit we believe in keeping somewhat ambiguous about the matter.” FN16

[pg116] It is not my purpose here to dwell on China's motives for amassing its military forces in the Taiwan Strait. The American media reported that China was trying to influence the upcoming Taiwanese Presidential elections on March 25th, or that China was concerned about the example on the Chinese people of Taiwan's open and democratic elections. Neither of these alleged motives are particularly credible. It seems instead that China was making a statement during the Taiwan election campaign that no matter who was elected, the government should cease its foreign activities seeking to obtain an international personality for Taiwan. I cite as evidence for this proposition a report by CNN on March 12 that the PRC offered to withdraw their military forces from the Taiwan Strait if Taiwan withdrew its overseas campaign for entry into the United Nations—an offer that Taiwan promptly rejected. FN17

By March 5th, the PRC had announced that it was going to conduct war games including missile exercises in the Taiwan Straits. The US reaction, given at its Press Briefing, was restrained:

“Mr. McCurry. We have long felt that military exercises of that nature, specifically these types of missile tests, don't do anything to contribute to peace and stability in the region.” FN18

Two days later, the Press Secretary (a) refrained from admitting that there had been tests, (b) said that the PRC had announced missile tests, and (c) characterized them in more forceful language:

“Mr. McCurry: If, indeed, there have been missile tests associated with the military exercises that are underway now adjacent to the Taiwan Straits, they would be consistent with what the People's Republic had previously announced. They've previously announced they would likely include as part of this exercise missile tests. We would be deeply disturbed by any test of that nature, consider that provocative and consider them reckless.” FN19

The United States was speaking from a position of having monitored the Chinese troop movements. It came to the conclusion that the deployment of force in the Taiwan Strait did not have the characteristics of a preparation [pg117] for invasion of Taiwan. Thus there was practically no chance that China intended to start a war with Taiwan. Moreover, intentional aggression against Taiwan would be irrational from the Chinese perspective (although, with Saddam Hussein's invasion of Iraq freshly in mind, one

should never rule out the capacity of dictatorial leaders to commence a wholly irrational war). A war against Taiwan would be irrational, first, because several thousand American citizens are present in Taiwan (a number of them working in the quasi-diplomatic American Institute in Taiwan, set up by the Taiwan Relations Act). Chinese aggression against Taiwan would undoubtedly trigger a huge American military response if for no other reason than to protect the lives of American citizens on Taiwan. Second, China continues to count on the support of many Taiwanese residents who are loyal to the PRC. An invasion that would be preceded by artillery and missile fire would not be able to distinguish between these "compatriots" and other Taiwanese citizens, and thus would endanger everyone. In recognition of this problem, Foreign Ministry spokesperson Shen Guofang was quoted on Chinese state radio as saying, "China has never promised to give up the use of force, though of course this is not directed at the Taiwan compatriots."FN20 How can artillery and missile fire spare those "compatriots" living in crowded proximity with other Taiwanese citizens? War is simply too blunt an instrument; it would have the effect of immediately turning the "compatriots" against China. Finally, Taiwan has a substantial defense capability. Despite China's overwhelming troop strength (over three million soldiers), its meager amphibious capability would give Taiwan's beach perimeter defense an almost insuperable advantage.

Yet military hostilities can arise from mistakes and accidents, which is probably one reason Press Secretary McCurry used the words "provocative" and "reckless." In the war of words that was going on, the PRC responded within five days that the US policy "is stupid and reckless."FN21 I will now try to show that the fear of error escalating into war was the linchpin in the confrontation between the PRC and the US in March, 1996.

The Chinese war games in the Taiwan Strait began on March 11. More than 150,000 Chinese troops were involved in the live ammunition exercise, as were a flotilla of ships and at least 300 airplanes. FN22 The US responded by deploying significant naval forces to international waters several hundred miles east and southeast of Taiwan, and not in the Taiwan Strait. Included [pg118] was the USS Independence, a carrier group out of Yokosuka, Japan, that included several cruisers, destroyers, frigates, and nuclear attack submarines. A second carrier group, the USS Nimitz, was sent from the Persian Gulf to international waters southeast of Taiwan. FN23 The US navy did not conduct live ammunition war games, but engaged in noticeable 24 hour-a-day exercises including 80 sorties daily from the USS Independence.

Rear Admiral James Ellis, Commander of the Seventh Fleet Battle Force, told CNN news:

"What is our purpose here, and it is not to bully or intimidate. We are here to monitor the ongoing military exercises. The Chinese themselves have said that's a normal naval function. That's what they do with us, that's what we do with them." FN24

It is a classic case of creating an ambiguity between words and actions. The US did not need two huge carrier fleets to "monitor" the Chinese war games; that was already being done by reconnaissance satellites, and in any event the fleets were too far away to see or hear anything connected with the games. However, the PRC, for its part, understood full well that the US was downplaying its naval presence near Taiwan, and

rather than contradicting the US characterization, instead chose to downplay it even further. Foreign Minister Qian Qichen was asked by a CNN reporter on Beijing television to react to the American plans to move its carrier forces close to Taiwan. The Minister replied, "It is common for US warships to engage in activities in high seas." FN25 Earlier in January 1996 Defense Minister Chiang Chungling had downplayed the matter perhaps to the lowest possible level of discourse. Commenting on a rumor about a planned US carrier traversal of the Taiwan Strait during the Taiwan elections in March, the Minister said that he had not heard anything about it: "A minister will not necessarily know every trifling matter such as this. He is in charge of major affairs." FN26

In order to fully analyze these military and diplomatic posturings, they must be seen as interacting with rules of customary international law. One of those rules is that because the Taiwan Strait is approximately a hundred miles wide (and 137 miles long), it is an international waterway. Therefore it is open to vessels of all nations. The Chinese military exercises effectively cut off that waterway, thus temporarily violating international law. Yet I believe it was part of the deliberate Chinese military strategy to violate [pg119] international law. When any nation uses its military forces in violation of international legal norms, the "intimidation factor" increases. The target of the intimidation—namely, the Taiwanese people—would be insecure whether the PRC might proceed to violate other international norms, such as the norm against aggression.

But this violation of international waters also presented a legal and military challenge to the United States. In December 1995 the USS Nimitz had traversed the Taiwan Strait. Would the US navy try it again in March 1996 when China was conducting live ammunition and missile tests in those waters? To do so would be to present a frontal challenge to the PRC: either back down, or continue the tests with the high probability of hitting the USS Independence and setting off a war with the United States. Prior to the tests China had issued a warning to international shipping and aviation to stay away from the Taiwan Strait. The PRC chose its language carefully on March 17 when it was still doubtful whether the US navy would try to navigate the Taiwan Strait. Prime Minister Li Peng said:

"If someone makes a show of force in the Taiwan Strait, that will not only be a futile act, but it will also make the situation all the more complicated." FN27

The US response was to play down the situation. A "White House official" said in Washington:

"Although we don't like the newly announced military exercise, we take note of the fact that there is little to no interference with international shipping or air travel, that they take place far from Taiwan proper so that there is no direct threat, and that the Chinese have been careful in their rhetoric not to issue direct threats." FN28

In fact, the US did not try to navigate the Taiwan Strait, and China brought its war games to an end two days after the presidential election on Taiwan. The entire affair ended peacefully.

Allow me to speculate as to the reasons why the United States decided not to send either or both of its carrier fleets through the Taiwan Strait. First, although the US

branded the Chinese war games as "reckless," it has conducted and undoubtedly will continue to conduct similar naval war games of its own, especially in the Persian Gulf and in the Mediterranean (in order to intimidate states like Iraq, Iran, and Libya.) Any objection to the Chinese [pg120] war games could come back to haunt the United States the next time it wishes to conduct similar exercises.

Second, the US set the precedent for cordoning off a portion of the high seas when it conducted its nuclear tests in the South Pacific in 1954. At that time it notified international shipping and aviation to stay away from the specified area. However, the magnitude of one of the test explosions was underestimated by half, and there was in addition an erroneous wind prediction. A Japanese fishing vessel, which apparently lay fourteen miles clear of the warning zone, was caught in the radiation; its twenty-seven man crew suffered serious injuries, one of them dying. The US paid Japan two million dollars for the injuries to the crewmen and the damage to the Japanese fishing industry. FN29 Japan explicitly refused to demand that the US discontinue its tests. FN30 These facts appear to establish that when the international legal norm of freedom of the seas is temporarily violated for the purpose of conducting weapons tests, the norm should be interpreted as a "liability" rather than a "property" norm. FN31 Under this interpretation, if the USS Independence were to enter the proclaimed war games zone in the Taiwan Strait, and if it were hit by Chinese artillery fire or a missile, China could restore the situation to the status quo ante by promptly offering to pay full damages to the US. However, this legal result would be extraordinarily difficult for President Clinton to explain to the American people. There would be cries in Congress to retaliate with full force against China, and the President would be criticized as a weakling for accepting payment from China for the affront to the American navy. Thus, assuming that lawyers for the Pentagon and the State Department reasoned the matter through to this point, they might very well have advised the President that it was politically a "no-win" situation to send an American carrier force through the Taiwan Strait.

The preceding two reasons have to do with the relation between rules of customary international law and military strategy. A third reason bears on the relation between political prediction and military strategy. White House political advisers may have come to the conclusion that the PRC made a political miscalculation in deciding to conduct military exercises in the Taiwan Strait. The PRC may have acted out of a sense of frustration that Taiwan was gradually heading toward independence from the mainland; not knowing exactly what to do about it, China may have simply decided to flex its [pg121] military muscles—a decision that may have had more to do with fact that the Chinese leadership is aging and nearly senile than with any sound political calculation. But the predictable consequences of a military show of force in the Taiwan Strait would be to drive the Chinese "compatriots" on Taiwan closer to the rest of the Taiwanese citizenry, for reasons I have suggested earlier in this essay. Hence I would not be surprised to see in months to come an acceleration in the overseas activities of Taiwanese officials in the direction of independent statehood for Taiwan, stimulated by the Chinese demonstration in the Taiwan Strait in March, 1996. If the White House made a similar assessment, then its best strategy would have been to bring the USS Nimitz and the USS Independence into the area—so as to show support for the people on Taiwan—and at the same time let China go ahead with its war games with only mild remonstrance

from the White House Press Secretary. If I am correct about White House strategy, it would simply be the latest example of an ambiguous and hence remarkably flexible policy that has served the US well through the years in preserving peace in the region of the Taiwan Strait and allowing the Two China Problem to work itself out at its own pace.

Footnotes

*The author wishes to thank Irene Berkey, International Research Librarian at Northwestern Law School, for research assistance on this project.

**Numbers in the format “pg109” etc. refer to the pagination in the original article.

FN 1 However, in 1991, the ruling Nationalist Party in Taiwan (the Kuomintang) renounced its historical claim to sovereignty over all China and unilaterally recognized the People's Republic of China.

FN 2 L. ZHAO, *The Main Legal Problems in the Bilateral Relations Between China and the United States*, 16 NEW YORK UNIV. J. INT'L L. & POLITICS 543-545 (1984). Professor Zhao teaches at Peking University.

FN 3 The text of the document can be found in many places, including L. W. KOENIG, J. C. HSIUNG, & K.-Y. CHANG (EDS.), CONGRESS, THE PRESIDENCY, AND THE TAIWAN RELATIONS ACT 169 (1985).

FN 4 Mutual Defense Treaty, Dec. 2, 1954, United States-Republic of China [Taiwan], 6 U.S.T. at 433, T.I.A.S. No. 3178.

FN 5 93 Stat. 14 (1979), 22 U.S.C. § 3301.

FN 6 *Ibid.* at Sec. 2(b)(4).

FN 7 *Ibid.*, at Sec. 2 (b)(5).

FN 8 *Ibid.* at Sec. 3 (a).

FN 9 *Ibid.* at Sec. 3(c).

FN 10 *Ibid.* at Sec. 4(b)(1).

FN 11 *Ibid.* at Sec. 4(b)(7).

FN 12 *Ibid.* at Secs. 6, 7.

FN 13 A typical mutual defense pact commits the US to act only in accordance with its constitutional processes, which gives the US a Congressional safety valve. Moreover, the pact is in reality a one-way street; the U.S. did not sign it to obtain national security help from its treaty partner.

FN 14 L. ZHAO, *op. cit. supra* n. 1, at 547.

FN 15 Press Briefing by M. MCCURRY, 1996 WL 60961 (White House, Feb. 13, 1996).

FN 16 Press Briefing by M. MCCURRY, 1996 WL 107147 (White House, Mar. 12, 1996).

FN 17 CNN NEWS REPORT, 6:03 p.m. ET, March 12, 1996. Later, on 12 March, 1996, Foreign Minister Qian Qichen denied that the war games were an attempt either to influence the Taiwan presidential campaign or to discourage democracy in Taiwan: "What we oppose are the separatist activities on Taiwan, and the forces working for Taiwan independence." *Tensions Seen as Receding as China Ends War Games*, N.Y. TIMES, March 26, 1996, p. 8, col. 4.

FN 18 Press Briefing by M. MCCURRY, 1996 WL 93855 (White House, Mar. 5, 1996).

FN 19 Press Briefing by M. MCCURRY, 1996 WL 99450 (White House, Mar. 7, 1996).

FN 20 CNN WORLD NEWS, 11:20 a.m. EST, March 16, 1996.

FN 21 Hong Kong newspaper WEN WEI PO, quoting Foreign Minister Qian Qichen, BBC SUMMARY OF WORLD BROADCASTS, EE/D2559/F Mar. 12, 1996.

FN 22 CNN NEWS, 6:03 p.m. ET, March 12, 1996.

FN 23 CNN WORLDWIDE WEB, posted at 7:10 a.m. EST, March 13, 1996.

FN 24 CNN NEWS, 10:31 p.m. ET, March 16, 1996.

FN 25 BBC SUMMARY OF WORLD BROADCASTS, EE/D2558/G, March 11, 1996.

FN 26 BBC SUMMARY OF WORLD BROADCASTS, EE/D2520/F, Jan. 26, 1996.

FN 27 *China Warns U.S. to Keep Away from Taiwan Strait*, N.Y. TIMES, Mar. 18, 1996, p. 3, col. 1.

FN 28 *Ibid.*

FN 29 N.Y. TIMES, Jan. 5, 1955, p. 6

FN 30 N.Y. TIMES, April 2, 1954, p. 4

FN 31 See GUIDO CALABRESI & A. DOUGLAS MELAMED, *Property Rules, Liability Rules, and Inalienability: One View of the Cathedral*, 85 HARV. L. REV. 1089 (1972) (explaining property rules and liability rules).