1997

Signals, Threats, and Deterrence: Alive and Well in the Taiwan Strait

Glenn R. Butterton

SIGNALS, THREATS, AND DETERRENCE: ALIVE AND WELL IN THE TAIWAN STRAIT

*Glenn R. Butterton**

Taiwan held its first democratic presidential elections in March 1996, which motivated mainland China to stage large scale contemporaneous war games in the Taiwan Strait and aim unusually belligerent rhetoric at Taipei. The United States responded by deploying substantial naval forces in the area. After examining this confrontation between China, Taiwan, and the United States in terms of the 1979 Taiwan Relations Act, international law, and non-nuclear deterrence theory, the author presents a novel analysis of indirect deterrence communication between the United States and China.

TABLE OF CONTENTS

* Lecturer in Law and Bigelow Fellow, University of Chicago. A.B., M.A., Ph.D., University of California, Berkeley; M.Phil., Cambridge University; J.D., Columbia University. Thanks are due to many teachers and colleagues of mine, including F.H. Hinsley, Zara Steiner, Philip Towle, Richard Langhorne, D.A. Low, Elihu Lauterpacht, D.W. Bowett, J.G. Collier, Philip Allott, Lori F. Damrosch, Michael K. Young, Howard Raiffa, Richard Craswell, Joan R. Butterton, Julian Boyd, John R. Searle, and the late Paul Grice. Paul Bryan and Greg Nimmo provided valuable bibliographic assistance. I am also grateful for stimulating support provided by the University of Chicago Law School. Errors, of course, are mine alone.

I. INTRODUCTION

March 1996 was an anxious time in Taiwan. World attention focused on the Taiwan Strait where China, Taiwan, and the United States seemed perilously close to armed conflict. In time, tensions abated, and military forces stood down. What took them to, and brought them back from, the brink? In a word, deterrence. China had put on a large show of military force in the form of missile tests and war games, with the aim of deterring Taiwanese voters from casting ballots for incumbent President Lee Teng-hui. The Chinese effort failed insofar as Mr. Lee won a decisive victory.[1] The United States also put on a show of substantial force, but appears to have enjoyed significantly greater success. The U.S. objective was the deterrence of prospective Chinese aggression against Taiwan. The effort

1. Lee and the leading "pro-independence" candidate, Peng Ming-Min, received 54% and 21% of the votes for president, respectively, giving them a combined total of 75%. *See* Patrick E. Tyler, *Taiwan's Leader Wins Its Election And A Mandate*, N.Y. TIMES, Mar. 24, 1996, § 1, at 1. Out of 15 million eligible voters, 11 million (76%) cast a ballot. *See* 56 FACTS ON FILE 193, 194 (March 28, 1996) (noting the election results); THE WORLD ALMANAC AND BOOK OF FACTS 1996, at 822 (Robert Famighetti ed., 1995) (citing Taiwan's population statistics); *see also infra* notes 154-59 and accompanying text (discussing the election results). A similar but more successful Chinese effort four months earlier, in December 1995, sought to deter Taiwanese voters from casting ballots for "pro-independence" candidates in parliamentary elections. In that contest, Mr. Lee's Nationalist Party, the Kuomintang, had its majority in the 164-seat parliament reduced to 85, while the Chinese New Party, which took a conciliatory stance toward Beijing, gained 14 seats, increasing its total to 21. *See* Rone Tempest, *Taiwan's Ruling Party Escapes With Narrow Majority in Vote*, L.A. TIMES, Dec. 3, 1995, at A20. The Democratic Progressive Party, which favored outright independence from Beijing, also gained four seats, raising its total to 54. *See id.* Minor parties took the remaining seats. Fewer than 68% of those eligible to vote cast a ballot. *See* 1 EUROPA WORLD YEAR BOOK 866 (1996) [hereinafter EUROPA]; *see also* Willy Wo-Lap Lam & Vivien Pik-Kwan Chan, *Beijing To Step Up Pressure On Taipei*, SO. CHINA MORNING POST, Dec. 4, 1995, at 1 (discussing the outcome of the 1995 elections). China's partial success against "pro-independence" candidates in the parliamentary elections appears to have inspired the expression "missile diplomacy" and emboldened Beijing in its subsequent unsuccessful attempt to sway the outcome of the presidential election. *See infra* note 2 (noting Beijing's subsequent efforts at "missile diplomacy").

succeeded to the extent that the Chinese did not attack, formally blockade, cause an "accidental" mishap, or otherwise further menace Taiwan during or after the war games.[2] Thus, greater tension, armed conflict, perhaps even war, were averted. In this manner, the United States appears to have made efficient use of the threat of force, without ever actually using force, to guide events to a pacific outcome.

We will likely not know for some time, if ever, the nature of the actual deliberations which led to a Chinese withdrawal, or to the American decision to position a formidable military presence near Taiwan and China at a moment of high tension. But, let us assume that Washington *did* deter Beijing, that the timely deployment of U.S. naval assets—two aircraft carrier battle groups and other vessels—coupled with Washington's public and private statements about the crisis, did in fact play a key role in motivating Chinese decision makers to holster their ambitions, and kept a dangerous situation from escalating.[3] If deterrence did work, a host of questions naturally arise about the mechanisms, consequences, and legal character of its success. In this article, I shall ask three of those questions whose answers help explain how the United States unilaterally used the threat of force (military, and to some extent, economic) to deter aggression by China. My first and second questions probe the legality of American actions. If the United States made efficient use of the threat of force in the Strait: (1) Did it remain within the constraints of domestic U.S. law. Did it, in particular, adhere to the terms of the Taiwan Relations Act of 1979? (2) Asking a similar question from a transnational point of view: Did the United States remain within the constraints of international law? Did it, for example, violate international norms or prohibitions on the use of force, such as those spelled out in relevant provisions of the United Nations Charter and elsewhere?

My third and most ambitious question is, in part, an operational one whose answer takes the form of a "how to" lesson. In broad form this

---

2. Two months before the presidential election, in January 1996, Beijing informed Washington of its plan to subject Taiwan to a month-long barrage of missiles, firing one a day for thirty days. *See* Patrick E. Tyler, *As China Threatens Taiwan, It Makes Sure U.S. Listens,* N.Y. TIMES, Jan. 24, 1996, at A3; *see also infra* note 67 and accompanying text (documenting expansion of China's "live fire" war games). For purposes of this article, I assume the truth of the counterfactual: if the U.S. had not mounted a show of force, the Chinese would have attacked, invaded, or taken other comparatively aggressive action toward Taiwan.

3. There is, of course, an epistemological veil over private communications between the parties which to date has been only partially lifted. *See infra* note 138 (discussing a March 7, 1996 working lunch between U.S. Defense Secretary William Perry and Liu Huaqiu, Foreign Affairs Director of China's State Council, during which tensions in the Taiwan Strait were discussed).

question asks: If Washington did deter Beijing, how did it signal its intention to do so? What exactly were the connections between the signaling and the threat of force? Was the threat direct or indirect? Were the same methods employed by the Chinese? From a signaling point of view, what were the mechanisms of belief, reason, and action that prevented conflict and kept the peace? Furthermore, were there notable connections between this question and my first question, between, for example, U.S. signaling behavior and the interpretation of relevant U.S. law? Considerable effort has been invested over the years in various theoretical accounts of deterrence and strategic decision making in the nuclear context, and this work has made important contributions to our general understanding of the logic of decision.[4] However, little work has been

4. *See generally* GRAHAM T. ALLISON, ESSENCE OF DECISION: EXPLAINING THE CUBAN MISSILE CRISIS (1971) (discussing the strategic aspects of the Cuban Missile crisis); BERNARD BRODIE, ESCALATION AND THE NUCLEAR OPTION 3 (1966) (arguing in favor of threatening the use of the "miserable bomb"); BERNARD BRODIE, STRATEGY IN THE MISSILE AGE 264-304 (1959) (discussing "the anatomy of deterrence" in the nuclear age); LAWRENCE FREEDMAN, THE EVOLUTION OF NUCLEAR STRATEGY 3 (2d ed. 1989) (asserting that the modern concept of nuclear war was derived from the "strategic bombardment" doctrine of the post-1945 era, which was premised on the belief that attacking an enemy's social and industrial centers was the most effective way to avoid a repeat of the "murderous stalemate" experienced in World War I); ALEXANDER L. GEORGE & RICHARD SMOKE, DETERRENCE IN AMERICAN FOREIGN POLICY: THEORY AND PRACTICE 11 (1974) ("[D]eterrence is simply the persuasion of one's opponent that the costs and/or risks of a given course of action he might take outweigh its benefits."); ROBERT JERVIS, THE LOGIC OF IMAGES IN INTERNATIONAL RELATIONS 3 (1970) (discussing methods which alter a state's image and exercise influence without modifying policies); ROBERT JERVIS, PERCEPTION AND MISPERCEPTION IN INTERNATIONAL POLITICS 3 (1976) (arguing that perception plays a critical role in understanding international relations); HERMAN KAHN, ON THERMONUCLEAR WAR 3 (2d ed. 1969) (considering foreign and defense policies from the perspective of various military postures and corresponding strategies used by the United States and the Soviet Union); HERMAN KAHN, THINKING ABOUT THE UNTHINKABLE 101 (1962) (discussing deterrence in the thermonuclear arena); ROBERT POWELL, NUCLEAR DETERRENCE THEORY: THE SEARCH FOR CREDIBILITY (1990) (reviewing various approaches states employ to threaten nuclear attack and maintain credibility among their adversaries); THOMAS C. SCHELLING, ARMS AND INFLUENCE 1 (1966) (characterizing diplomacy as a bargaining process in which opponents achieve objectives that are less than ideal, yet better than the alternatives); THOMAS C. SCHELLING, THE STRATEGY OF CONFLICT (1960) (examining various theories and strategies of conflict); J. DAVID SINGER, DETERRENCE, ARMS CONTROL, AND DISARMAMENT 56-86 (1962) (considering perceptions in deterrence); GLENN H. SNYDER, DETERRENCE AND DEFENSE 3 (1961) (defining "deterrence" as "discouraging the enemy from taking military action by posing for him a prospect of cost and risk outweighing his prospective gain," and "defense" as "reducing our own prospective costs and risks in the event that deterrence fails"); Bernard Brodie, *Implications for Military Policy*, *in* THE ABSOLUTE WEAPON: ATOMIC POWER AND THE WORLD ORDER 70-107 (Bernard Brodie ed., 1946) (discussing the impact of atomic weapons on military policy); Robert Jervis, *Deterrence and Perception*, 7 INT'L. SECURITY 3, 3 (1982-83) (explaining the importance of perception in methods of deterrence); Bruce M. Russett, *The Calculus of Deterrence*, 7

done on the basic signaling and communication mechanisms involved in non-nuclear deterrence situations, and less still on the role of those mechanisms in the interpretation of law. In this article, I mean to contribute to the scholarship in this area by examining the Taiwan Strait incident and discussing the role some of those mechanisms played in its resolution.

The crisis featured a number of quite public communications between U.S. and Chinese officials. On rare occasions, the communication was very direct, as when the U.S. Senate urged China to "cease its bellicose actions directed at Taiwan."[5] However, on the vast majority of occasions, the communication was rather indirect, as in December 1995, when the United States sent an armada through the Taiwan Strait for the first time since the normalization of Sino-American relations in 1978, or when Beijing recalled its ambassador to Washington following the U.S. decision to issue a visa to Taiwanese President Lee Teng-hui. On these occasions, both sides understood that "messages" were being sent. Likewise, one might say that in the "totality of the circumstances," many other acts by both sides were not simple acts of, for example, expulsion, arrest, recall, arms transfer, ship deployment, and so on.[6] Rather, something was "meant" by these acts: they were used both to expel, arrest, recall, transfer or deploy, *and also* to signal the intention to communicate and actually communicate "messages" to the interlocutor, messages such as, "Do not invade or attack Taiwan!" or "Do not interfere in China's internal affairs!" It is self-evident that these and similar acts of communication

---

J. CONFLICT RESOL. 97, 98 (1963), *reprinted in* INTERNATIONAL POLITICS AND FOREIGN POLICY 359, 360 (James N. Rosenau ed., 1969) ("Deterrence fails when the attacker decides that the defender's threat is not likely to be fulfilled."); Richard Wasserstrom, *War, Nuclear War, and Nuclear Deterrence: Some Conceptual and Moral Issues*, 95 ETHICS 424, 424 (1985), *reprinted in* NUCLEAR DETERRENCE: ETHICS AND STRATEGY 15 (Russell Hardin et al. eds., 1985) ("One cannot think adequately about the moral issues of nuclear deterrence without thinking about the moral issues of nuclear war.").

5. S. Con. Res. 43, 104th Cong. (1996); *see also infra* note 22; *infra* text accompanying note 90.

6. Examples abound: Chinese Prime Minister Li Peng indirectly warned the United States to stay out of the Strait in a speech before the National People's Congress, *see infra* note 143 and accompanying text; various U.S. officials remarked on the grave consequences attacks on Taiwan would have, *see infra* notes 144-46 and accompanying text; the Chinese recalled high-level emissaries and expelled American military attachés, *see infra* notes 98, 102-03 and accompanying text; the United States and negotiated "routine" arms transfers to Taiwan and downgraded the status of official meetings with China, *see infra* notes 148, 152 and accompanying text; China arrested both Chinese and American human rights activists, *see infra* notes 99-100 and accompanying text; the United States announced and carried out major ship movements, while China announced and conducted missile "tests," staged mock invasions, and various other war games, *see infra* notes 132-40 and accompanying text.

occurred in the heat of the Strait crisis. What we want to know, however, and what Question Three aims to discover is, at least in part, how such communication works. In particular, we want to know how a person or a state can 'say' one thing and mean it, but also mean something else, something quite different, at the same time.

There is a great deal of information to absorb in the various fact and theory intensive sections of this article, which places a heavier burden than I would like on my audience. Therefore, I must with apologies beg the reader to indulge me by retaining and integrating as much material as possible in each successive section while the exposition of the whole unfolds. My underlying assumption here is that if you do not understand the factual and theoretical background of this empirical inquiry, you may not fully understand or appreciate the questions I am posing or, more importantly, the answers I am offering for them. Having said that, let me point out that the Appendix is the most fact-intensive portion of the article, and reviews in very concise terms the ten-month period preceding the crisis. This portion, together with accompanying footnotes, resembles a politico-diplomatic narrative which may have special appeal for historians, and is probably essential background for all but those who recall the basic sequence of events from May 1995 to March 1996 with reasonable clarity. In any event, I will assume familiarity with it throughout the rest of the paper. Section II discusses some conceptual and historical roots of the notion of strategic deterrence, while Section III examines the legal status of U.S. actions in the Strait under: (a) the Taiwan Relations Act of 1979; and (b) international law and norms constraining the use of force against sovereign states. Finally, Section IV, which will be unfamiliar to most readers, embodies a novel application of some logico-analytical tools to specific examples of the signaling behavior involved in this particular deterrence situation, and ultimately demonstrates how that signaling behavior bears upon the interpretation of relevant law. It is my contention that the tools used here can be broadly applied to explain much of this and similar behavior exhibited by the United States and China, as well as comparable behavior of other parties in similar crises.

II. ROOTS OF DETERRENCE

Non-nuclear deterrence, deterrence as such, is an old strategy in warfare,[7] and arguably a fundamental concept in the social life of human

7. *See* GEORGE & SMOKE, *supra*, note 4, at 11-37 (tracing the historical development of deterrence theory from the Peloponnesian War to the post-World War II era).

beings. It did not arrive on the scene with nuclear weapons technology and will not vanish with the end of the Cold War or waning concerns about the prospect of large-scale nuclear combat. In this respect, the root concept of deterrence, broadly construed, is very much alive and a sometimes conspicuous feature of human behavior and decision making by state and non-state actors, in the Taiwan Strait and elsewhere. In the most elementary terms, how does it work?

At the physical level, states, like private individuals, can and do resolve differences through force. Given superior physical strength in the proper configuration, one state can simply take what it wants from another or prevent another from taking what it has. Strength, of course, is not simply a brute numerical calculation, but rather is derived from quality as well as quantity, from superior organization and deployment of force, as well as the possession of numerically greater human and material assets. At a more abstract level, strength can also be derived from economic and political power. Other things being equal, strong states can thus overwhelm weak ones. However, the Taiwan Strait standoff, while it was very much concerned with strength, was primarily about something else: deterrence. Deterrence typically depends upon, but goes beyond, strength. It adds another level of complexity to physical conflict, regardless of how well-equipped sophisticated belligerents may be in physical, economic, and political resources. Why is that?

What distinguishes deterrence from brute forms of combat is that deterrence operates at the physical *and* the mental level. It accomplishes this by inspiring fear or intimidation by way of a threat of retaliation. The state possessing the power to deter can prevent an adversary from engaging in an action not to the state's liking. For example, it can keep the adversary from destroying property, interrupting commerce, or harming citizens, simply by *threatening* to use significant force if a forbidden act is undertaken.[8] In this respect, the threat itself—the threat to use significant force—becomes the chief weapon of deterrence. The de-

8. Deterrence also can broadly shape behavior. Beyond simply deterring an adversary from *bringing about* untoward actions, a state can motivate the *cessation* of such actions after they are already underway; in this way, one might stop the arrest of civilians, the looting of shrines, the use of "inhumane" explosives or the invasion of third parties. In such cases, deterrence is used in a "negative" manner to terminate behavior. Conversely, the power of deterrence can be used positively to motivate one's adversary to initiate or take a particular action. For example, one may want the enemy not merely to hang fire but to quit the fortress; not merely to halt the advance but to withdraw from territory already secured; and not merely to cease the torturing of prisoners but to release them. Just as "negative" deterrent power can bring to an end an enemy's undesirable deeds, "positive" deterrent power can coerce the enemy into "undoing" deeds or initiating such new deeds as the threatener may require.

terring state communicates to its opponent—and it is precisely these acts of communication which are our main concern in this article—that if the opponent fails to behave in a particular fashion, an unwanted and perhaps violent consequence will result. A country that is strong enough and skilled enough vis-à-vis its adversary can in these ways deter that adversary, and thereby control that adversary's actions through the sheer power of this kind of intimidation. The deterred or coerced party fears for its security and the loss or pain it will suffer if the threat is made good and some substantial cost or the great fury of some potential violence is unleashed against it. When deterrence of this kind succeeds, it typically does so because the deterred party believes that his autonomous position, or some element of it—his weapons, comrades-in-arms, industrial assets, home, family, prosperity, perhaps his way of life or just his life *simpliciter*—is worth more to him than the gains he might enjoy by undertaking the challenged behavior. In a certain straightforward sense, the deterred party's desire to maintain the status quo outweighs the desire to take action and risk the unacceptably severe damage of retaliation.[9]

While this central role of the threat—of threatened rather than actual violence—may well have been a factor in pre-historic and other pre-modern conflicts, it came to the center of the strategic stage at the dawn of the nuclear age, when the threatened use of nuclear weapons virtually guaranteed wholly undesirable consequences for all parties. This single attribute made nuclear deterrence conspicuous, perhaps unique, among deterrence situations. In fact, the formal doctrine most commonly associated with the expression "deterrence" in the context of international affairs is essentially a product of the strategic thinking of the post-World War II era, dating from the outset of the Cold War.[10] Strategic deter-

9. The assumption is that the adversary makes a kind of cost-benefit calculation of the stakes. In this article, I am not concerned with addressing the question of whether such calculations are actually made or how, but rather with the logic of the system through which the deterring state communicates to its opponent that if the opponent fails to behave in a particular fashion, an unwanted and perhaps violent consequent will result. Formal attempts to characterize the "post-communication" stakes involved in such calculations from a deterrence perspective might reason as follows: a Chinese attack can be deterred if China calculates that the expected costs and risks (or expected negative utilities) of mounting the attack outweigh the expected benefits (or expected positive utilities). Thus, Costs plus Risks exceed Benefits, or $C + R > B$. For example, China might conclude this if it believed that the United States would come to the military defense of Taiwan or impose costly economic sanctions on China in response to a Chinese attack on Taiwan.

10. The doctrine proper recognized that the great value of nuclear weapons was dependent upon their destructive potential—the potential to inflict unacceptably severe damage upon specific adversaries—and recognized, too, that this potential meant that nuclear weapons had other important uses besides the simple destruction of enemy assets or

rence thinking has primarily concerned itself with nuclear weapons and strategic questions about possible world wars in a nuclear-capable age.[11] Furthermore, until recently it primarily concerned the interests of two nuclear superpowers—the United States and the former Soviet Union—in deterring each other from using nuclear weapons, and only peripherally concerned the affairs of third parties or client states.

However, the concerns of U.S. and Chinese decision makers from May 1995 to March 1996 were quite different. Formal doctrines of nuclear deterrence, like nuclear weapons themselves, probably did not figure directly, if at all, in the geo-political decision making of Washington or Beijing during the 1996 crisis. Rather, this Taiwan Strait conflict concerned non-nuclear deterrence.[12] While the United States and China are both nuclear powers—even if very unevenly matched ones—and each doubtless has, and had in the Strait, contingency plans for using nuclear weapons against the other, this crisis was primarily about the welfare of a third party: Taiwan. More precisely, it was about the U.S. interest in deterring Chinese aggression against Taiwan.[13]

In such third party circumstances, if I seek to deter you, I do so not because you threaten or violate me or my homeland, but because you threaten or violate another party whose welfare concerns me. I am willing to expend the lives of my people and the treasure of my country to

---

troops. More importantly, however, the threat potential of these weapons gave them value as levers and chips in negotiation. So enormous was that value that the doctrine took as its central proposition the premise that the chief worth of the arms was in their bargaining potential and not their use. As Bernard Brodie wrote in the *locus classicus* of deterrence theory:

> Thus, the first and most vital step in any American security program for the age of atomic bombs is to take measures to guarantee to ourselves in case of attack the possibility of retaliation in kind. The writer in making that statement is not for the moment concerned about who will *win* the next war in which atomic bombs are used. Thus far the chief purpose of our military establishment has been to win wars. From now on its chief purpose must be to avert them. It can have almost no other useful purpose.

Brodie, *Implications for Military Policy*, *supra* note 4, at 76.

11. *See supra* note 4 (listing sources examining nuclear strategy and deterrence).

12. Nuclear weapons did loom large in the background during earlier Strait crises following World War II, particularly the crisis that developed in 1950 when North Korea invaded South Korea. *See infra* text following note 120 (surveying briefly three earlier Strait crises).

13. *See* HSIAO-SHIH CHENG, PARTY-MILITARY RELATIONS IN THE PEOPLE'S REPUBLIC OF CHINA AND TAIWAN (1990) (discussing the current state and future plans of the Chinese military); Ray Montaperto, *China as a Military Power*, 56 INSS STRATEGIC FORUM 1 (Dec. 1995) <http://www.ndu.edu/ndu/inss/strforum/forum56.html>; David Shambaugh, *China's Military in Transition: Politics Professionalism, Procurement and Power Projection*, 146 CHINA Q. 265 (1996); *see also* Patrick E. Tyler, *China's Military Stumbles Even as Its Power Grows*, N.Y. TIMES, Dec. 3, 1996, at A1.

defend another, in some sense alien, tribe from your aggression. In such circumstances, it is one thing to inform and convince a prospective aggressor that I can and will defend *my home* from his assault and that, come what may, the aggressor will suffer just for trying to intrude. It is quite another matter to inform and convince an aggressor that I will go to such trouble for *someone else.* How do I do these things?

First, in the theoretically successful case, the signaled threat will be credible insofar as it is made by a threatener who is perceived by the adversary as having the capability and the will to execute the threat. Second, the threat must be expressed or communicated to an opponent through some kind of signaling device—for example, a remark in a conversation, a letter or published statement, or the movement of military assets or a demonstration of military power. Third, the opponent must both receive and correctly understand the signal sent. Finally, the opponent must produce, at least in part as a result of receiving the threat, the behavior desired by the would-be deterrer. On occasion, there may be ancillary effects of making and successfully communicating the threat. For example, one's allies may be reassured by the issuance of the threat, one's enemies may be appropriately concerned that they may be the target of the threat in the future, or one's constituents may see one as strong—just for having made the threats—or, in the alternative, as trigger-happy, and so on. These are the roots of the phenomenon of third party deterrence that faced Washington, Beijing, and Taipei in March 1996. What are the relations between these roots and the narrower domestic and international law issues at the center of the crisis?

III. QUESTIONS OF LAW

This section presents answers to Questions One and Two posed in the introduction. Part (A) explores the legality of military and non-military U.S. actions in the Strait crisis under relevant statutory provisions of U.S. law, while Part (B) assesses the legality of those actions under international law and international norms prohibiting the use of force.

A. The Taiwan Relations Act

For almost two decades, America's relations with Taiwan have been nominally governed by the Taiwan Relations Act (TRA), which was enacted in 1979 as the mechanism through which the United States was to "downgrade" its relationship with Taiwan to "unofficial" status, while officially recognizing and establishing full diplomatic relations with the

People's Republic of China.[14] In assessing U.S. actions in the 1996 crisis, one might reasonably ask, first, whether the actions were permitted under the terms of the TRA, and, second, whether the United States, in carrying out those actions, fully met its obligations under the TRA. A look at the history of the legislation demonstrates why these concerns are of special importance.

In the course of normalizing relations with China in 1978, the United States announced the termination of its mutual defense treaty with Taiwan.[15] The congressional controversy over the Carter administration's termination of the treaty, however, was so fierce that it motivated some members of Congress to mount a constitutional challenge to the propriety of the termination by the executive branch.[16] While the challenge

---

14. *See* Taiwan Relations Act (TRA), §§ 2-17, 22 U.S.C. §§ 3301-3316 (1994). On the U.S.-Taiwan "downgrading" or "derecognition" process, see GERHARD VON GLAHN, LAW AMONG NATIONS: AN INTRODUCTION TO PUBLIC INTERNATIONAL LAW 82 (7th ed. 1996); *see also* BARRY E. CARTER & PHILLIP R. TRIMBLE, INTERNATIONAL LAW 471-72 (2d ed. 1995) (reprinting provisions of the Taiwan Relations Act governing international agreements and the American Institute of Taiwan).

15. Mutual Defense Treaty, Dec. 2, 1954, U.S.-P.R.C., 6 U.S.T. 433 (entered into force Mar. 3, 1955, terminated Jan. 1, 1979). For the U.S. announcement accompanying signing of the U.S.-P.R.C. Communiqué on Normalization, see Statement Issued by the U.S. Gov't (Dec. 15, 1978), *reprinted in* U.S. DEP'T OF STATE, AMERICAN FOREIGN POLICY: BASIC DOCUMENTS 1977-80, Doc. No. 508, at 968 (1983); *see also* Joint Communiqué of the United States of America and the People's Republic of China, Aug. 17, 1982, U.S.-P.R.C., 21 I.L.M. 1147, 1148 (1982) [hereinafter Taiwan Communiqué] (stating that the United States would gradually reduce arms sales to Taiwan); Joint Communiqué on the Establishment of Diplomatic Relations Between the United States of America and the People's Republic of China, Dec. 15, 1978, U.S.-P.R.C., § 6 , DEP'T ST. BULL., Jan. 1979, at 25 (establishing formal relations between the United States and the People's Republic of China); United States-People's Republic of China: Joint Communiqué, Feb. 28, 1972, U.S.-P.R.C., 11 I.L.M. 443, 445 (1972) (noting that the People's Republic of China viewed "[t]he Taiwan question [as] the crucial question obstructing the normalization of relations between China and the United States"). For a discussion of various practical and legal dilemmas concerning U.S.-P.R.C. normalization in relation to Taiwan, see Hungdah Chiu, *Normalization and Some Practical and Legal Problems Concerning Taiwan*, 2 OCCASIONAL PAPERS/REPRINTS SERIES IN CONTEMPORARY ASIAN STUDIES: NORMALIZING RELATIONS WITH THE PEOPLE'S REPUBLIC OF CHINA: PROBLEMS, ANALYSIS AND DOCUMENTS 51-71 (Hungdah Chiu ed., 1978).

16. *See* Goldwater v. Carter, 444 U.S. 996, 996 (1979) (Powell, J., concurring in judgment) (arguing that the dispute between President Carter and various members of Congress concerning the President's termination of the Mutual Defense Treaty with Taiwan was "not ready for judicial review unless and until each branch has taken action asserting its constitutional authority"). For a useful summary of the procedural history of the case, see David I. Salem & Howard Jack Price, Jr., *Note: Presidential Power to Terminate Treaties without Congressional Action*, Goldwater v. Carter, 100 S. Ct. 535 (1979), OCCASIONAL PAPERS/REPRINTS SERIES IN CONTEMPORARY ASIAN STUDIES: THE CHINESE CONNECTION AND NORMALIZATION 68-72 (Hungdah Chiu & Karen Murphy eds., 1980).

failed, it generated sufficient support in Congress to include provisions in the TRA that effectively authorized a unilateral U.S. commitment to Taiwan's defense, a commitment which essentially duplicated the one scrapped when the United States normalized relations with the People's Republic of China.[17]

The TRA is organized around three chief concerns: commercial activities, human rights, and security. The 1996 crisis can be characterized most naturally under the rubric of security, and in that respect it should be noted that four statements in section 2(b) of the Act emphasize U.S. interests in maintaining peace, stability, and security in the Western Pacific, and in ensuring that Taiwan's future is secured by peaceful means.[18] Another section provides that the United States will "provide Taiwan with arms of a defensive character," and is implemented in section 3 of the Act which provides 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."[19] As stated by Professor Lori Damrosch:

> Just as important as arms sales to Taiwan is the TRA's explicit commitment to maintain the capacity of the U.S. to resist any resort to force or coercion that would jeopardize Taiwan's security. As a statement of a political commitment adopted by the Congress, this policy is probably at least as effective as the mutual defense treaty that was in effect prior to the change in recognition.[20]

To the extent that American military conduct, diplomatic actions, and public policy statements during the crisis itself were designed to deter Chinese military action against Taiwan, they would appear to have

---

17. *See supra* note 14 (citing the Taiwan Relations Act). On the first decade of the Taiwan Relations Act, see Lori Fisler Damrosch, *The Taiwan Relations Act After Ten Years*, 3 J. CHINESE L. 157 (1989); *see also* A. DOAK BARNETT, U.S. ARMS SALES: THE CHINA-TAIWAN TANGLE (1982); CHINA AND THE TAIWAN ISSUE (Hungdah Chiu ed., 1979); EDWIN K. SNYDER ET AL., THE TAIWAN RELATIONS ACT AND THE DEFENSE OF THE REPUBLIC OF CHINA (1980); A UNIQUE RELATIONSHIP: THE UNITED STATES AND THE REPUBLIC OF CHINA UNDER THE TAIWAN RELATIONS ACT (Ramon H. Myers ed., 1989); Tao-tai Hsia, *The P.R.C.'s Attitude Toward the Taiwan Relations Act, in* CHINA POLICY AND NATIONAL SECURITY 195-97 (Frederick Tse-shyang Chen ed., 1984); Lester Wolff, *The Legislative Intent of the Taiwan Relations Act, in* CHINA POL'Y AND NAT'L SECURITY 190-94 (Frederick Tse-shyang Chen ed., 1984).

18. *See* Taiwan Relations Act, § 2(b)(2)-(4), (6), 22 U.S.C. § 3301(b)(2)-(4), (6) (1994).

19. *Id.* §§ 2(b)(5), 3(a); *see also* International Security Assistance Act of 1979, § 23(a), 22 U.S.C. § 3302 (1994) (authorizing the President "to transfer to Taiwan United States war reserve material").

20. Damrosch, *supra* note 17, at 170 (footnote omitted).

served section 2(b)'s interests in maintaining peace, stability, and security in the Western Pacific and in ensuring that Taiwan's future was secured by peaceful means. In addition, the arms transfer negotiated by the United States and Taiwan during the crisis arguably falls within the scope of the U.S. obligation under section 3 to make appropriate defensive arms available to Taiwan.[21] More importantly, it is likely, given the evident Congressional intent behind the language of section 2(b), that actual U.S. intervention in the crisis would have been authorized under U.S. law.

Of course, there was no *actual* U.S. intervention.[22] Instead, there was "observation" by U.S. military forces, albeit at relatively close range, of China's war games.[23] I want to suggest, and ultimately elaborate upon, what is perhaps obvious: that this was essentially constructive intervention, intervention by indirect action and implied threat, which served the purpose of deterrence. United States action (or some rough alternative) was not only clearly *permitted* within the meaning of the TRA, but was arguably *required* by the TRA in order to ensure that Taiwan's future was secured by peaceful means. The failure to take such action could well have exposed the United States to claims that it had neglected its duty to ensure against any attempt to take Taiwan by force, particularly if the Chinese had indulged in more belligerent behavior or actually attacked or invaded. I shall return in due course to the subject of what the

---

21. A key provision of the 1982 U.S.-P.R.C. Joint Communiqué on Taiwan states:

> [The United States] does not 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 gradually to reduce its sale of arms to Taiwan.

Taiwan Communiqué, *supra* note 15, § 6. This provision has been quite controversial for conservative Republicans in the United States who regard it as undermining the U.S. security commitment to Taiwan expressed in the TRA. *See generally supra* text accompanying notes 18-19 (discussing the provisions of the TRA covering the commitment to the security of Taiwan). It has also been controversial for the People's Republic of China, which has bristled at continuing U.S. arms sales to Taiwan which, depending on one's assumptions, might be seen to violate section 6 of the Taiwan Communiqué. Not surprisingly, the Chinese viewed U.S. arms transfers to Taiwan during the 1996 crisis as violations.

22. At the height of the 1996 Taiwan Strait crisis, however, a non-binding Resolution was passed in the House of Representatives calling for U.S. assistance in the defense of Taiwan in the event of a Chinese attack. *See* H.R. Con. Res. 140, 104th Cong. (1996) (enacted). This Resolution, along with a related Senate Resolution, *see* S. Con. Res. 43, 104th Cong. (1996) (enacted), are discussed further below. *See infra* text accompanying notes 146, 148.

23. The public record indicates that the U.S.S. *Independence* aircraft carrier battle group was stationed fewer than 200 miles east of Taiwan. *See infra* note 136 and accompanying text (concerning U.S. carrier force movements).

TRA required in this regard, and how those requirements might be determined. In this connection, I shall demonstrate that the indirect methods used by the United States effectively constrained interpretation of the TRA and, as a result, partly shaped those requirements. Whether the various American actions actually taken also fell within the bounds of international law, given Taiwan's uncertain international status, is a much stickier question to which I now turn.

B. Intervention and International Law

This section presents an answer to the second question posed in the introduction by exploring the legality under international law of American military and other actions in the Taiwan Strait crisis. In that regard, I shall be concerned with unilateral intervention, that is, action taken by a single state to project its power into the "internal" or "domestic" affairs of another state or political entity.[24] This type of action has traditionally been prohibited under the norms of customary international law. As characterized by Oppenheim, for example, this type of intervention is seen as "dictatorial interference by a state in the affairs of another state."[25] The norm for international intervention is expressed in the principles inherent in the modern international system of sovereign states, such as the nonuse of force, political independence of states, and sovereign equality. This norm is given written expression in the U.N. Charter, and other international documents, which I shall discuss in due course.[26]

---

24. On collective, as opposed to unilateral, intervention, see generally Tom J. Farer, *A Paradigm of Legitimate Intervention*, *in* ENFORCING RESTRAINT: COLLECTIVE INTERVENTION IN INTERNAL CONFLICTS 316-47 (Lori Fisler Damrosch ed., 1993).

25. L. OPPENHEIM, 1 INTERNATIONAL LAW: A TREATISE § 134, at 305 (H. Lauterpacht ed., 8th ed. 1955); *see also* 1 OPPENHEIM'S INTERNATIONAL LAW § 128, at 428 (Robert Jennings & Arthur Watts eds., 9th ed. 1992) ("That intervention is, as a rule, forbidden by international law there is no doubt."). In recent times, these "state system" values have been balanced by a contrasting, and sometimes conflicting, set of "human rights" values such as rights to due process, equality under law, and participation in deliberative democracy. *See id.* § 131, at 439-45. In theory, "human rights" values can be used to justify intervention just as "state system" values can be used to justify non-intervention. *See id.* at 442 & n.18. For an excellent discussion of this general topic see Lori Fisler Damrosch, *Changing Conceptions of Intervention in International Law*, *in* EMERGING NORMS OF JUSTIFIED INTERVENTION 96-100 (Laura W. Reed & Carl Kaysen eds., 1993). In this article, I will not take up the question of whether, and if so, how U.S. action in the Strait could have been justified under international law norms using a "human rights" model. On this topic, however, it is worth noting that section 2(c) of the TRA is devoted in part to expressing a U.S. commitment to the "preservation and enhancement of the human rights of all the people of Taiwan." Taiwan Relations Act, § 2(c), 22 U.S.C. § 3301(c) (1994).

26. See *infra* notes 44-47 and accompanying text.

What kinds of conduct count as intervention? In international law, the concept of intervention is broadly construed as consisting of any type of interference in the affairs of another state, ranging from, for example, offshore naval presence and exercises to naval blockade or direct internal military action; from economic coercion to arms supply for guerrillas; from financial aid to diplomatic recognition of secessionists.[27] Intervention of any type is invariably aimed at one end: forcing a target state to take some action desired by the intervening state, and is premised on the assumption that the target state would not otherwise be inclined to take that action.[28] Such intervening behavior risks exposing the intervenor to the charge of violating international law by interfering in the sovereign affairs of the target state. Where a state has already intervened "illegally," subsequent intervention by yet another state—which is often justified as an attempt to undo the earlier illegal intervention—is called counter-intervention.[29]

Many of these elements of "interference"—naval presence and demonstration, arms supply, intervention, and counter-intervention—were, in one way, or another, present in the Taiwan Strait crisis.[30] It is our task to sort out some of the reasons for this messy tangle. To do this, we must see what made the crisis unusually complex as a matter of international law. Let us begin by providing a taxonomy of conflicts featuring unilat-

---

27. *See* PETER CALVOCORESSI, WORLD ORDER AND NEW STATES: PROBLEMS OF KEEPING THE PEACE 17 (1962); LAW AND FORCE IN THE NEW INTERNATIONAL ORDER 111-24 (Lori Fisler Damrosch & David J. Scheffer eds., 1991); R.J. VINCENT, NONINTERVENTION AND INTERNATIONAL ORDER 13 (1974); Damrosch, *supra* note 25, at 91-110; Rosalyn Higgins, *Intervention and International Law, in* INTERVENTION IN WORLD POLITICS 30 (Hedley Bull ed., 1984). *See generally* Max Beloff, *Reflections On Intervention*, 22 J. INT'L AFFAIRS 198 (1968) (discussing the history and theories of intervention); Hans J. Morgenthau, *To Intervene or Not to Intervene,* 45 FOREIGN AFFAIRS 425 (1967) (same).

28. *See* CARL VON CLAUSEWITZ, ON WAR 75 (Michael Howard & Peter Paret trans. & eds., 1976); Stanley Hoffman, *The Problem Of Intervention, in* INTERVENTION IN WORLD POLITICS 9 (Hedley Bull ed., 1984).

29. *See* MALCOLM N. SHAW, INTERNATIONAL LAW 572 (2d ed. 1986) (discussing winter-intervention with respect to Soviet intervention in Afghanistan); MICHAEL WALZER, JUST AND UNJUST WARS: A MORAL ARGUMENT WITH HISTORICAL ILLUSTRATIONS 90 (1977) (discussing the concept of counter-intervention).

30. There was a question whether China would undertake, or was in effect already undertaking, a blockade of Taiwan, because its forces seemed incapable of logistically managing an invasion, and its leadership was likely unwilling—even without U.S. involvement—to suffer the casualties and inflict the damage that would have accompanied any invasion. *See* Edward A. Gargan, *Chinese, In A Move To Alarm Taiwan, Fire Test Missiles*, N.Y. TIMES, Mar. 8, 1996, at A1; Patrick E. Tyler, *War Games Off Taiwan To Expand, Beijing Says*, N.Y. TIMES, Mar. 10, 1996, at 12. A blockade would have been illegal under international law, where Taiwan was regarded as a sovereign state. *See supra* notes 24-26 and accompanying text (considering international norms of intervention).

eral intervention. The first type of conflict simply involves the use of armed force by one sovereign state against another—this may be described as inter-state conflict. The second type, demonstrated by the Strait crisis, involves a third party's extension of assistance to one of the parties involved in a distinctly two-party conflict. These situations come in two variants: one in which the core two-party conflict is an inter-state conflict, and one in which the two-party conflict is a non-inter-state conflict involving, for example, two *intrastate* parties, a state and a non-state, or perhaps two non-states. Non-states are typically guerrilla, insurgent, or terrorist groups. The intervention can take place in a variety of venues, for example, on territory controlled by one of the two parties—state or non-state—involved in the core conflict, on territory controlled by a political entity not otherwise involved, or in international waters or airspace. Sometimes the third party intervention will be provided under the auspices of a statute or treaty or defense pact, such as the TRA, and that intervention can theoretically occur whether the core conflict is state-to-state, state-to-non-state, or non-state-to-non-state in character.[31]

What makes the U.S. intervention in the 1996 Taiwan Strait crisis somewhat difficult to characterize, and somewhat problematic under international law, is the ambiguous status of Taiwan. Is Taiwan properly characterized as a state or a non-state? Are its leaders guerrillas or insurgents, or terrorists? Or are they—after the elections of December 1995 and March 1996—now the duly elected officials of a sovereign political entity? The answers to these and related questions are not entirely clear.

The ambiguous status of Taiwan is at least partly rooted in the victorious Allied Powers' plans during and following World War II. The Allies intended to restore to China various territories, including Taiwan, or Formosa as it was then known, which had been occupied by Japan during and prior to the war, and expressed this intention in the Cairo Declaration of 1943, and later confirmed it in the Potsdam Conference of 1945.[32]

---

31. *See* INGRID DETTER DE LUPIS, THE LAW OF WAR 61-71 (1987) (categorizing and explaining various types and characteristics of intervention).

32. The Cairo Conference included President Franklin Roosevelt, representing the United States, Winston Churchill, representing Great Britain, and Chiang Kai-shek, representing China. The three leaders expressed their decision to re-conquer and restore Japan's seizures in the Pacific in The Cairo Declaration of November 1943. *See* HERBERT FEIS, CHURCHILL, ROOSEVELT, STALIN: THE WAR THEY WAGED AND THE PEACE THEY SOUGHT 252 (2d ed. 1967); REDVERS OPIE ET AL., THE SEARCH FOR PEACE SETTLEMENTS 40 (1951); KEITH SAINSBURY, THE TURNING POINT: ROOSEVELT, STALIN, CHURCHILL, AND CHIANG KAI-SHEK, 1943—THE MOSCOW, CAIRO, AND TEHERAN CONFERENCES 321-22 (1985) (containing the Cairo and Teheran Documents); JONATHAN D. SPENCE, THE SEARCH FOR MODERN CHINA 474 (1990). The Potsdam

When Japan finally collapsed in 1945, Formosa was already occupied by Chinese forces; however, the Peace Treaty in which the Japanese formally renounced control over the territory was not signed until 1951, and did not take effect until 1952.[33] By then, the Communists had seized the mainland, while the Chinese Nationalists occupied only Formosa and a handful of small offshore islands. Until the United States derecognized Taiwan in the TRA, it viewed the Nationalist government as the sole legitimate government of the whole of China and, thus, the effect of the Peace Treaty with Japan was to place sovereignty over Formosa squarely with the Nationalists. The communist perspective, however, was that Formosa became an inalienable part of China proper from the moment Japanese military units surrendered to Chinese forces in 1945, and that sovereignty over all Chinese territory passed to the communist government when the Nationalists fled the mainland in 1949.[34] It is on this complex foundation that the terms of the TRA rest.

From the point of view of the mainland, Taiwan is purely and simply a renegade mainland province, no different conceptually and geographically than the (non-renegade) province of Hainan Island off China's southeast coast. Based on this view, the core conflict is internal to a single sovereign state, the People's Republic of China, and pits the ruling communist regime against Taiwanese insurgents. Therefore, the United States must be given the status of an external third-party intervenor providing support for the insurgents and, perhaps, working to destabilize the Beijing government. However, from the perspective of Taiwan and a number of other sovereign states, including the United States to some degree, Taiwan arguably has the de facto status of a sovereign state and is simply being menaced by another; from this realpolitik angle the core conflict has the character of a state-to-state dispute. As Professor Oscar Schacter noted, "recognized governments have a right to receive external military assistance and outside states are free to furnish such aid."[35] On

---

Conference included President Harry Truman, representing the United States, Joseph Stalin, representing Russia, and Winston Churchill, representing Great Britain, who was replaced late in the Conference by Clement Atlee. *See* WILLIAM L. TUNG, CHINA AND THE FOREIGN POWERS: THE IMPACT OF AND REACTION TO UNEQUAL TREATIES 269 (1970).

33. *See* Peace Treaty, Sept. 8, 1951, Allied Powers-Japan, T.I.A.S. No. 2490, 16 I.L.M. 1570 (1977) (entered into force April 28, 1952, ratification deposited Bolivia, August 11, 1977).

34. *See* IAN BROWNLIE, PRINCIPLES OF PUBLIC INTERNATIONAL LAW 68-69 (2d ed. 1973) (discussing the status of Formosa after 1949); D.W. GREIG, INTERNATIONAL LAW 176-77 (2d ed. 1976) (same); LOUIS HENKIN ET AL., INTERNATIONAL LAW: CASES AND MATERIALS 300-01 (3d ed. 1993) (same).

35. Oscar Schacter, *The Right of States to Use Armed Force*, 82 MICH. L. REV. 1620, 1645 (1984). De facto sovereign status and external aid are the root of Beijing's concern

this view, the United States was acting in the Strait crisis simply as an outside state providing support for such a "recognized" government.

The one clear exception to the aiding-a-recognized-government rule arises in the form of state-to-non-state conflict known as civil war, which did besiege China at least until the Nationalists fled to Taiwan in 1949. So the operative question, in one respect, is whether forty-eight years after Chiang Kai-shek fled to Taiwan from the communist takeover on the mainland, China and Taiwan are still involved in a civil war. From the perspective of Beijing, the answer is "Yes," but from that of Taipei and Washington, it is surely "No."[36] This is true even though the United States "downgraded" its relations with Taiwan when it normalized relations with the mainland in 1978 and recognized, under the so-called "one China" policy, the Beijing government as the sole government of China. As indicated in the foregoing discussion of the TRA, U.S. ability under domestic law to provide defensive support for Taiwan was and is the upshot of the bolstered provisions of the TRA, providing another source of Taiwan's unusual status under international law.[37] By virtue of the TRA, the United States recognizes Taiwan as part of China, but at the same time acknowledges Taiwan's right to be free from any attempt by the mainland to incorporate it by force of arms and undertakes an obligation to assist in Taiwan's defense to ensure against the possibility of force. Thus, as the United States views the situation, Taiwan has important attributes which, for practical purposes, make it indistinguishable from a sovereign state. Indeed, the U.S. decision to treat Taiwan as a state sovereign in many legal matters is clearly stated in the TRA. For example, section 4(a) of the TRA states that for the purpose of interpreting U.S.

---

with interest in independence among the Taiwanese. While the government of President Lee is widely recognized as the government of Taiwan, it is recognized by Beijing only as a provincial Chinese government, and by about 30 other, mostly minor, sovereign states as a legitimate government in charge of a sovereign entity. Subsequent to the 1996 crisis, President Lee launched a plan to dismantle the official provincial government of Taiwan, which to a considerable degree structurally paralleled and functionally duplicated the national government. Despite warnings from Beijing, the plan came to fruition in July 1997, and was widely seen to symbolize a further step toward Taiwanese independence. *See Taiwan Ends Its Status as a Province of China*, N.Y. TIMES, July 20, 1997, § 1, at 6.

36. Given the general absence of armed hostilities and the development of robust trade links across the Strait since China's "opening to the outside world" in 1979, the claim of an ongoing civil war is counter-intuitive at best. *See infra* notes 86-89 and accompanying text (discussing the relationship between Taiwan and the People's Republic of China prior to the 1996 Crisis). *See generally* TAIWAN IN WORLD AFFAIRS (Robert G. Sutter & William R. Johnson eds., 1994); HSIN-HSING WU, BRIDGING THE STRAIT: TAIWAN, CHINA, AND THE PROSPECTS FOR REUNIFICATION (1994).

37. *See supra* text accompanying notes 33-34 (discussing the post-World War II status of Taiwan); *see also* CARTER & TRIMBLE, *supra* note 14, at 471-73 (discussing the TRA in the context of Taiwan's unique status under international law).

laws, the United States should treat Taiwan in the same way that it was treated before derecognition.[38] Moreover, section 4(b)(1) states that terms in U.S. laws which "refer or relate to foreign countries, nations, states, governments, or similar entities," are to be construed as "apply[ing] with respect to Taiwan."[39] Finally, section 4(c) of the Act also states that:

> For all purposes, including actions in any court in the United States, the Congress approves continuation in force of all treaties and other international agreements, including multilateral conventions, entered into by the United States and the governing authorities on Taiwan recognized by the United States as the Republic of China prior to January 1, 1979, and in force between them on December 31, 1978, unless and until terminated in accordance with law.[40]

Therefore, the U.S. decision to recognize Taiwan as part of China, while determining that Taiwan shall be essentially treated as a sovereign state under U.S. law, and acknowledging an obligation to assist in Taiwan's defense against forcible annexation by the mainland, has made for a remarkably anomalous situation. As a result, the 1996 Taiwan Strait conflict does not map neatly onto international law principles governing the use of force as expressed in the U.N. Charter and elsewhere.[41]

The difficulty is that, depending on one's assumptions as to Taiwanese sovereignty—is it or is it not a sovereign state?—statutory language as well as international law norms may be interpreted in different ways. For example, the concepts associated with key expressions in the Charter such as "force" and "threat of force" embrace "a wide range of possible meanings," and "[t]heir application to diverse circumstances involves choices as to these meanings and assessments of the behavior and intentions of various actors."[42] In this regard, the differences of opinion that result from attempts at interpretation are "not significantly different from those that arise with respect to almost all general legal principles."[43] Thus, depending upon whether one adopts Beijing's or Washington's perspective, one will read relevant provisions of the U.N. Charter differently. To consider just two examples, different interpretations are possible of Article 2(4): "All members shall refrain in their international rela-

38. *See* Taiwan Relations Act, § 4(a), 22 U.S.C. § 3303(a) (1994).

39. *Id.* § 4(b)(1).

40. *Id.* § 4(c).

41. *See* HENKIN, *supra* note 34, at 884-85 (providing a brief overview of the relevant provisions of the U.N. charter governing the use of force).

42. Schacter, *supra* note 35, at 1633.

43. *Id.*

tions from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations"; and Article 1(1), [the United Nations must] take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace."[44]

The problem of interpretation here is not especially complex because it turns almost entirely on whether Taiwan is treated as part of China or as a sovereign or quasi-sovereign state. From Beijing's perspective, the expression "territorial integrity" in Article 2(4) may refer, in the China-Taiwan context, to a Taiwan which is a part of China, and to a Beijing government which can legitimately exercise control over both China and Taiwan. Under this interpretation, U.S. military action in the Strait could be reasonably construed as a "threat or use of force" against China within the meaning of Article 2(4) or an act of "aggression" within the meaning of Article 1(1). On the other hand, from Washington's perspective, or that of any state recognizing Taiwan as possessing the de facto or de jure status of a sovereign, the expression "territorial integrity" in Article 2(4) may refer to a Taiwan which is not a part of China, and to a Taipei government which actually exercises control over Taiwan. Under this interpretation, China's belligerent actions might be properly construed as violating Article 2(4) and be subject to action under Article 1(1). Further, U.S. conduct could be construed as lawful under both the TRA and Article 2(4), and consistent with the "maintenance of peace" objective of Article 1(1).

Other relevant provisions of the U.N. Charter,[45] U.N. declarations,[46] and other international documents expressing the international law norm

---

44. U.N. CHARTER art. 2, para. 4; art. 1, para. 1, *reprinted in* LELAND M. GOODRICH ET AL., CHARTER OF THE UNITED NATIONS: COMMENTARY AND DOCUMENTS 676 (3d ed. 1969); *see also* G.A. Res. 3314, U.N. GAOR 6th Comm., 2319th mtg., U.N. Doc. A/9890 (1974) (containing the "Definition of Aggression" United Nations Resolution); *Report of the Special Committee Defining Aggression*, 29 U.N. GAOR, Supp. No. 19, U.N. Doc. A/9619 (1974) (attempting to define aggression). For U.S. comments on the definition of "aggression," see Robert Rosenstock, Statement to the U.N. Special Committee on the Question of Defining Aggression (Apr. 12, 1974), *reprinted in* DEP'T ST. BULL., May, 1974, at 498.

45. *See* U.N. CHARTER art. 1, para. 2; art. 2, para. 1; art. 2, para. 7; arts. 24, 34, 39 and 55, *reprinted in* GOODRICH ET AL., *supra* note 44, at 676-77, 681, 683, 684, 687. In the citations here and in the following two footnotes, I follow Professor Damrosch's discussion. *See* Damrosch, *supra* note 25, at 98-106 & nn.9-10, 107 n.11.

46. *See Declaration on Principles of International Law Concerning Friendly Relations and Co-Operation Among States in Accordance with the Charter of the United Nations*, G.A. Res. 2625, U.N. GAOR, 25th Sess., 1883rd mtg., U.N. Doc. A/8082 (1970), *reprinted in* 13 UNITED NATIONS RESOLUTIONS 337 (Dusan J. Djonovich ed., 1976); *Declaration on*

of non-intervention[47] are also subject to precisely these same problems of interpretation. For these reasons, even though neither the United States nor China engaged in any overt act of war, many would see the threats represented by both U.S. and Chinese actions as falling well within the scope of what U.N. Secretary General Trygve Lie called the "veiled threat,"[48] and Professor Wolfgang Friedmann called "indirect aggression."[49]

IV. DETERRENCE IN THEORY AND PRACTICE

We have now answered Questions One and Two, and determined that U.S. actions in the crisis can be reasonably characterized within the meaning of the TRA as legal under U.S. law. In addition, I have found that if one assumes de jure or something akin to de facto Taiwanese sovereignty, U.S. actions can be reasonably characterized as legal under international law, within the meaning of customary norms governing the use of force among sovereign states as codified in the U.N. Charter and other international law instruments. Conversely, these actions are arguably illegal if such assumptions are not made.

With this rather unusual background of U.S. and international law, I turn to a closely related but more daunting task. This section examines some of the deterrence signaling and communication mechanisms at work in the Strait crisis, and thus begins to answer Question Three posed in the introduction. The theoretical approach I take in answering this question has never been used before. It exploits contemporary technical developments in the study of human communication and reasoning; specifically, research on the logic of natural languages within the framework

---

the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty, G.A. Res. 2131, U.N. GAOR, 20th Sess., 1408 mtg.; U.N. Doc. (1965), *reprinted in* 10 UNITED NATIONS RESOLUTION 107 (Dusan J. Djonovich ed., 1974).

47. *See* Conference on Security and Co-operation in Europe, *Questions Relating to Security in Europe* (Helsinki Accord) (Aug. 1, 1975), *reprinted in* 6 HUMAN RIGHTS, EUROPEAN POLITICS, AND THE HELSINKI ACCORD: THE DOCUMENTARY EVOLUTION OF THE CONFERENCE ON SECURITY AND CO-OPERATION IN EUROPE 1973-1975, at 185 (Igor I. Kavas et al. eds., 1981); Organization of African Unity Charter (May 25, 1963), *reprinted in* 2 I.L.M. 766 (1963); Organization of American States Charter, art. 18 (Apr. 20, 1948), 2 U.S.T. 2416, 2420 (1952); Pact of League of Arab States, art. 8 (Mar. 22, 1945), 70 U.N.T.S. 237, 254 (1950); Montevideo Convention on the Rights and Duties of States, art. 8 (Dec. 26, 1933), 69 Stat. 3097, 3115 (1936).

48. *The Question of Defining Aggression: Report of the Secretary-General*, U.N. Doc. A/2211, at 52 (1952), *reprinted in* HENKIN ET AL., *supra* note 34, at 894-96. Trygve Lie of Norway served from 1946 to 1953.

49. WOLFGANG FRIEDMANN, THE CHANGING STRUCTURE OF INTERNATIONAL LAW 262 (1964).

of Anglo-American philosophy of language, linguistic pragmatics, and allied disciplines. While the answer I provide to Question Three with the help of this approach is by no means exhaustive, it will, I believe, produce for the reader an important new way of understanding some key concepts in the machinery of deterrence—such as orders, threats, and promises—as they are exhibited in the international signaling behavior of governments engaged in martial conflict. More importantly, as I noted at the outset of this study, the answer to Question Three is closely related to the answer to Question One, largely because it shows how indirection permitted the United States to bypass the chore—and sidestep the risk—of clarifying the precise meaning of the TRA, and for that matter the status of Taiwan under international law. In other words, the United States never had to state just what the TRA required or what actions the United States would initiate under what circumstances during the Strait crisis.

A. The Structure of Signals: Orders, Threats, and Promises

From a technical point of view, the study of the logic of orders, threats, and promises belongs to the branch of the philosophy of language known as the theory of speech acts.[50] I shall argue that within the framework of that theory, a communicative act designed to deter is a hybrid of two types of act: the threat, which is similar to a promise, and the order.[51] I

50. The literature on the subject of speech acts is extensive, and a comprehensive review of it is beyond the space I have available in this article. *See generally* J.L. AUSTIN, HOW TO DO THINGS WITH WORDS (1962); JOHN R. SEARLE, EXPRESSION AND MEANING: STUDIES IN THE THEORY OF SPEECH ACTS (1979) [hereinafter SEARLE, EXPRESSION AND MEANING]; JOHN R. SEARLE & DANIEL VANDERVEKEN, FOUNDATIONS OF ILLOCUTIONARY LOGIC (1985); JOHN R. SEARLE, SPEECH ACTS: AN ESSAY IN THE PHILOSOPHY OF LANGUAGE (1969); J.L. Austin, *Performative-Constative*, *in* PHILOSOPHY AND ORDINARY LANGUAGE 22 (Charles E. Caton ed., 1963); L. Jonathan Cohen, *Do Illocutionary Forces Exist?* 14 PHIL. Q. 118 (1964); H.P. Grice, *Utterer's Meaning, Sentence-Meaning, and Word Meaning*, 4 FOUND. LANG. 225 (1968); John R. Searle, *A Taxonomy of Illocutionary Acts*, *in* 7 MINNESOTA STUDIES IN THE PHILOSOPHY OF SCIENCE: LANGUAGE, MIND AND KNOWLEDGE 344-69 (Keith Gunderson ed., 1975); P.F. Strawson, *Intention and Convention in Speech Acts*, 73 PHIL. REV. 439 (1964). For additional relevant citations, see *infra* notes 52, 53, 61, 76. Scholarship closely related to the theory of speech acts may also be found in the literature of linguistic pragmatics and other disciplines falling under the broad rubric of cognitive science. *See generally* RUTH M. KEMPSON, PRESUPPOSITION AND THE DELIMITATION OF SEMANTICS (1975); STEPHEN C. LEVINSON, PRAGMATICS 226-45 (1983); JOHN LYONS, SEMANTICS (1977); SPEECH ACT THEORY AND PRAGMATICS (John R. Searle et al. eds., 1980); DAN SPERBER & DEIRDRE WILSON, RELEVANCE: COMMUNICATION AND COGNITION (1968); 3 SYNTAX AND SEMANTICS: SPEECH ACTS (Peter Cole & Jerry L. Morgan eds., 1975).

51. I do not claim that all scholars working on speech act theory or in pragmatics

cannot in this space elaborate a full-blown account of this theory, however, for the sake of clarity I will review a few of its rudimentary distinctions and assumptions.

According to the theory, speech acts are the basic unit of linguistic communication among speakers of natural languages. Speakers of a given language *L* communicate with each other in part by making utterances in reliance on grammatical rules, principles, and other constraints associated with *L*, which determine the meanings of words, sentences, and utterances in *L*. Let us label this the *essential condition*, and note that it will apply in both communicative and non-communicative contexts. Generally, in contexts of communication, when a speaker *S* performs a speech act in *L* with the intention of communicating with an addressee or hearer *H*, *S* intends the performance of the speech act to produce in *H*, by virtue of the *essential condition*, a certain response—namely, an understanding of what *S* means by performing the speech act. Furthermore, *S* intends that *H* recognize *S*'s intention to produce that response, and intends that *H*'s recognition of *S*'s intention to produce that response will partly serve as a reason for *H*'s response. This version of the so-called communication-intention theory of meaning is derived from the account originally formulated by Paul Grice.[52] However, while I will be discussing and analyzing *communication* situations in the Strait conflict, it is important to understand that the phenomenon of meaning in the context of this article does not depend entirely, as it did in Grice's account, on communication intentions. Rather, I will adopt, even though I cannot here discuss it in detail, the view first articulated by John Searle and his followers that meaning intentions are intentions to represent, regardless of whether or not a particular representation is used for communication.[53] Communication intentions, by contrast, are intentions to communicate one's representing intentions. Thus, in the performance of many speech acts there is a double level of intention, one at the level of intentions to represent, another at the level of intentions to communicate.

I want now to explicate some logical properties of a handful of speech acts, which, in one way or another, played a role in the Strait crisis.

---

share a unified technical analysis of the properties of threats, promises, or orders. Furthermore, while many linguistic researchers share various assumptions about the nature of language, meaning, and communication, I am unaware of anyone who has proposed, or would subscribe to, the type of deterrence analysis presented here.

52. *See generally* H.P. Grice, *Meaning*, 66 PHIL. REV. 377 (1957).

53. *See* John R. Searle, *Meaning, Communication and Representation*, *in* PHILOSOPHICAL GROUNDS OF RATIONALITY 209-26 (Richard E. Grandy & Richard Warner eds., 1986).

Along the way, I will be able to fill in some of the theoretical story about how representing intentions and, in turn, communication intentions work. It is widely understood that well-formed speech acts, produced by *S* according to the grammatical rules and other constraints of *L*, will typically have a *propositional content p* and an *illocutionary force.* For example, if one utters to one's interlocutor, "Cease directing bellicose actions at Taiwan," the propositional content is "that *H* not direct bellicose actions at Taiwan" and the illocutionary force is that of an order. The order will be carried out or obeyed if *H* performs the action *A* ordered by *S*. Let us call this the propositional content condition on the speech act. Moreover, in issuing such an order, *S* also always expresses an underlying mental state. Typically, in the case of an order, the mental state will be one of desire (or want or wish). Because the mental state is always expressed in the performance of the speech act, *S* cannot without contradiction both issue the order that *p*, and at the same time deny having the desire that *p*. *S* cannot say "I order you to cease directing bellicose actions at Taiwan, but I do not want you to cease those actions."[54]

For any particular act, however, *S* can be insincere or attempt to mislead *H* as to what *S*'s actual desires are, but whether *S* does this or not has no effect on the fact that in the performance of any given speech act of ordering, *S* will always of necessity convey to *H* the desire that *H* do *A*. Indeed, it is precisely this condition which makes insincerity, deceit, and so on, possible. We can label the underlying mental state the *sincerity condition* on the speech act of ordering. Finally, in the case of a well-formed speech act of this kind, *S* can only order *H* to do what *H* has the ability to do. If I order you to jump over the moon, but you are not able to obey my order because you are not able to perform the action in question, then my order is defective for lack of physical ability on your part. Similarly, I can only order you to cease directing bellicose actions at Taiwan if you have the ability to cease such actions, and are in control of the forces directing the actions. This can be labeled the *preparatory condition* on the speech act.

Just as the speech act has a propositional content, the mental state will also have a content, which we can label a *representative content.* More importantly, the representative content (that *H* not direct bellicose actions at Taiwan) will match exactly the propositional content of the speech act. In those cases where *H* performs the action ordered (that is,

54. This phenomenon is generally known as Moore's Paradox, following the English philosopher G.E. Moore.

ceases the bellicose actions), not only will the speech act be obeyed, but the underlying desire will likewise be satisfied. In general, the order will be satisfied in part because *H* does *A* as a result of being ordered to do *A* by *S*. By contrast, in those cases where *H* does *A*, but not in order to satisfy *S*'s order, or where *H* does *A*, but has no knowledge of the order or would have performed *A* in any case, *S*'s order may be only partly satisfied or may perhaps go entirely unsatisfied. In these ways, both the propositional content of the speech act, and the corresponding content of the underlying mental state, will each represent their own satisfaction conditions—that is, the conditions in the world under which the order will be obeyed and the desire fulfilled.

In the present example, the speech act has the illocutionary force of an order, but orders are part of a larger class of speech acts which we can label *Directives*. This class includes among many others, not just orders, but also commands, directions, exhortations, instructions, questions, entreaties, and requests. In the case of any speech act in this class, *S* is attempting to get *H* to perform some action. In fact, the attempt to secure the performance of the action is what defines the so-called illocutionary point or purpose of the whole Directive class. In each case, *S* is trying to get "the world to match the words." In general, all of the logical properties that I have just enumerated for orders will also be observed in the operation of other speech acts in the Directive class.

It is also true that the same proposition can represent the content of speech acts with various illocutionary forces, and I shall now look at a couple of examples of speech acts with other forces to make the point. First, consider that *S* can not only order *H* to cease its bellicose actions, but can, for example, state that *H* has done so ("You have ceased your bellicose actions."). In such a case, the illocutionary force is that of a statement, even though the propositional content is, again, that *H* cease its bellicose actions. Statements belong to the class of *Assertives*, whose other members include, for example, assertions, predictions, reports, descriptions, characterizations, and conclusions. The illocutionary point or purpose of acts in this class is not, as in the case of Directives, to get *H* to do *A*. Rather, it is to indicate that such and such is the case, or that the world is thus and so. Therefore, in performing such an act, *S* is not trying to get "the world to match the words," rather, *S* is trying to get "the words to match the world."

In the case of statements, as with Directives, there is for each Assertive an underlying mental state in a certain psychological mode, and the representative content of the state exactly matches the propositional content of the speech act. In general, the psychological mode for acts in this class

will be belief, and the content of the state will represent its conditions of satisfaction in the same way that the content of the statement represents its satisfaction conditions. For acts in the Assertive class, however, conditions are called *truth conditions*, and the acts and beliefs are assessed in terms of truth and falsity according to whether they succeed or fail in matching the world. Thus, the statement that *H* has ceased its bellicose actions will be true or false, depending on whether *H* has ceased or not. Likewise, the belief that *H* has ceased those actions will be a true belief if *H* has in fact ceased, otherwise it will be false. Further, as in the case of Directives, for acts in the Assertive class the underlying psychological state, namely, belief, will also always be expressed in the performance of the speech act so that *S* cannot, without contradiction, state and also deny the belief that, for example, *S* has ceased directing bellicose actions at Taiwan.

Let us also consider the case of promises. The proposition that a particular actor cease its bellicose actions can occur in promises just as it can occur in orders and statements. This happens when, for example, *S* promises that *S* will cease directing bellicose actions at Taiwan. In such a case, the illocutionary force is that of a promise, and the propositional content is that *S* will cease directing such actions. Promises belong to the class of *Commissives*, some of whose other members are pledges, vows, oaths, contracts, bequests, and undertakings. The illocutionary point or purpose of acts in this class is not, as in the case of Directives, to get *H* to do A, or, as in the case of Assertives, to state that such and such is the case. Rather, it is to commit *S* to doing *A*, for example, to cease directing bellicose actions at Taiwan. Thus, in performing this type of act, *S* is not trying to get "the world to match the words" by getting someone else to do something, or trying to get "the words to match the world" by saying how things are. Rather, in the case of Commissives, *S* is trying to get "the world to match the words," either by committing himself or herself to doing something, to seeing to it that someone else does something, or to seeing to it that something happens.

There is for each Commissive, as for each Directive and Assertive, an underlying mental state in a certain psychological mode, and the representative content of that state will exactly match the propositional content of the speech act. In general, the psychological mode for acts in the Commissive class will be intention, and the content of the state will represent its conditions of satisfaction in the same way that the contents of Directives and Orders represent their satisfaction conditions. For acts in the Commissive class, we can call those conditions *satisfaction conditions*, and we can assess the acts and underlying intentions in terms of whether

S keeps the commitment (the promise, vow, oath, etc.) by conforming his or her behavior in the world to match the words. Thus, *S*'s promise to cease its bellicose actions will be kept or broken depending on whether *S* has actually done *A* or not. Likewise, the intention to do *A* will be actually executed if *S* has ceased directing its bellicose actions at Taiwan, otherwise it will be unfulfilled. And where Directives always express desires, and Assertives express underlying beliefs, so too do Commissives express an underlying mental state: intention. Thus, *S* cannot both promise to do *A* and deny the intention to do *A* without risking contradiction.

B. Signals in Deterrence

I now examine the role of signals in deterrence and turn my attention to analyzing those signals in terms of the communicative acts of the parties. I earlier suggested that the essence of deterrence consisted of a hybrid communicative act, which conjoined the order and the threat. I am now in a position to demonstrate how that hybrid works.

The power of deterrence, at its core, is the power of one party to get a second party to do something or forebear from doing something. In this basic respect, deterrence has the structure of an order. As demonstrated above, the illocutionary point of the order is to get *H* to do something, namely, perform or refrain from performing the action expressed in the propositional content of the order. This was illustrated when, for example, the U.S. Senate urged China to "cease directing its bellicose actions at Taiwan." And orders are quite sufficient if *H*, in fact, does *A* when *S* performs the act of ordering.

However, in deterrence something more is needed or at any rate added. Deterrence adds the further element of the threat to the order as an aid to getting the order obeyed. This is what gives deterrence its conditional form: if you do not do what I say, then I will unleash my forces against, inflict pain upon, or exact a price from you and your interests. On the other hand, if you *do* do as I say, then I will refrain from bringing these costs to bear. We have seen that orders are a member of the Directive class, but where do threats fit in?

It is clear that whereas an order is about a future action or intentional inaction by the agent at whom the order is directed, a threat is generally about a future action by the agent who issues it. This suggests that the threat is a member of the Commissive class. It is as regards its propositional content (that *S* do *A*) clearly akin to promises, vows, oaths, and the like. However, curiously, there are at least two important differences between the threat and the paradigm of the Commissive class—the prom-

ise. We can begin to get a grip on those differences by recalling that it is sometimes said a threat is a promise to do something (bad) *to you*, not a promise to do something (good) *for you*. The analysis in this folk psychology is not completely explicit, but the intuition moves in the right direction. What is the insight behind that intuition?

First, in the paradigm case, the action promised by the speaker is something wanted by the hearer: when I promise to send my fleet to protect you or promise to sell you ordnance, I am usually committing myself to performing a future action that you want me to perform. It is in this sense that I am promising to do something (good) *for you*. This is not true in the case of threats; indeed, the exact opposite is the case with threats. When I threaten, for example, to withhold Most-Favored-Nation trading privileges from you (as the United States appears to have done to China during the crisis) or threaten military attack on your political process (as China appears to have done to Taiwan during the crisis), the actions I threaten are things you very much do not want to see happen. In this sense, I am promising to do something (bad) *to you*.

Second, a promise always contains a representation of future action and a commitment to that action by virtue of the essential condition on the performance of the act.[55] If the institution of promising by way of conventionalized formulas and other methods did not exist within *L*—here I have in mind formulas such as "I promise to *A*" or "I will do *A*" or "I am going to see to it that *A*; you have my word on it"—acts of promising couldn't get off the ground. Again, this is not true in the case of threats. Threats can be, but need not be, representational. The town bully, for example, may intentionally threaten the community because he somehow finds satisfaction in it,[56] not because he conditions his actions on others changing their behavior at his behest and needs some means of representing and communicating this desire. Moreover, unlike representations, persons and animals, and even plants and inanimate things for that matter, can just *be* threatening. That is, something can simply be threatening to some person or group without formally representing any intention to harm or impose costs on the person or group. One thinks of snakes and spiders, street gangs, and escaped convicts. It should be noted that this fact is in significant part about the perceptions and mental states of the threatened party, and not

55. Even the metaphorical use of promising, as in "She is a promising young violinist" is about possible future action, despite a lack of formal commitment or any representation uttered or otherwise generated by the "promisor."

56. The thrill, however, is not always a cheap one. Recent accounts about some bullies being done in by fed-up neighbors have been widely circulated. *See* Bill Calahan, *New Trial is Sought for Killer of Neighbor*, SAN DIEGO UNION-TRIB., Jan. 4, 1997, § B2, at 6.

states of the threatened party, and not necessarily about the entity posing the perceived threat at all.[57] In these circumstances, the threatener does not need to utter a representation or make a commitment to do *A*, or "make good" on the threatened conduct or event. I am inclined to think that this "subjective perception" concept is the root concept of the threat, from which the more complex representational form at work in deterrence conditionals was derived. This is the converse of the promise, where the representational form is surely the root concept, since the public commitment to future action is a necessary condition for any act of promising.

However, while threatening conduct need not be representational or entail a commitment, some does, and it is precisely this conduct which is involved in deterrence. While the threat is surely of the Commissive class, and the order is of the Directive, the two are conjoined in deterrence. First, I order that *p*: do as I say. And second, I vow, conditionally, that if not *p*, then *q*: if you do not do as I say, then the potential force at my disposal will be inflicted upon you. Now, as a first cut, we might observe that this conditional structure adequately depicts both deterrence strategies in the Strait, specifically the bellicose actions of China toward Taiwan, and the bellicose actions of the United States toward China. China sought to convey and did convey to the Taiwanese electorate that a Taiwanese show of electoral support for "independence" candidates would bring about a belligerent response from Beijing, including perhaps a missile attack or even an invasion. The United States sought to convey and did convey to the Chinese leadership that further escalation of belligerent actions toward Taiwan could result in U.S. military and economic action designed to protect Taiwan from military attack or other forms of serious aggression.[58]

C. Indirection in Deterrence

I have now demonstrated how martial deterrence occurring in the Strait and elsewhere typically has the conditional structure observed in such fully explicit verbal expressions as "If you do *X*, I will not do *Y*," or "If you fail to do *X*, I will do *Y*," or, in an alternative disjunctive syntax,

57. Severe snowstorms, floods, fires, earthquakes, unsafe airplanes, and coffee urns also fit the bill, even if only metaphorically.

58. It is easy to see how this analysis fits the communication-intention model, at least in a rough and ready way. The Chinese performed certain acts designed to threaten Taiwan, and did so in part by getting the Taiwanese to recognize the Chinese intention to threaten Taiwan. Likewise, the United States performed certain acts designed to threaten China and did so in part by getting China to recognize the U.S. intention to threaten China.

"Do *X* or I will do *Y*," and so on. However, many utterances designed to convey these sorts of martial deterrence signals are *not* fully formed explicit verbal conditionals. That is, they achieve their intended function even though they use fragmentary or indirect means of expressing the deterrence conditional. For example, in the Strait some signals were verbal and *direct*, but still only stated part of the conditional. The Senate Resolution, for example, urged China to "cease directing its bellicose actions at Taiwan," which explicitly expresses only the order, the first "Do *X*" part of the conditional. Others were verbal and *indirect*—for example, the assertion made by a number of American officials, in various periphrastic equivalents, that a Chinese attack on Taiwan would have "grave consequences," expressing neither the "Do *X*" of the order, nor the "Or I will do *Y*" of the threat.

Still other acts were reported or announced verbally but were themselves essentially non-verbal, such as the "test" missile launches and war games staged by the People's Liberation Army, and the dispatch of U.S. warships to the Strait region. These were among the most striking events of the crisis, perhaps because they came close to demonstrating the harmful, costly conduct represented by the threat portion of the deterrence conditionals issued by both the United States and China. Moreover, they were highly conventional threat signaling devices, often used in the conduct of "gunboat diplomacy" and its variants. Nonetheless, these acts were at bottom indirect, as were many of the verbal communicative acts of the crisis—there is nothing inherent in ship deployments, missile tests, troop movements, and the like which necessarily connects them with orders or threats. In the proper context, however, and conjoined with the proper speech acts, they are firmly connected with orders and threats. How is that? In this section, I want to determine whether we can make sense of these various acts and events in terms of what we know and what we can figure out about the use of indirection in the theory of speech acts.

1. Verbal Indirection

We earlier stated that speakers of *L* rely on their knowledge of the grammatical rules, constraints, and principles of *L* to determine the meaning of utterances in *L*. This is the *essential condition* on utterances in *L*. I must now refine the characterization of meaning in *L* somewhat. First, it is well understood that the syntactical and semantic rules of *L* will generally determine the meanings of words and sentences in *L*, apart from any particular use to which those words and sentences might be put by a speaker of *L*. There is, in a fairly uncontroversial sense, a set of re-

liable "literal" meanings always available for a particular word or sentence among a community of L speakers. The syntactical and semantic rules of L will determine those meanings by determining a set of truth or satisfaction conditions for words and sentences in L. Thus, for example, my assertion that "John is opening the door" determines a fairly straightforward set of satisfaction conditions, according to which "John is opening the door" is true if and only if John is in fact opening it. Further, as I have demonstrated, where the illocutionary force of the speech act varies, the satisfaction conditions so determined will correspondingly differ. Thus, John's promise to open the door ("I promise to open the door") will be satisfied if and only if John keeps his promise by opening the door. John's report that he opened the door ("I opened it") will be satisfied if and only if John actually opened the door, and so on.

In some circumstances, however, the relevant meaning is not captured by these methods. Take, for example, "Could you open the door?" Here, the syntactical and semantic rules will determine that by virtue of the meanings of its component parts, the utterance will be satisfied (the question answered) if and only if the addressee indicates whether she can, in fact, open the door by uttering, for example, "Yes, I can open it" or "No, I cannot." This analysis of the satisfaction conditions, however, would miss the point in one important class of cases, notably the class in which "Could you open the door?" is not simply a question about H's ability, but is rather a request that the door be opened. The literal interpretation of the meaning of S's utterance—Does H have the ability to open the door?—fails to capture what S meant, specifically, that he wanted the door open and wanted H to open it. In this type of indirection, as in such other nonliteral meaning cases as irony, metaphor, hyperbole, sarcasm, parody, and so on, the divergence between word and sentence meaning, on the one hand, and speaker meaning, on the other is easily observed. Word and sentence meaning concern such questions as "What does sentence X mean?" or "What satisfaction conditions does X determine?"; however, speaker meaning is quite different. It concerns such questions as "What did Speaker S mean in uttering X?" or "How is it that S could mean something *by* saying X?"

2. *The Puzzle of Indirection*

Thus, indirection presents a puzzle. The puzzle makes one wonder: How is it that S can say one thing and mean that thing and something else as well?[59] And how can H understand perfectly what S intends to say

59. In the typical case of indirection, S means *both* what is said (Are you able to open

given that the sentence *H* hears is not, or not entirely, what *S* means? The puzzle is made more complex by the fact that some expressions—for example, "Could you open the door?"—have become standard formulas for making indirect requests.

Very similar facts may be observed in the Strait crisis communications. This was illustrated by the assertion so often publicly repeated by U.S. officials: there would be grave consequences if China attacked Taiwan. Clearly, in these cases *S* meant exactly what was said, "There will be grave consequences," but also meant, and primarily meant, something more, namely, "Do not attack Taiwan!" Yet, as with opening the door, the Chinese interlocutors of these American officials likely had no difficulty whatsoever in understanding what was meant in each instance.

I am going to make a very strong claim about the structural analogy here: that some of the same general principles, rules, grammatical constraints, and interpretive strategies which appear to explain effectively the workings of much of the indirection used in standard verbal communication also apply to indirect deterrence communications in the Strait. Questions about ways in which the patterns of usage in the Strait vary from conversational patterns—which strategies are adopted in the Strait, which are ignored, and why—will be important questions to answer, and I will try to make some headway on that project below. An equally challenging puzzle is whether non-verbal communication in the Strait can be explained by any of the same principles, rules, constraints, and strategies. I will also try to examine this subject below. For the moment, I will begin by looking more closely at mechanisms at work in ordinary conversation.

3. Strategies in Conversation

In a straightforward way, the sentence uttered by *S* (Could you open the door?) serves as the means by which *S* produces the desired effect in *H* of understanding what *S* meant or intended (Open the door!). To see how this works, let us adopt the terminology "secondary" illocutionary act for the interrogative sentence *S* actually uttered (Could you open the door?), and "primary" illocutionary act for the order *S* chiefly intended to convey to *H* (Open the door!).[60] Thus, *S* performed the primary act by means of performing the secondary act.

---

the door?) *and* something more (Open the door!). In other cases of non-literal meaning, however, *S* will not necessarily mean both. For example, in irony *S* might say, "You got what you wanted, did you not?" while meaning exactly the opposite: "You did not get what you wanted, did you?" In this case, *S* means not what is literally said, but *only* what is as it were *unsaid.*

60. On the terminology of "primary" and "secondary" acts in the study of indirection,

We are left with the central question of how does *H* get from the literal meaning of the secondary act to the intended meaning of the primary act? In the realm of conversational exchanges, it is fair to say that many of the pragmatic strategies used by *H*, and assumed by *S*, are reasonably well understood from a technical point of view. *S* uses a number of theoretical and interpretive tools to infer what the primary illocutionary act must be on the basis of word and sentence meaning, as well as background facts about the context of utterance, and the nature and history of the conversation. Besides the theory of speech acts, these tools include powers of reasoning generally possessed and assumed by speakers of *L*, and various principles of conversational cooperation. These principles consist of, among other things, a general cooperative principle by which *H* assumes that *S* is cooperating in the conversation, and therefore is attempting to make a contribution which is appropriate to the conversation at the time and place it is made. In this respect *H* assumes that *S* will seek to adhere to such maxims of conversation as that, in making a contribution, *S* will say just as much as is required (neither more nor less), will endeavor to make a contribution that is truthful, and will strive both to be relevant and to convey the contribution as clearly as possible.[61]

As for door-opening, then, how does *H* proceed? Suppose *S*, who is on the way home, is burdened with packages and does not have a free hand. *H*, who is accompanying *S*, is standing outside the door, and declares to *S* "We need to go inside and warm up," to which *S* replies, "Could you open the door?" What must be determined is how *H* understands the primary illocutionary act—the request that *H* open the door—on the basis of the secondary act—the question whether *H* is able to open it. Assume that *H* already understands, by virtue of her knowledge of the syntax and semantics of *L*, the literal meaning of the secondary act. The process of reasoning that *H* will then follow[62] is roughly:

> (1) I have made a simple assertion expressing my belief that we need to go inside and warm up, and in response *S* has asked whether I am able to open the door. (Conversational Fact).
>
> (2) I assume *S* is talking to me. (Principles of Conversational Cooperation).
>
> (3) *S* is probably adhering to the maxim of relevance. (Inference from (1) and (2)).

---

see SEARLE, EXPRESSION AND MEANING, *supra* note 50, at 30-57.

61. These are the so-called Griceian maxims of quantity, quality, relation, and manner. *See* PAUL GRICE, STUDIES IN THE WAY OF WORDS 22-40 (1989).

62. This lengthy series of steps will not generally be undertaken in any conscious way. Nonetheless, the knowledge and reasoning depicted here are certainly part of the set of pragmatic skills mastered by competent speakers of *L*.

(4) A relevant remark in this context will further the conversation at hand by responding to what has been said through commentary, rejection, query, and so on. (Theory of Speech Acts).

(5) The literal meaning of *S*'s secondary act does not literally further the conversation in these ways, and so violates the maxim of relevance. (Inference from (1) and (4)).

(6) Given (2), however, *S* is probably not violating the maxim of relevance, therefore, he probably means more than he is literally saying in the secondary illocutionary act. I reason that *S* has probably performed a primary illocutionary act which differs from the secondary illocutionary act reported in (1). (Inference from (2), (3), and (5)).

(7) I know that I have remarked on the desirability of going inside, which may by itself provide *S* a reason for wanting to go inside, and that since *S* has his hands full he probably wants to go inside to disburden himself anyway. I also know that the door must be opened before we can go in and that because *S* cannot open it, he probably wants me to do it. (Background Facts).

(8) For reasons of politeness, *S* does not want to order me to open the door, but *S* also knows that I know that out of politeness and other concerns, those who are able to open doors often assist those who are not. (Background Fact).

(9) A preparatory condition on obeying an order is having the ability to perform the act represented (that *H* do *A*) in the propositional content of the order. (Theory of Speech Acts).

(10) *S* knows that he can indirectly and politely request that I open the door by questioning the preparatory condition on an order that I open the door. (Theory of Speech Acts).

(11) Since I understood the literal meaning of *S*'s utterance in (1), which questioned the preparatory condition on an order that I open the door, *S* probably has made an indirect request that I open it. That indirect request is probably *S*'s primary illocutionary act. (Conversational Facts and Theory of Speech Acts).

Here I have rehearsed a series of inferences that represent knowledge possessed and manipulated in some form by interlocutors in *L*. In doing so I have illustrated just a single conventionalized method for making indirect requests. In step (10), I identified the questioning of the preparatory condition (Can you do *A?* Could you do *A*?) as one method by means of which a speaker could successfully make an indirect request. There are, however, several other ways in which such indirect requests

can be accomplished. For example, one can assert as well as question the preparatory condition (You could open the door; You can open the door), and one can assert the sincerity condition on Directives, that is, assert one's desire or wish or want that *H* do *A* (I would like you to *A*; I hope you will do *A*; I would appreciate it if you would do *A*, and so on). One can also question *H*'s willingness to do *A* (Would you do *A?* Do you want to do *A?* Would you mind doing *A* for me?), and can question whether the propositional content condition will be satisfied, that is, whether *H* will do *A* (Will you open the door? Are you going to open the door? Are you not going to open it?). Finally, in one of the richer categories, one can utter sentences of various types concerning reasons for doing *A* (You ought to open doors for people; It would be a good idea if you would open this door; We would be better off if you would open the door; Why not open doors?). Moreover, I should note that certain formulas are clearly off limits: to wit, while one can make an indirect directive by stating that the sincerity condition obtains for *S* (I want you to *A*), one cannot ask whether it obtains (Do I want you to do *A*?).[63]

In a moment, I will want to discern whether and how communications in the Strait crisis map onto these methodological categories for making indirect Directives. But since deterrence conditionals embody not only Directives, in the form of orders, but also Commissives, in the form of threats, I should first take account of methodological categories for making garden variety indirect Commissives. Acts in which *S* questions the preparatory condition include those in which *S* questions or asserts her ability to do *A* (Can I do *A*? I can take care of it), and those in which she asks whether *H* wants her to perform the act (Do you want me to do *A*? Would you like me to take care of it?). In addition, some communications concern the speaker's desire to do the act and his assertion of the sincerity condition (I would like to take care of it, or I want or am willing to do it), while others concern the speaker's intention to do it and his assertion of that intention (I am going to do A; I plan to do it for you). And some simply assert or question the propositional content condition (I am going do *A* no matter what; Shall I do it this afternoon?).

63. Only with the special stage setting of a rhetorical question could this formula be used to make an indirect order.

TABLE 1		
	Directive Acts	Commissive Acts
Essential Condition	Counts as Attempt by *S* to get *H* to do *A*	Counts as Undertaking by *S* of Obligation to do *A*
Proposition Content Condition	*S* predicates a future act *A* of *H*	*S* predicates a future act *A* of *S*
Sincerity Condition	*S* wants *H* to do *A*	*S* intends to do *A*
Preparatory Condition	*H* is able to perform *A*	*S* is able to perform *A* *H* wants *S* to perform *A*

Finally, as with Directives, one can state or question reasons for doing the act represented in the propositional content condition (It would be a good idea for me to do it; Would it be good for everyone if I did it? Should I not take care of it right away?). And as with Directives, certain formulas are ill formed; in particular, while *S* can perform an indirect Commissive by asserting that *S*'s sincerity condition obtains (I want to do *A*), *S* cannot do it successfully by questioning whether it does obtain (Do I want to do *A*?).[64] Table 1 above summarizes the features of acts in the Directive and Commissive classes which are relied upon in the various forms of indirection I have just discussed.[65]

4. Verbal Strategies in the Strait

Now how do these methods of indirection map onto verbal communications in the Strait? I turn my attention again to the broad assertion that there would be grave consequences if China attacked Taiwan, since this was apparently one of the speech acts most frequently performed in public by U.S. officials during the crisis. In these cases, *S* meant exactly what was said: "There will be grave consequences," but also meant, and primarily meant something more directive, namely, "Do not attack Taiwan!" Yet, as with opening the door, the Chinese interlocutors of these American officials likely had no difficulty whatsoever in understanding what was meant in each instance. Again, indirection presents a puzzle. How is it that *S* can say one thing and mean that thing and something else as well? And how can *H* understand perfectly what *S* intends to say given that the sentence *H* hears is not, or not entirely, what *S* means?

64. Again, only with the special stage setting of a rhetorical question can this form succeed.

65. SEARLE, EXPRESSION AND MEANING, *supra* note 50, at 44.

In a surprisingly straightforward way, the sentence here uttered by *S* ("There will be grave consequences if you attack Taiwan") serves as the means by which *S* produces the desired effect in *H* of understanding what *S* meant or intended ("Do not attack Taiwan!"). Let us again use the terminology "secondary" illocutionary act for the assertive sentence *S* actually uttered, and "primary" illocutionary act for the order *S* chiefly intended to convey to *H* (as in the door opening case, where *S* performed the primary act by means of performing the secondary act).

Again, we want to see how *H* gets from the literal meaning of the secondary act to the intended meaning of the primary act by way of pragmatic strategies and theoretical and interpretive tools including the theory of speech acts, various principles of conversational cooperation, powers of rational inference, and background facts. I know that in the Strait, on the day prior to the March 10 "consequences" assertion by U.S. Secretary of State Warren Christopher (that there would be grave consequences if the Chinese tried to resolve that problem by force),[66] Beijing announced it was expanding its war games and would close a large section of the Taiwan Strait so that it could conduct "live fire" exercises with naval ships and warplanes from March 12 through 20.[67] In addition, China announced that from March 21 through 23, the day of Taiwan's presidential election, it would stage large-scale amphibious exercises on Chinese islands off the coast of Guangdong and Fujian provinces adjacent to Taiwan involving 150,000 troops.[68]

How then does *H* proceed? How do the Chinese understand the Secretary's primary illocutionary act (the order "Don't attack Taiwan!") on the basis of the secondary act (the assertion that "there will be really grave consequences if they try to resolve that problem by force")? Assume that *H* already understands the literal meaning of the secondary act. The process of reasoning that *H* will then follow is roughly:

> (1) We have made a simple announcement about our plans to stage further war games in the Taiwan Strait, and in response *S* has asserted that there would be "really grave consequences" if we tried to resolve the Taiwan problem by force. (Conversational Fact).

---

66. *See* John O'Neil, *U.S. Sending More Ships to Taiwan Area in Warning to China*, N.Y. TIMES, Mar. 11, 1996, at A5; Dana Priest & Judith Havemann, *Second Group of U.S. Ships Sent to Taiwan: Christopher Calls Exercises By China 'Risky,' 'Reckless,'* WASH. POST, Mar. 11, 1996, at A1.

67. *See* Tyler, *supra* note 30, at 12.

68. *See* Steven Mufson, *China Plans Live-Ammunition Tests; Naval and Air Maneuvers Could Add Pressure Before Taiwan's Vote*, WASH. POST, Mar. 10, 1996, at A20.

(2) We assume *S* is talking to us. (Principles of Conversational Cooperation).

(3) *S* is probably adhering to the maxim of relevance. (Inference from (1) and (2)).

(4) A relevant remark in this context will further the conversation at hand by responding to what has been said through commentary, rejection, query, and so on. (Theory of Speech Acts).

(5) The literal meaning of *S*'s secondary act does not literally further the conversation in these ways, and so violates the maxim of relevance. (Inference from (1) and (4)).

(6) However, given (2), *S* is probably not violating the maxim of relevance, therefore, *S* probably means more than *S* is literally saying in the secondary illocutionary act. We reason that *S* has probably performed a primary illocutionary act which differs from the secondary illocutionary act stated in (1). (Inference from (2), (3), and (5)).

(7) We know that we have announced our plans to stage further war games in the Strait, and that such plans are likely to concern *S* since *S* has close relations with Taiwan. We also know that *S* may wonder whether we intend to attack Taiwan (and has alluded to this possibility in using the word "force") because *S* is committed in writing to defending Taiwan against such an attack. Such a defense would likely involve a military confrontation with us, and this would generally be seen as a "grave consequence" of any attack by us on Taiwan. (Background Facts).

(8) Grave consequences are generally seen as undesirable consequences, so *S* probably does not want them to materialize. (Background Fact).

(9) To avoid those consequences, *S* will probably try to motivate us not to attack Taiwan. *S* knows that we may acquire that motivation if threatened by S, and that *S* could order us not to attack and link that order conditionally to a threat to impose a significant cost upon us if we do not obey. (Theory of Speech Acts).

(10) However, *S* does not want to order us directly not to attack, or to threaten us directly, because we might find such behavior provocative. Therefore, *S* will probably use indirect means. (Background Facts and Theory of Speech Acts).

(11) *S* has just asserted a reason ("grave consequences") why it would not be a good idea to attack Taiwan. *S* knows that by stating a reason of this sort, *S* can indirectly and non-provocatively order us not to attack Taiwan, while indirectly threatening to injure us if we do. Therefore, *S*'s primary illocu-

> tionary act is probably to threaten us conditionally with harm unless we obey its order not to attack Taiwan. (Theory of Speech Acts).

Thus, in this instance, the preferred illocutionary strategy for indirection was the assertion of a *reason* for *H* to obey the indirectly issued order, which amounted to a reason for avoiding potential injury or cost. This appears to have been an attractive rhetorical strategy for U.S. policymakers in the State Department, and apparently a source of comparatively substantial data because this form of indirection was used several times in late March 1996 at the height of the crisis: the "consequences" strategy surfaced in remarks by National Security Adviser Anthony Lake,[69] Assistant Secretary of State for East Asian Affairs Winston Lord,[70] and State Department Spokesman Nicholas Burns,[71] in addition to those of Secretary of State Christopher.[72] Since U.S. naval forces were already in the vicinity of the Strait, and in each case the remarks were made in conjunction with, or temporally close to, announcements regarding the disposition of those forces, the implied threat was perhaps most reasonably associated with military action. However, in a notable variation on the "consequences" strategy which appeared in remarks by Treasury Secretary Robert Rubin, the implied threat was economic rather than military. In remarks made in Hong Kong, also at the height of the crisis, Secretary Rubin pointedly tied Beijing's untoward conduct to the potential loss of trade benefits which could have been worth several billion dollars to China.[73] Thus, the *reasons* for obeying the order indirectly expressed by *S* account for an important portion of the corpus of indirect utterances used by the United States in the Strait crisis.

Another important portion of the corpus is composed of speech acts concerning the disposition of U.S. naval assets and military forces generally. Consider the announcement by the White House on March 11, 1996, that a second aircraft carrier battle group, headed by the U.S.S. *Nimitz*, would join the group headed by the U.S.S. *Independence*, which

---

69. *See* Priest & Havemann, *supra* note 66 at A1 (discussing the public statements of Mr. Lake on the potential "grave consequences" of any Chinese aggression against Taiwan).

70. *See* Interview by Charlayne Hunter-Gault with Winston Lord, Assistant Secretary of State (MacNeil-Lehrer Newshour, Mar. 11, 1996) <http://www.pbs.org/newshour>.

71. *See* Keith B. Richburg, *Of Missiles and Chinese Mind Games*, WASH. POST, Mar. 7, 1996, at A24 (quoting Mr. Burns as saying that there would be unspecified "consequences" if Chinese war games harmed persons in the Strait).

72. *See* Priest & Havemann, supra note 66, at A1 (citing the public statements of Secretary Christopher).

73. *See U.S., China Clash in Battle of Rhetoric*, CHI. TRIB., Mar. 20, 1996, at 6 [hereinafter *Battle of Rhetoric*] (citing the public statements of Secretary Rubin).

was already on station near Taiwan. The naval forces of the *Nimitz* group, like those of the *Independence*, provided very tangible wherewithal to make good the threat component of the deterrence conditionals in the Strait crisis.[74]

In this case, again, *S* meant exactly what was said—"The *Nimitz* has been dispatched to the Strait"—but also meant, and primarily meant, something more, namely, "I can impose a very substantial military cost on you." Yet, as in the previous cases, the Chinese interlocutors of these American officials likely had no difficulty whatsoever in understanding what was meant in each instance. Thus reappears the puzzle: How can *S* say one thing, mean that thing, and mean something else as well? And how can *H* understand perfectly what *S* intends to say, given that the sentence *H* hears is not, or not entirely, what *S* actually means? How does *H* receive the literal meaning of the secondary act, which after all is merely an announcement of the movement of a group of ships, but understand the intended meaning of the primary act, that a powerful force can be used to impose a great cost on *H*?

Regarding the Strait conflict, we know that on the day before the March 11 announcement of the *Nimitz* deployment, Secretary Christopher made his "consequences" assertion, which followed Beijing's chilling declaration the previous day regarding its expanded plans for war games and missile launches. The *Nimitz* deployment, then, was in close proximity to what might be described fairly as planned deployments by Beijing, which were at least similar in kind, even if comparatively modest in scale. Given such a stage setting, how, and with what interpretive strategy, does *H* proceed? How do the Chinese understand the primary illocutionary act on the basis of the secondary? Assuming, as before, that *H* already understands the literal meaning of the secondary act, the process of reasoning which *H* then follows is roughly:

> (1) We have made a simple announcement about our plans to stage further war games in the Taiwan Strait, and in response *S* has asserted, first, that there will be "really grave consequences" if we try to resolve the Taiwan problem by force, and then, subsequently, that *S* is dispatching an armada to join another armada already near the Strait. (Conversational Fact).
>
> (2) We assume *S* is talking to us. (Principles of Conversational Cooperation).
>
> (3) *S* is probably adhering to the maxim of relevance. (Inference from (1) and (2)).

74. The analogous relationship holds for deterrence conditionals intended by Beijing to apply to Taiwan.

(4) A relevant remark in this context will further the conversation at hand by responding to what has been said through commentary, rejection, query, and so on. (Theory of Speech Acts).

(5) The literal meaning of *S*'s secondary act does not literally further the conversation in these ways, and so violates the maxim of relevance. (Inference from (1) and (4)).

(6) However, given (2), *S* is probably not violating the maxim of relevance, therefore *S* probably means more than *S* is literally saying in the secondary illocutionary act. We reason that *S* has probably performed a primary illocutionary act which differs from the secondary illocutionary act stated in (1). (Inference from (2), (3), and (5)).

(7) We know that we have announced our plans to stage further war games in the Strait, and that this is likely to concern *S* since *S* has close relations with Taiwan. We also know that *S* may wonder whether we intend to attack Taiwan because *S* is committed in writing to defending Taiwan against such an attack. Such a defense would likely involve a military confrontation with us. (Background Facts).

(8) The armada *S* has sent to the Strait, along with that already on station, would enable *S* to inflict great damage on us. (Background Fact).

(9) *S* has already asserted that grave consequences will result if we attack Taiwan. Grave consequences are generally seen as undesirable consequences, so *S* probably does not want them to materialize. (Background Fact).

(10) To avoid such consequences, *S* will probably try to motivate us not to attack Taiwan. *S* knows that we may acquire that motivation if threatened by *S*, and that *S* could order us not to attack and link that order conditionally to a threat to impose a significant cost upon us if we do not obey. (Theory of Speech Acts).

(11) But *S* does not want to order us directly not to attack, or to threaten us directly, since we might find such behavior provocative. Therefore, *S* will probably use indirect means. (Background Facts and Theory of Speech Acts).

(12) *S* has just made an assertion about a preparatory condition for making good on a threat (that *S* has the ability to perform the threatened act). *S* knows that when *S* makes an assertion about *S*'s ability in this way, we will link the threat to *S*'s desire that we not attack Taiwan, and we will understand *S* to be telling us that if we refrain from attacking Taiwan, *S* will not make good on *S*'s threat. (Theory of Speech Acts).

Thus, in this instance, the preferred illocutionary strategy for indirection was the assertion of a fact about *S*'s ability to carry out threats against *H*. This, like the assertion of reasons for obeying *S*'s order to refrain from attacking Taiwan, appears to have been an attractive rhetorical strategy for U.S. policymakers, as indicated by its frequent use. It was relied upon at several critical junctures during the height of the crisis, for example, when announcements regarding major deployments of naval assets or attributes of those assets were made by Secretary of Defense William Perry, Secretary Christopher, and the White House.[75]

D. Further Observations

Now that we have spelled out some of the most basic relations between deterrence and communicative indirection, I want to examine briefly the role that indirection played in the interpretation of the TRA during the Strait crisis. I begin that task with a few observations about conventions, politeness, and deniability in indirection.

1. Conventions and Politeness

In this Strait confrontation, without doing an exhaustive inventory of communications among the parties, we have observed that the United States made prominent use of two forms of indirection: (1) assertions concerning good military reasons, such as grave consequences, and good economic reasons, such as trade losses, for China to refrain from attacking Taiwan; and (2) assertions concerning a preparatory condition on American threats against China—the disposition of U.S. naval assets. While there is, as I have shown, a wide range of formulas available for use in indirection, these specific "good reasons" and "preparatory condition" forms appear to have been favored by the United States. They were chosen instead of forms which question *H*'s sincerity condition (Do you want to refrain from attacking Taiwan?), assert *H*'s preparatory condition (You could leave Taiwan alone), or question the satisfaction of a propositional content condition (Will you not attack Taiwan?). The preferred forms were not just chosen indifferently from a stable of rough semantic equivalents; instead, they were chosen because they were appropriate in ways that other, technically permissible choices were not. In simple terms, this was because the preferred forms were idiomatic expressions in the circumstances; they reflected conventions of usage and

75. *See infra* notes 138-139, 144-46 and accompanying text (examining U.S. Diplomatic attempts at communicative deterrence, coupled with strategic naval maneuvers).

thus were the vehicles of choice for representing the meaning intentions of the speakers involved in this martial conflict.

Now one might reasonably wonder both why *conventionalized* devices are favored in this way, and also why *indirect* conventionalized devices are also favored. First, economic considerations come to the fore. As in other areas of verbal communication and signaling systems generally, conventions are efficient. They are efficient because they serve as valuable aids to interpretation. They make communication between interlocutors easier and less prone to interpretive error, because they operate to reduce the range of possible intended meanings to those that are typically used in a given circumstance.

Second, considerations of politeness are also of key importance. As in other areas of verbal communication, one important motivation for the use of *indirect* forms in martial confrontation is certainly politeness.[76] It is, however, politeness with a twist. In cases of ordinary verbal politeness achieved through issuing, for example, indirect requests, one gives one's interlocutor room to maneuver. By this I mean that it is not entirely presupposed by *S* that *H* can or will do the action requested. For example, when a request is made to open the door (Can you open it?), it is not necessarily assumed that *H* can (Oh, I am terribly sorry, but I do not have a feel for that kind of lock). In addition, *H* can reasonably decline to do the requested action, or at any rate it is generally presupposed in this form of request that *H* is able to decline (Oh, I hope you do not mind, but I have got to run upstairs to get the phone). This room to maneuver is generally not present in cases where *direct* orders are issued. In those cases, the ordering party is typically authorized to issue the order, and the ordered party is typically able to do the deed; moreover, the ordered party is generally not expected or permitted to decline to do it as when, for example, a superior military officer issues orders to inferiors, a senior corporate officer commands and supervises subordinates, or parents instruct and direct their own minor children.

In our martial case by contrast, *H* is given *nominal* room to maneuver militarily and perhaps politically insofar as the order is *indirect*; in this sense a measure of formal politeness is intended. The requirement that *H* be *physically able* to perform the ordered action (the preparatory condition on orders) is presumed just as it is in the direct order cases. But voluntary compliance (the option of refusal) is essentially a formality, and herein lies the twist—both parties are well aware that *S* does not re-

76. *See generally* PENELOPE BROWN & STEPHEN LEVINSON, POLITENESS: SOME UNIVERSALS IN LANGUAGE USAGE (1987); ROBIN T. LAKOFF, LANGUAGE AND WOMAN'S PLACE (1975) (considering issues of deference from a linguistic point of view).

gard the fulfillment of the indirect order as optional, and that the point of the deterrent threat is that *S* likely will not physically permit *H* to decline to do what *S* wants *H* to do. At the same time, however, it is critically important that *H* appear, if only on the basis of the indirect form of the communication, to have the option of refusal. This counts as a "face-saving" gesture—behavior which sustains or leaves relatively undamaged *H*'s reputation and nominal autonomy even while *H* takes measures to obey *S*'s order. To do the opposite, to give the impression that *H* has no such option and must simply obey *S*'s direct order, would impose a greater reputational cost on *H*, and might even provoke *H* into indulging in greater belligerence.

2. Deniability

In the Strait crisis, there was at least one example of this brand of politeness taken to an important extreme. In December 1995, as the crisis was quickly heating up, but three months before it came to a head, the U.S.S. *Nimitz* sailed through the Taiwan Strait. As it happened, this was the first occasion since the normalization of Sino-American relations in 1978 that an American warship had made such passage. While Beijing was quite upset by the event and vocal in its criticism of the United States, the incident was characterized by a U.S. Defense Department spokesman as a strictly weather-related ship movement which otherwise had no geo-strategic purpose.[77] This sequence of events is emblematic of a relatively extreme version of politico-diplomatic politeness in a deterrence context. A martial act is reported[78] and all but universally construed as an indirect order designed to deter Chinese aggression against Taiwan. Yet, the would-be deterrer effectively denies that it possesses either the desire to deter China or the intention to use the ship movement as a device to represent a belligerent intention (such as, "Refrain from attacking Taiwan or I will impose a great cost on you"). I label this form of indirection in deterrence deniability in the service of politeness. This form, as a variation on the "room to maneuver" type of politeness discussed above, enables *H* to save face, that is to appear in some sense to be freely choosing to perform the future act which *S* very much wants *H* to perform, namely, the act of refraining from attacking Taiwan.[79]

---

77. *See infra* note 122 and accompanying text (discussing this incident).

78. It is, incidentally, not certain that much of the world, including the Chinese, would have known about the passage had the Pentagon not reported the event in a press conference.

79. This circumstance is closely related to, but distinguishable from, one in which *S* orders *H* to do *A*, and then denies wanting *H* to do *A*. I demonstrated earlier that for Di-

3. Interpreting the TRA

We asked earlier what the connections were between signaling, indirection, and U.S. domestic law, and we are now in a position to remark on some of them. When I considered American actions in the Strait crisis in light of the TRA,[80] it appeared that the actions fell well within the constraints of U.S. statutory law. Having now scrutinized the dynamics of indirection, we are in a position to see that American communicative acts designed to deter in the Strait crisis may well have been undertaken with a view to limiting the ways in which the TRA would and perhaps could be interpreted both during and after the crisis. Most notably, U.S. decision makers were faced with the important question of what assistance the United States *could legally provide* Taiwan under the TRA, as well as the perhaps thornier question—particularly in future years—of what assistance the United States would be *obliged* to provide Taiwan under the TRA. In this area, there are at least two leading points to be made: first, the heavy use of indirect deterrence conditionals by U.S. officials—the mention of good reasons for Chinese restraint; of the quality, type, and disposition of U.S. naval assets, and so forth—had the remarkable effect at the end of the day of attaching the United States to virtually no explicit commitment to action. Put another way, the United States rather consistently declined to interpret the TRA precisely or say what exactly it would do if China attacked Taiwan.[81] Second, in this connection, it is worth noting that the Clinton administration took very different attitudes toward the two congressional actions aimed at diminishing Chinese belligerence. The administration pointedly criticized the House Bill, which used very explicit language advocating U.S. intervention on Taiwan's behalf in compliance with the TRA if China took more aggressive action,[82] while endorsing a Senate measure that employed

---

rectives, one cannot both perform the act of ordering and at the same time deny that one has the underlying psychological state associated with ordering, without risking contradiction; that is, *S* cannot order *H* to do *A* (Take out the trash!), while simultaneously denying that he wants *H* to do *A* (But I do not want you to take out the trash). In the standard case of indirection, *S* will make an indirect request (Can you open the door?) and cheerfully assent to any corresponding psychological state query: "Do you want me to open the door?"

80. *See supra* Part III.A. (discussing the legality of American action during the crisis under the TRA).

81. For example, U.S. communications during the crisis reflected a conspicuous absence of deterrence conditionals justifying the TRA as controlling, such as: "Do *X*, or else we will do *Y*, under the authority of the TRA," or "If you fail to do *X*, we will be compelled to do *Y* under the terms of the TRA," or "The TRA requires that if you do not do *X*, we will have to do *Y*."

82. *See* H.R.Con. Res. 140, 104th Cong. (1996) (enacted) (declaring "that any attempt by the People's Republic of China to threaten the peace and security of Taiwan is a threat

comparatively soft language and was free of any hard and fast commitments to come to Taiwan's defense.[83] Perhaps not wanting to establish a precedent which might backfire if relations with Taiwan and China took an unpredictable turn, the administration thus conveyed the distinct impression of attempting to leave itself and its successors as much flexibility as possible in interpreting the requirements of the TRA.[84]

V. CONCLUSION

My very strong claim that some rules and principles of linguistic systems may usefully explain certain kinds of strategic communication is still no more than a hypothesis. Much more empirical investigation is necessary before we can demonstrate that the primary and secondary illocutionary acts, verbal and non-verbal representing devices, and rational strategies presented above, are actually relied upon by actors in non-nuclear deterrence situations. At the same time, however, I believe we have shed light on some important relations between orders and threats, and between direct and indirect signals where orders and threats are involved. I hope that this work will illuminate a path for further investigations of both this particular confrontation—especially the study of Chinese and Taiwanese actions—and the investigation of similar confrontations elsewhere.

---

to peace and security in the Pacific and tantamount to the interests of the United States").

83. *See* S. Con. Res. 43, 104th Cong. (1996) (enacted) ("the Government of the People's Republic of China should cease its bellicose actions directed at Taiwan and instead enter into meaningful dialogue with the Government of Taiwan").

84. *See* Winston Lord, Assistant Secretary for East Asian and Pacific Affairs, *Statement Before the Subcommittee on East Asia and the Pacific of the House International Relations Committee* (Mar. 14, 1996), *in* U.S. DEPT. OF STATE DISPATCH, Mar. 25, 1996 (characterizing the Strait crisis as not constituting "a threat to Taiwan of the magnitude contemplated by the drafters of the TRA").

VI. APPENDIX: A BRIEF HISTORY OF EVENTS FROM MAY 1995 TO MARCH 1996

In this appendix, I sketch a narrative of the events leading up to the Strait confrontation. Very briefly, I cover, first, the backdrop of recent Sino-Taiwan commercial and political relations against which the crisis unfolded, and second, the essential details of the ten-month period when the crisis intensified and came to a resolution. Part One covers the Summer of 1995, Part Two the Fall of 1995, and Part Three the Winter of 1996.

China has regularly refused to rule out the use of force against Taiwan, and has consistently identified three main circumstances under which it would use force: first, if Taiwan officially declared itself an independent state; second, if there were foreign intervention in Taiwan; and, third, if Taiwan were beset by serious civil unrest.[85] With the rapid growth of cross-Strait commercial and cultural communications in recent years—a direct consequence of China's Opening to the Outside World in 1979—these three scenarios for using force had until recently largely receded into the dim realm of stale political bluster.[86] Person-to-person exchanges began in 1987 and have numbered more than seven million in the ten years since.[87] Trade in goods began formally in 1991, and two-way trade now amounts to about US $20 billion annually while Taiwanese direct investment in China exceeds US $20 billion.[88] These robust trade links have played a large part in improving bilateral relations and in reducing tensions to their lowest levels since the Nationalists fled the Communist takeover of the mainland in 1949. The rehabilitated relationship, however, began to collapse quite suddenly in

85. *See China Won't Give Up Its Principle On Taiwan Issue*, XINHUA NEWS AGENCY, Mar. 20, 1996, *available in* 1996 WL 5574347 (noting continued adherence to these principles); Tan Tarn How, *No Change in Taiwan Policy*, STRAITS TIMES (Singapore), Dec. 1, 1995, at 1, *available in* 1995 WL 10241458 (same); Marcus Warren, *Two Chinas Return To Sabre Rattling*, SUNDAY TELEGRAPH (London), Feb. 11, 1996, at 26, *available in* 1996 WL 3927486 (same).

86. While China ceased its routine symbolic shelling of the Taiwan-controlled islands Quemoy and Matsu on January 1, 1979, Taiwan did not relax its "Three Nos" policy—no contact, no negotiation, no compromise—until 1987 when then President Chiang Ching-kuo, the son of Chiang Kai-shek, began to permit Taiwanese to visit mainland relatives. *See* Chong-Pin Lin, *Beijing and Taipei: Dialectics in Post-Tiananmen Interactions*, *in* GREATER CHINA: THE NEXT SUPERPOWER? 118 (David Shambaugh ed., 1995); *see also* LAI TO LEE, THE REUNIFICATION OF CHINA: PRC-TAIWAN RELATIONS IN FLUX (1991).

87. In 1988, 450,000 Taiwanese visited the mainland, and, by 1992, visits were totaling 1.5 million annually. *See* David Shambaugh, *Security Issues Intensify*, FREE CHINA REV., Mar. 1996, at 55-65.

88. *See supra* note 84 (noting the comments of Assistant Secretary of State Lord regarding the rapid increase in Taiwan's annual exports, particularly to the P.R.C.).

ever, began to collapse quite suddenly in the Summer of 1995 after the United States granted Taiwanese President Lee Teng-hui a visa in June 1995 to attend a reunion at Cornell University.[89]

A. Summer 1995

The U.S. grant of a visa to President Lee Teng-hui was an extraordinary act insofar as no Taiwanese leader had been officially allowed to visit the United States since 1979 when the United States downgraded its relations with Taiwan to unofficial status. The private visitation grant was apparently motivated in large part by the persuasive influence of votes in favor of the visa by both the U.S. Senate, which had voted 97 to 1 in favor, and the House of Representatives, which had voted 396 to 0 in favor.[90] Despite Lee's explicit and often repeated statements to the contrary,[91] the Chinese viewed the U.S. trip as hard evidence that the Taiwanese leadership had decided to seek formal independence, and had sent Lee on the trip as part of a plan to gain greater international visibility for Taiwan, and to have Lee generally display the posture of a national leader in foreign countries.[92] Taipei's interest in acceding to the

89. In 1968, President Lee earned a Ph.D. in agricultural economics at Cornell, where he had studied from 1965 to 1967. The reunion took place on June 9, 1995. For valuable biographical notes on Lee, see Marcus W. Brauchli, *Why Historic Election In Taiwan Is Rattling Both China and U.S.*, WALL ST. J., Feb. 26, 1996, at A1. The Chinese leadership was already quite upset over a decision made during the administration of President George Bush to sell Taiwan 150 advanced American fighter planes. *See* James Sterngold, *U.S.-China Tensions Over Trade*, N.Y. TIMES, Sept. 14, 1992, at D1. The Chinese regarded the sale as a violation of the agreement reached with the Reagan administration to gradually diminish the quantity and quality of arms that the United States would sell Taiwan. *See supra* note 15 for the Joint Communiqué of August 17, 1982.

90. *See* Steven Greenhouse, *Aides to Clinton Say He Will Defy Beijing and Issue a Visa to Taiwan's President*, N.Y. TIMES, May 22, 1995, at A6. Some Asia experts in the State Department opposed the granting of the visa, fearing the damage it might cause to relations with China, but were overruled by Secretary of State Warren Christopher. Those who recommended the visa sought to avoid a high-stakes contest with Congress which the White House stood to lose, apparently because of sufficient votes in Congress to override a presidential veto. The Chinese ambassador to the United States, Li Dao-yu, was informed of the administration's decision by National Security Adviser Anthony Lake and Under Secretary of State Peter Tarnoff, who told him that if President Clinton did not grant a visa, Congress might adopt a binding resolution that would not only require him to do so, but would also upgrade the American relationship with Taiwan. *See id.* A transit visa was granted later for a separate visit by Taiwan's Vice-President as well. *See U.S. Gives Transit Visa To Taiwan Vice President*, BOSTON GLOBE, Jan. 7, 1996, at 2.

91. For an example, see Thomas L. Friedman, *The View From Taipei*, N.Y. TIMES, Sept. 3, 1995, §4, at 11 (discussing President Lee's views on the future of Taiwan).

92. Chinese President Jiang Zemin had issued an "Eight-Point Plan" concerning reunification on January 30, 1995, which, while nominally discussing trade and culture, was quite explicit in asserting a "one China" principle, opposing any "independence" move-

World Trade Organization,[93] its offer of a US $1 billion contribution for a U.N. developing countries fund in exchange for a U.N. seat,[94] and its recent formation of full diplomatic ties with a handful of smaller nations,[95] have added to communist speculation that a not-so-covert independence drive has risen to the top of Taiwan's agenda.[96]

Beijing responded to Lee's U.S. visit with dramatic diplomatic and military action, and harsh rhetoric. The commander-in-chief of the Chinese Air Force, General Yu Zhenwu, cut short an official visit to U.S.

---

ment on Taiwan, and not ruling out the use of force against Taiwan. Taiwanese President Lee Teng-hui, responding with his own "Six-Point Speech" on April 8, 1995, coolly rebuffed President Jiang by characterizing China and Taiwan as being "governed by two political sovereign entities since 1949," declaring that "[b]oth sides should participate in international organizations," and asserting that China's tendency to "use foreign interference and Taiwan independence campaigns as an excuse to maintain a military solution" was "to ignore and distort" Taiwan's "nation-building spirit." Both statements are reprinted in an interview by Richard R. Vuylsteke with Wei Yung, President of the Vanguard Institute for Policy Studies, *in Time to Clarify the One China Principle*, FREE CHINA REV., Mar. 1996, at 24-25.

93. Taiwan applied to join the General Agreement on Tariffs and Trade (GATT), the predecessor to the World Trade Organization (WTO) in 1990, although it applied not as an independent state, but as the customs union of Taiwan, Penghu, Jinmen, and Mazu. Presumably, it applied under this status to avoid antagonizing Beijing, which had also initially filed a GATT application in 1986. Both applications are presently the subject of GATT/WTO study groups. *See* Lori Fisler Damrosch, *GATT Membership in a Changing World Order: Taiwan, China, and the Former Soviet Republics*, 1992 COLUM. BUS. L. REV. 19, 24, 27; James V. Feinerman, *The Quest for GATT Membership: Will Taiwan Be Allowed to Enter Before China?*, CHINA BUS. REV., May-June 1992, at 24-27; James V. Feinerman, *Taiwan and the GATT*, 1992 COLUM. BUS. L. REV. 39, 40-42.

94. *See* Pamela Burdman, *Taiwan Offers to Buy Its Way into the U.N.: Outcast Nation Says It Will Pay $1 Billion*, S.F. CHRON., June 27, 1995, at A1.

95. Between 1989 and 1991 Taiwan was formally recognized as a sovereign state by Grenada, Liberia, Belize, Lesotho, Guinea-Bissau, Nicaragua, and the Central African Republic. In each case, however, Beijing withdrew its own embassy from the country granting recognition. At the same time, Taipei began to move much more aggressively in enhancing relations with France, Canada, Australia, New Zealand, Poland, Czechoslovakia, Hungary, Vietnam, North Korea, and the then Soviet Union. *See* Lin, *supra* note 86, at 121.

96. *See Beijing Meeting On "Taiwan Independence" Book*, XINHUA NEWS AGENCY, Mar. 10, 1996, *available in* 1996 WL 5573095; *Chinese Foreign Ministry Spokesman On Lee Teng-hui's Statement*, XINHUA NEWS AGENCY, Feb. 15, 1996, *available in* LEXIS, Asiapc Library, Xinhua File; *"Common Life Community," Fomenting Separatism*, XINHUA NEWS AGENCY, Aug. 4, 1995, *available in* LEXIS, Asiapc Library, Xinhua File; *Lien's Visit To Czech Republic—Another Attempt At "Two Chinas,"* XINHUA NEWS AGENCY, June 23, 1995, *available in* LEXIS, Asiapc Library, Xinhua File; *Make More Efforts For Unification*, XINHUA NEWS AGENCY, Jan. 30, 1996, *available in* 1996 WL 5570084; *Qian Qichen On U.N. Seat For Taiwan*, XINHUA NEWS AGENCY, March 11, 1996, *available in* 1996 WL 5571861. Perhaps of even greater concern to the mainland was the fact that Taiwan was about to hold its first direct presidential election. *See supra* note 1 (discussing the outcome of the election).

Air Force installations on May 23,[97] and China's ambassador to Washington, Li Daoyu, was recalled to Beijing on June 16.[98] On June 18, the Chinese detained American human rights activist Harry Wu, who was attempting to enter China through Kazakhstan, and three weeks later formally arrested him and charged him with espionage.[99] On June 25, they arrested and revoked the parole of dissident Chen Ziming, who at the behest of the Clinton administration had been released from prison for medical reasons in 1994 after serving part of a thirteen-year sentence for sedition in conjunction with the Tiananmen Square demonstrations in 1989.[100] Then in late July 1995, Beijing undertook two missile exercises eighty-five miles north of Taiwan, and in four successive days fired four medium-range surface-to-surface missiles and two ballistic missiles.[101]

During a meeting of the Association of Southeast Asian Nations (ASEAN) in Brunei, Secretary of State Warren Christopher met with Chinese Foreign Minister Qian Qichen on August 1, 1995, in an effort to repair relations with China and secure Harry Wu's release. The results of the ninety-minute meeting were described in cautiously optimistic terms, but Secretary Christopher found himself upstaged by an incident which was emblematic of a general disarray in the Clinton administration's Asia policy. Three days before the meeting, on July 29, China had detained two Hong Kong-based American military attachés who were traveling in Fujian province, directly across the Strait from Taiwan. While the incident was not discussed or even mentioned during Christopher's meeting with Qian, it was made public the next day, August 2. The following day, the two attachés were expelled by Beijing after being accused of illegally photographing a restricted site from which China had been launching missiles in its attempt to intimidate Taiwan.[102] They were

---

97. *See Chinese Visit Cut Short*, N.Y. TIMES, May 24, 1995, at A8.

98. *See* Elaine Sciolino, *Angered Over Taiwan, China Recalls Its Ambassador in U.S.*, N.Y. TIMES, June 17, 1995, at 5. The recall lasted for little more than two months. *See China Sending Its Ambassador Back to U.S. as Feud Subsides*, N.Y. TIMES, Aug. 29, 1995, at A8.

99. *See Chinese-American Dissident is Arrested on Spying Charges*, N.Y. TIMES, July 8, 1995, at 2; Patrick E. Tyler, *Beijing Arrests Rights Defender*, N.Y. TIMES, July 9, 1995, § 1, at 1.

100. *See* Rone Tempest, *Beijing Revokes Parole, Returns Dissident to Jail*, L.A. TIMES, June 27, 1995, at A13.

101. *See* Seth Faison, *Taiwan Reports Nearby Firing Of 4 Test Missiles by China*, N.Y. TIMES, July 24, 1995, at A2. This was widely perceived in East Asia as a strong signal from China that it would take military action if Taiwan opted for independence, and the exercises caused concern among China's neighbors. *See* Tony Walker & Laura Tyson, *Breathing Fire*, FINANCIAL TIMES (London), Aug. 1, 1995, at 14.

102. *See* Steven Mufson, *China Expels Two Attachés Accused Of Spying*, WASH. POST, Aug. 3, 1995, at A1.

believed to be the first U.S. officials publicly expelled from China since relations were normalized in 1978.[103] Christopher complained to Washington about the poor timing of the officers' actions, while the Pentagon defended itself by explaining that the officers were not in a restricted area and were legitimately monitoring military activities. To some the incident reflected a basic conflict between the conciliatory approach of the State Department to China and the Pentagon's growing concern about Chinese military activities in the Taiwan Strait.[104] At the same time, there was considerable speculation that the incident had been orchestrated by elements of the Chinese military in order to embarrass Mr. Qian and undermine his meeting with Secretary Christopher.[105]

In the interim, in China's official press, the Communist Party continued to toss rhetorical barbs at President Lee, calling him a "traitor" and describing him as, among other things, someone who was "plotting" and "scheming" to separate Taiwan from China, the "motherland."[106] Between August 15 and 25, 1995, more Chinese missile "tests" followed in an area 80 to 100 miles north of Taiwan, including tests of French Exocet anti-ship missile clones.[107] However, at the close of these exercises, the Chinese, in a watershed decision, first convicted Harry Wu of spying and then deported him,[108] which not only seemed to indicate an improved mood in Sino-American relations, but also led directly to two other events which in all likelihood would not have otherwise occurred: a September visit to China by President Clinton's wife, Hillary Rodham Clinton, to attend the United Nations Fourth World Conference on

103. Steven Greenhouse, *China Arrests Start Dispute in Washington*, N.Y. TIMES, Aug. 4, 1995, at A4.

104. According to Pentagon spokesman Kenneth Bacon, the two air force officers had diplomatic passports and valid visas, were wearing civilian clothes, and had cameras in their backpacks when they were arrested. "They were not in a restricted area" and "were on a road with many civilians." *Id.*

105. It was reported that in May 1995, following an earlier meeting with Secretary Christopher, Mr. Qian informed China's leadership that the United States would not issue a visa to Lee Teng-hui. The Chinese military remained skeptical, and two days later the visa was issued. *See* Mufson, *supra* note 102, at A1; *see also* Jim Mann, *Christopher Tries to Downplay China Incident*, L.A. TIMES, Aug. 4, 1995, at A11.

106. *See* Shambaugh, *supra* note 87; Patrick E. Tyler, *Tough Stance Toward China Pays Off for Taiwan Leader*, N.Y. TIMES, Aug. 29, 1995, at A1; *Xinhua Signed Article Slams Lee Teng-hui*, XINHUA NEWS AGENCY, Aug. 23, 1995, *available in* LEXIS, Asiapc Library, Xinhua File.

107. *See* Keith B. Richburg, *Chinese Weapons Tests Seen Targeting Taiwanese Politics*, WASH. POST, Aug. 16, 1995, at A21.

108. *See* R.W. Apple, Jr., *First Lady Will Attend Women's Conference*, N.Y. TIMES, Aug. 26, 1995, at 5; Seth Mydans, *American Deported From China Kept Secret Diary of Life in Jail*, N.Y. TIMES, Aug. 26, 1995, at 1.

Women in Beijing, and a much-anticipated October summit meeting in the United States between President Clinton and China's President Jiang Zemin during celebrations marking the fiftieth anniversary of the founding of the United Nations.[109]

B. Fall 1995

But relations soon soured further as the Women's Conference was marred by extensive meddling, surveillance, censorship, and harassment by Chinese authorities.[110] The summit meeting proved awkward both procedurally and substantively as, first, President Jiang declined an invitation to meet with President Clinton in Washington because the White House would not accommodate China's request for a full ceremonial state visit,[111] and, second, having finally agreed to a meeting in New York, President Jiang balked at the choice of the New York Public Library as a meeting site because Chinese security personnel had discovered an exhibit in the library related to Beijing's 1989 Tiananmen Square crisis.[112] The summit meeting was eventually held on October 24, 1995, at Lincoln Center in New York City, however, even though the event was described by the White House as a "very good, positive meeting" and by Chinese officials as "candid, friendly, positive and useful," it produced no agreements or understandings, and followed by only hours a speech by President Jiang at the United Nations in which he charged that "certain big powers, often under the cover of freedom, democracy and human rights, set out to encroach upon the sovereignty of other countries, interfere in

---

109. *See* Apple, *supra* note 108, at 5; Todd S. Purdum, *The Clintons Back Parley On Women: Foes of Trip to China Called Demagogic*, N.Y. TIMES, Aug. 27, 1995, at 10; Patrick E. Tyler, *Hillary Clinton in Beijing as Women's Conference Opens,* N.Y. TIMES, Sept. 5, 1995, at A3; Patrick E. Tyler, *U.S. And China Plan Meeting of Their Leaders in October,* N.Y. TIMES, Aug. 28, 1995, at A1.

110. *See* Seth Faison, *Chinese Jostle Thousands of Women at Forum*, N.Y. TIMES, Sept. 7, 1995, at A11; Seth Faison, *Meeting Of Women Says Surveillance By China Must End*, N.Y. TIMES, Sept. 3, 1995, § 1, at 1; Seth Faison, *'Women In Black' Defy China's Police,* N.Y. TIMES, Sept. 5, 1995, at A3; Patrick E. Tyler, *Forum on Women Is Vexed By Chinese Security Agency*, N.Y. TIMES, Aug. 30, 1995, at A10; Patrick E. Tyler, *Meddling By China is Seen as Marring Meeting on Women*, N.Y. TIMES, Sept. 2, 1995, at 1; Patrick E. Tyler, *Women at Forum Agree to Press On: Threat to Cancel Fails to End Harassment by Chinese*, N.Y. TIMES, Sept. 4, 1995, at 1.

111. *See* Elaine Sciolino, *No Appetite in Washington for a State Dinner Now*, N.Y. TIMES, Oct. 1, 1995, §1, at 10.

112. *See* Alison Mitchell, *China's President and Clinton Meet to Repair Fences*, N.Y. TIMES, Oct. 25, 1995, at A1; *cf.* Patrick E. Tyler, *China Accepts Clinton's Offer of New York Summit Meeting*, N.Y. TIMES, Oct. 2, 1995, at A6 (discussing the difficulties surrounding the summit).

their internal affairs and undermine their national unity and ethnic harmony."[113]

Tensions continued to mount through the Fall as the Chinese staged another round of war games in late November in an attempt to shape the outcome of Taiwan's parliamentary elections on December 2, 1995.[114] The exercises, which were centered on Dongshan Island off China's southeast coast adjacent to Taiwan,[115] came on the heels of a Beijing visit by a high-level U.S. military delegation.[116] When the votes were counted, the ruling Nationalist Party (Kuomintang or KMT) led by President Lee Teng-hui won eighty-five seats, which reduced by seventeen its previous 102-seat majority in the 164-member Yuan, the Taiwanese parliament; the Chinese New Party, which was formed in 1993 by KMT rebels who endorse a conciliatory stance toward the mainland, won twenty-one seats, up from seven seats, and the Democratic Progressive Party, which favors outright independence from Beijing, won fifty-four seats, up from fifty.[117] The extent to which the election results were affected by the mainland's military posturing is unclear, but from the perspective of simple voting power, the grip of the Nationalists was clearly weakened, though they still retained a majority, and the pro-Beijing contingent enjoyed a significant increase in support despite the offsetting gains of the Democratic Progressive Party. For their part, the Chinese applauded the results as a victory for "missile diplomacy," and evidently fashioned a new slogan in advance of the upcoming March 1996 direct presidential elections on Taiwan: "A vote for Lee Teng-hui is a vote for war."[118]

C. Winter 1996

Relations deteriorated further in mid-December when Chinese pro-democracy activist Wei Jingsheng was convicted of attempting to overthrow the Chinese government and sentenced to a fourteen-year prison

---

113. Mitchell, *supra* note 112, at A1.

114. *See* Dennis Engbarth, *The Giant Shadow over Taiwan's Polls*, CHINA MORNING POST, Dec. 2, 1995, at 19; Andrew Higgins, *War-Games Threaten Taiwan*, THE GUARDIAN (London), Nov. 27, 1995, at 9.

115. Chinese television broadcast images to Taiwan of aircraft, warships, tanks, marines, and paratroopers taking part in a mock invasion. *See* Higgins, *supra* note 114, at 9. At the same time, Beijing floated reports that it had set up a new joint command center in Fujian province to prepare for possible action against Taiwan. *See id.*

116. *See* Patrick E. Tyler, *China-U.S. Ties Warm a Bit as China-Taiwan Relations Chill*, N.Y. TIMES, Nov. 18, 1995, at 3.

117. *See* Tempest, *supra* note 1, at A20. Fewer than 68% of eligible voters cast a ballot. *See* 1 EUROPA, *supra* note 1, at 866.

118. Lam & Chan, *supra* note 1, at 1.

term for the second time in seventeen years.[119] Then, on December 19, three months before the crisis came to a head, the United States took its first, comparatively low-key military action bearing on the conflict. A group of American warships, led by the aircraft carrier U.S.S. *Nimitz*, navigated the 120-mile wide Taiwan Strait. As these were international waters and there was no armed conflict in the area, one might otherwise have reasonably expected the event to be unremarkable. Owing to the recent history of relations between China and Taiwan, however, the seeming point of the U.S. action was not lost on the Chinese. Indeed, it caused a serious disturbance in Beijing.[120] No American warship had passed through the Strait since 1978, when the United States normalized relations with the communists, and apart from a tense period during the Kennedy administration in 1962 when the United States discouraged Nationalist forces led by Chiang Kai-shek from launching an invasion of the mainland, there had previously been three major Sino-American crises in the Strait, and in each case the United States had without hesitation dispatched formidable naval forces to the area. First, in 1950, when North Korean troops invaded South Korea, President Truman interposed the U.S. Seventh Fleet between the island and the mainland to protect the Taiwanese Nationalists from any invasion designs the communists might have been entertaining. Second, in 1955, President Eisenhower renewed deployment of the Fleet following China's shelling of the Taiwan-held islands of Quemoy and Matsu, and Chinese-Taiwanese air and naval clashes in the Strait. Third, in 1958, President Eisenhower staged yet another deployment, in an effort to deter Mao Zedong from invading Quemoy and Matsu.

From the Chinese perspective, history was repeating itself. China has always had uneasy relations with foreigners or "barbarians." By the time

---

119. *See* Patrick E. Tyler, *Beijing Sends a Strong Warning with Long Jail Sentence for Dissenter*, N.Y. TIMES, Dec. 14, 1995, at A1. Wei was originally arrested in 1979 for producing political rhetoric unfavorable to the Communist Party during the Beijing Democracy Wall Movement, and after serving 14 and one-half years of a 15-year-prison sentence, he was released, but then re-arrested by Chinese authorities in 1994. *See* Patrick E. Tyler, *China Arrests Leading Dissident for the Second Time in a Month*, N.Y. TIMES, Apr. 2, 1994, at 1; Patrick E. Tyler, *Eye On Olympics, China Frees Top Dissident*, N.Y. TIMES, Sept. 14, 1993, at A6.

120. Chen Jian, a spokesman for the Chinese Foreign Ministry, stated that while the Taiwan Strait is an international waterway where foreign warships have a right of "harmless" or "innocent" passage, China was nonetheless "highly concerned" that an American aircraft carrier would enter the sensitive strait "in view of the situation." Patrick E. Tyler, *China Hints at a Timetable To Take Control of Taiwan*, N.Y. TIMES, Jan. 31, 1996, at A2; *see also U.S. Warship Cruises China-Taiwan Passage*, N.Y. TIMES, Jan. 27, 1996, at 4 [hereinafter *Warship Cruises Passage*] (noting that U.S. naval presence in the area had been absent for 17 years).

of the signing of the Treaty of Nanking in 1842, which followed the first opium war in 1839, in which overwhelming foreign military technology was used to impose foreign rights on a less than willing empire, the Chinese saw the United States and European powers as foreign devils (*yang-guizi*), sinister outsiders intervening in China's internal affairs for their own advantage.[121] In December 1995, the foreign devils were back.

For its part, the United States denied any connection between the passage of the warships through the Strait and the political conflict engulfing China and Taiwan. Although on the one hand the U.S. Defense Department made a point of publicizing the event, on the other, a Pentagon spokesman went so far as to characterize the ship movements as "weather-related."[122] On January 4, however, National Security Adviser Anthony Lake was notified by Charles Freeman, a former Assistant Secretary of Defense who had just returned from meetings in China with senior officials, that the People's Liberation Army (PLA) had planned a missile attack on Taiwan consisting of one missile strike every day for thirty days, commencing just after the election.[123] The administration largely discounted this as empty rhetoric because it was inconsistent with other intelligence data, although the so-called "Pearl Harbor factor" caused the threatened Chinese scenario to generate residual concern in the White House.[124]

In mid-February, President Lee and his running mate Lien Chan paid visits to front-line Taiwanese troops on Quemoy and Matsu as the Chinese continued a troop build-up in Fujian Province on the mainland adjacent to Taiwan, where 150,000 Chinese soldiers had already been stationed.[125] By early March, tensions were running higher than ever. China announced on March 5 that it would be staging missile tests from

121. *See generally* H.G. CREEL, CHINESE THOUGHT FROM CONFUCIUS TO MAO TSE-TUNG 235-57 (1953) (discussing China's longstanding distrust of foreigners); SPENCE, *supra* note 32, at 117-36 (same); SSU-YÜ TENG & JOHN K. FAIRBANK, CHINA'S RESPONSE TO THE WEST: A DOCUMENTARY SURVEY 1839-1923, 23-84 (5th prtg. 1979) (same); Gerrit W. Gong, *China's Entry Into International Society, in* THE EXPANSION OF INTERNATIONAL SOCIETY 171, 171-83 (Hedley Bull & Adam Watson eds., 1984) (same).

122. Tyler, *supra* note 120, at A2. Only three weeks later, Chinese approval was given for the American warship U.S.S. *Fort McHenry* to make a port call in Shanghai, which took place in late January 1996. *See* Seth Faison, *U.S. Warship Pays a Visit to Shanghai*, N.Y. TIMES, Feb. 1, 1996, at A6; *see also Warship Cruises Passage, supra* note 120, at 4.

123. *See* Tyler, *supra* note 2, at A3.

124. *See* Terry Atlas & William Neikirk, *U.S., China Quietly Worked to Defuse Taiwan Crisis*, CHI. TRIB., Mar. 31, 1996, at 1.

125. *See Taiwan, Nervous About China, Reasserts Role on Disputed Isles*, N.Y. TIMES, Feb. 16, 1996, at A10.

March 8 to 15,[126] as part of broader war games to be held prior to (and, as it turned out, in the days following) Taiwan's March 23 presidential elections. The PLA planned to mount various live-fire maneuvers and to lob ballistic missiles at targets fewer than twenty miles off the coast from two of Taiwan's largest ports, Keelung and Kaohsiung, far closer to the island than any of Beijing's previous missile shots. The very next day, March 6, State Department spokesman Nicholas Burns publicly announced that the Chinese had been warned that "there will be consequences should these tests go wrong."[127] Nevertheless, on March 8, the tests began with the launch of three Chinese M-9 missiles into the target area.[128] U.S. Secretary of Defense William Perry immediately criticized China for conducting the tests, pointing out that the missiles could easily have misfired and caused civilian deaths, while at the same time reporting that several U.S. reconnaissance aircraft and naval vessels were in the area, including the aircraft carrier U.S.S. *Independence*.[129]

While the Taiwanese appeared skeptical if anxious,[130] the announcement of the Chinese exercises sent shivers down the spine of the international diplomatic community.[131] By the next day, March 9, Beijing announced it was expanding its games and would close a large section of the Taiwan Strait so that it could conduct "live fire" exercises with naval ships and warplanes from March 12 to 20.[132] In addition, from March 21 to 23, the day of the election, it would stage large-scale amphibious exercises involving 150,000 troops on Chinese islands off the coast of Guangdong and Fujian provinces adjacent to Taiwan.[133] While Chinese Trade Minister Wu Yi described the maneuvers as routine military exercises designed to increase the military effectiveness of the PLA,[134] Foreign

126. *See China Announces Tests of Missiles Near Taiwan*, N.Y. TIMES, Mar. 5, 1996, at A10.

127. Richburg, *supra* note 71, at A24.

128. The M-9 is a solid fuel, conventional ballistic missile with a range of 600 kilometers. *See* JANE'S WEAPONS SYSTEMS (Duncan Lennox ed., 1994).

129. *See Taiwan Warns China on Missiles; Intimidation on Eve of Election Protested*, DALLAS MORNING NEWS, Mar. 9, 1996, at 10A. The U.S.S. *Independence* was reported to be 200 miles northeast of Taiwan; the guided missile cruiser U.S.S. *Bunker Hill* was reportedly operating close to Taiwan's southern coast. *See* Tom Rhodes, *U.S. Warships Monitor Tests*, TIMES (London), Mar. 9, 1996, at 14.

130. *See* Edward A. Gargan, *Chinese Missile Testing Fails to Disrupt Life on Taiwan*, N.Y. TIMES, Mar. 9, 1996, at 3.

131. *See* Nicholas D. Kristof, *Neighbors Voice Concern Cautiously*, N.Y. TIMES, Mar. 10, 1996, at 12.

132. *See* Tyler, *supra* note 30, at 12.

133. *See* Steven Mufson, *China's Forces Set New Games off Taiwan*, BOSTON GLOBE, Mar. 10, 1996, at 2.

134. *See China Not Afraid Of Sanctions: Minister*, XINHUA NEWS AGENCY, Mar. 9,

Ministry spokesman Shen Guofang stated that the exercises were intended "to suppress the acts of the pro-independence forces that are trying to create two Chinas or one China and one Taiwan."[135]

Only hours after Beijing's March 9 announcement of its expanded games, U.S. Secretary of State Warren Christopher, having characterized China's actions as "reckless" and "risky" and as smacking of "intimidation and coercion," indicated on March 10, that the U.S.S. *Independence* would be moved closer to Taiwan and that "if [the Chinese] try to resolve this policy through force, rather than through peace, [it would be] a grave matter with us."[136] National Security Adviser Anthony Lake, echoing Secretary Christopher, predicted on the same day, but in a different setting, that "if [the Chinese] attack Taiwan, there will be grave consequences."[137] The next day, March 11, the White House announced that a second aircraft carrier battle group, headed by the U.S.S. *Nimitz*, had been ordered from the Persian Gulf to join the *Independence*,[138] and Assistant Secretary of State for East Asia, Winston Lord, reported to the press that "[w]hat we have done is relay to the Chinese that there would be grave consequences if they resorted to force" and "I think China understands that they would suffer great damage if they resorted to force."[139] On March 12, the People's Liberation Army began its "live fire" maneuvers and fired off a fourth M-9 on March 13.[140]

While Chinese officials were reported to have been conveying for some time so-called "unambiguous signals" that they did not intend to

---

1996, *available in* 1996 WL 5572910.

135. Edward A. Gargan, *Chinese, In A Move To Alarm Taiwan, Fire Test Missiles*, N.Y. TIMES, Mar. 8, 1996, at A1.

136. O'Neil, *supra* note 66, at A5; *see also* Priest & Havemann, *supra* note 66, at A1.

137. *See* Priest & Havemann, *supra* note 66, at A1.

138. *See* Patrick E. Tyler, *China Signaling U.S. That It Will Not Invade Taiwan*, N.Y. TIMES, Mar. 13, 1996, at A3; Philip Shenon, *Gunboat Diplomacy, '96 Model*, N.Y. TIMES, Mar. 17, 1996, §4, at 1. On March 7, at the invitation of National Security Adviser Anthony Lake, Liu Huaqiu, Foreign Affairs Director of China's State Council, arrived in Washington for discussions with Lake and other U.S. officials, including Secretary of Defense Perry and Secretary of State Christopher. *See* Atlas & Neikirk, *supra* note 124, at 1. At a working lunch with Mr. Liu, Secretary Perry "recounted having learned as a soldier the artillery technique known as bracketing—that is, firing on either side of a target before zeroing in for the kill"—and noted that China seemed to be bracketing Taiwan with its missile tests and exercises. *Id.* Acting on that concern, Secretary Perry recommended two days later that the *Nimitz* battle group join the *Independence* group near Taiwan. *See id.* The decision to move the ships was actually made by President Clinton in California on March 9. *See* Michael Dobbs & R. Jeffrey Smith, *Second Carrier Group Sends a Clear Signal*, WASH. POST, Mar. 12, 1996, at A10.

139. Interview with Winston Lord, Assistant Secretary of State (MacNeil-Lehrer Newshour, Mar. 11, 1996) <http://wwl.PBS.ORG/Newshour>.

140. *See* Tyler, *supra* note 138, at A3.

invade or attack Taiwan,[141] by March 16, Chinese Foreign Ministry spokesman Shen Guofang denied that such assurances had been given and declared that China had never promised to give up the use of force.[142] The next day, March 17, Chinese Prime Minister Li Peng addressed China's legislative body, the National People's Congress, and issued a thinly veiled warning to Washington that "[i]f someone makes a show of force in the Taiwan Strait, that will not only be a futile act, but it also will make the situation all the more complicated."[143] Within two days, the Pentagon and the State and Treasury Departments appeared to have delivered, whether coordinated or not, a three-track response to Mr. Li's warning: Defense Secretary Perry declared belligerently that "America has the best damned navy in the world, and no one should ever forget that,"[144] while Assistant Secretary of State Lord noted in reassuring tones that while the situation was fraught with danger, "we are not on the brink of war,"[145] and U.S. Treasury Secretary Robert Rubin observed in Hong Kong that China's threats to Taiwan could jeopardize renewal of trade benefits to China worth billions of dollars.[146]

On that same day, March 19, the U.S. House of Representatives passed, by a vote of 369 to 14, a non-binding Resolution which made reference to the 1979 Taiwan Relations Act and stated that the United States "should assist in defending [Taiwan] against invasion, missile attack, or blockade by the People's Republic of China," and required the President and Congress to consider taking actions "consistent with the commitment of the United States under the Taiwan Relations Act" in response to a threat to the security of Taiwan.[147] Elsewhere in Washington,

---

141. *Id.*

142. *See China Denies Ruling out Taiwan Attack*, BOSTON GLOBE, Mar. 17, 1996, at 2; *Urgent Foreign Ministry Spokesman Comments On Report*, XINHUA NEWS AGENCY, Mar. 16, 1996, *available in* LEXIS, Asiapc Library, Xinhua File.

143. Patrick E. Tyler, *China Warns U.S. to Keep Away From Taiwan Strait*, N.Y. TIMES, Mar. 18, 1996, at A3.

144. James Pringle, *China Warned not to Tangle with American Navy*, TIMES (London), Mar. 20, 1996, at 12.

145. *Id.*

146. *See Battle of Rhetoric*, *supra* note 73, at 6. Presumably, Rubin's reference was to the annual review of China's Most-Favored-Nation (MFN) trading privileges, which would begin in June and were critical to China's ability to export goods to the United States at a rate that reached $45 billion in 1995. For a comment on the Clinton administration's subsequent recommendation that China's MFN privileges be renewed in 1996, see Glenn R. Butterton, *Renew MFN for China? Right Decision, Wrong Reasons*, CHI. TRIB., July 3, 1996, at 27.

147. H.R. Con. Res. 140, 104th Cong. (1996) (enacted). The Clinton administration, led by Assistant Secretary of State Lord, had opposed the House Resolution, because of its potential for misinterpretation in Asia as an American attempt to modify the TRA, and

at the annual meeting of U.S. and Taiwanese defense officials concerning Taiwan's defense needs, U.S. officials gave provisional approval for the sale to Taiwan of various weapons systems; though the administration portrayed the sale as strictly routine and the weapons list as "fairly modest," it did include shoulder-fired Stinger surface-to-air missiles, which were potentially useful in the short-term against Chinese aircraft.[148]

Two days after the House action on China, the Senate, on March 21, passed its own non-binding Resolution by a vote of 97 to 0. Though it lacked the explicit mention of U.S. intervention adopted by the House, the Senate Resolution called on China to "cease its bellicose actions directed at Taiwan" and called on President Clinton to consult immediately with Congress if China's missile tests and military exercises posed an actual threat to Taiwan's peace and security.[149] The Chinese lashed out immediately, asserting that it was "very irresponsible for the United States side to sell advanced weapons to a sensitive area at a sensitive time," and that the United States "should hold unshirkable responsibility for exacerbating the tension in the Taiwan Strait." The Chinese characterized the House Resolution as "a serious encroachment upon China's sovereignty and gross interference in China's internal affairs."[150]

Meanwhile, on March 20, a Beijing-controlled Hong Kong newspaper (*Wei Wen Po*) often used to float the mainland's opinions, asserted that Chinese forces would need fewer than six hours to mount a successful invasion; and on the next day, March 21, in a seeming response to Secretary Perry's declaration and perhaps the House and Senate Resolutions as well, the paper asserted that "[w]ith a concentrated fire of guided missiles and artillery, the People's Liberation Army can bury an enemy intruder in a sea of fire," and "could deal a blow to the head of American forces if they ventured through the Strait."[151] Then, on March 22, Secre-

---

to redefine the U.S. security commitment to Taiwan. *See* Leon Hadar, *U.S. House Adopts Resolution to Defend Taiwan*, BUS. TIMES (Singapore), Mar. 21, 1996, at 5, *available in* LEXIS, Busfin Library, Bustms File.

148. The list also included an advanced targeting and navigation system for fighter jets and a package of electronic warfare devices, but did not include any submarines, which are perennially requested by Taiwan. *See* Bradley Graham, *U.S. Approves Arms Sales to Taiwan*, WASH. POST, Mar. 20, 1996, at A24. For information on the Stinger missile, see JANE'S WEAPONS SYSTEMS 1987-88, 212 (1987-88).

149. S. Con. Res. 43, 104th Cong. (1996) (enacted); *Senate Urges Review of Taiwan Defense*, WASH. POST, Mar. 22, 1996, at A28. The Clinton administration did not oppose the language of the Senate Resolution, as it did that of the House. *See* Hadar, *supra* note 147, at 5.

150. Tan Tarn How, *China Slams U.S. Decision to Sell Missiles to Taiwan*, STRAITS TIMES (Singapore), Mar. 22, 1996, at 1.

151. Seth Faison, *China Threatens to 'Bury' U.S. Forces if They Come Too Close*, HOUSTON CHRON., Mar. 22, 1996, at 18A.

tary Perry canceled his long-scheduled meeting with Chinese Defense Minister Chi Haotian, stating that "[a] large scale official visit is not appropriate in the current climate,"[152] and on the same day, the administration decided to extend informally its freeze on new financing of American business deals in China, which had been originally undertaken in response to China's sale of sensitive nuclear-related technology to Pakistan.[153]

Ultimately, the Taiwanese electorate was both incensed and emboldened by China's bald threat, and as a result the Chinese strategy backfired: the communists' nine-month effort to frighten the Taiwanese electorate actually enhanced support for Lee Teng-hui,[154] and he won the election by an unexpectedly wide margin.[155] Lee won fifty-four percent of the vote and his closest challenger, Peng Ming-min of the Democratic Progressive Party, who favored outright independence from China, won twenty-one percent, while Lin Yang-kang and Chen Li-an, two challengers from the China New Party who advocated conciliatory positions toward the mainland, won just fifteen percent and ten percent of the vote, respectively.[156] Thus, the combined vote of those who took a hard line against Beijing—Mr. Lee and Mr. Peng—amounted to seventy-five percent of eleven million ballots cast,[157] which was widely seen as a sharp re-

152. Elaine Sciolino, *White House Snubs China Over Military Maneuvers,* N.Y. TIMES, Mar. 23, 1996, at 5. China had earlier insisted that Mr. Chi be given "red-carpet treatment," including a White House meeting with President Clinton, however, a large number of Republican members of Congress disapproved of the invitation because Mr. Chi had been a key general during the repression of pro-democracy demonstrations in Tiananmen Square in 1989. *See id.* Some Republicans, however, had suggested that the 19-gun salute planned for Mr. Chi at the Pentagon would have made excellent film footage for use in the upcoming presidential campaign against Mr. Clinton. *See id.* The administration had apparently attempted unsuccessfully to persuade the Chinese to reduce the event to a "straight business trip," and to change the venue to Hawaii. *Id.* For their part, the Chinese claimed that *they* had canceled the meeting in retaliation for Washington's show of support for Taiwan. *See id.*

153. *See id.*

154. *See* Gargan, *supra* note 130 at 3; James Pringle, *Peking Ends Military Manoeuvers off Taiwan*, TIMES (London), Mar. 26, 1996 at 11; Richburg, *supra* note 71, at A24; Theresa Tan, *China's Military Exercises Not Achieving Aim, Say Reports*, STRAITS TIMES (Singapore), Aug. 29, 1995, at 11, *available in* LEXIS, Asiapc Library, Strait File; Patrick E. Tyler, *Tough Stance Toward China Pays Off for Taiwan Leader*, N.Y. TIMES, Aug. 29, 1995, at A1.

155. *See* Simon Reeve, *Taiwan Goes for Lee in China Snub*, BOSTON GLOBE, Mar. 24, 1996, at 1; Tyler, *supra* note 1, at A1.

156. *See* Tyler, *supra* note 1, at A1.

157. Taiwan has a population of 21 million, of which 11 million, or 76% of the 15 million eligible, cast a ballot. *See* THE WORLD ALMANAC AND BOOK OF FACTS 1996, at 822 (Robert Famighetti ed., 1995) (citing the population of Taiwan); 56 FACTS ON FILE 193, 194 (Mar. 28, 1996) (noting election results).

buff to China's leadership and its tactics. In the meantime, the official Chinese press duly reported the results of the election as occurring in association with activities regarding a change of leadership in Taiwan and properly credited Mr. Lee with fifty-four percent of the vote, while playing down Mr. Peng's "pro-independence" share of the vote as lower than anticipated[158] and enhancing the combined total of the candidates who were conciliatory toward Beijing.[159] China continued its war games until March 25, two days after the election and then withdrew without incident.[160]

158. *See supra* note 1 and accompanying text (analyzing election results). A majority of non-Chinese analysts concluded that a fair number of voters had defected from Mr. Peng to Mr. Lee. *See supra* note 1 and accompanying text.

159. *See Furthering Relations Across Taiwan Straits Constitutes Greatest Popular Feeling,* XINHUA NEWS AGENCY, Mar. 24, 1996, *available in* LEXIS, Asiapc Library, Xinhua File; Seth Faison, *China Says Taiwan Election Shows That Voters Oppose Separation From The Mainland,* N.Y. TIMES, Mar. 24, 1996, at 16.

160. *See* Pringle, *supra* note 154, at 11.