

# *Santa Barbara* Lawyer

Official Publication of the Santa Barbara County Bar Association  
February 2022 • Issue 593



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# A Lasting Peace in Taiwan Requires Independence

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The United States has a complicated history with Taiwan. The United States' involvement with Taiwan stems from decisions made during World War II. In World War II, Japan, as a member of the Axis powers, was engaged in an expansionist drive to conquer significant parts of mainland China for raw materials and resources to feed its domestic economy.<sup>1</sup> To oppose the Japanese expansion, the United States supported the separate Chinese national groups (consisting of Chinese Nationalists and Communists) that joined together in their fight against the Japanese.<sup>2</sup> This support manifested in the United States allying itself with the Chinese Nationalist government led by Chiang Kai-Shek.<sup>3</sup> However, as the war raged on the Chinese Communists gained large swaths of territory.<sup>4</sup> In the aftermath of World War II, the peace between the Chinese factions ended. In the ensuing Chinese civil war, the Chinese Communist party, led by Mao Tse-tung, gained control of mainland China.<sup>5</sup> Chiang Kai-Shek fled with his Nationalist supporters to Taiwan, or the Republic of China. Both leaders professed to be the true representative of the Chinese people.

## Historical Background

Prior to 1979, the United States officially recognized Taiwan as the capital of the Republic of China based on the Sino-American Mutual Defense Treaty<sup>6</sup>. Pursuant to this treaty, the United States promised to come to the defense of Taiwan should another country, such as China, attempt to conquer it through an invasion.<sup>7</sup> From 1955 to 1979, China understood that any military action that it took against Taiwanese independence would trigger an armed response from the United States. Therefore, during this period, Taiwan was protected from a Chinese invasion.

Then in 1979, President Jimmy Carter unilaterally nullified the Sino-American Mutual Defense Treaty.<sup>8</sup> The move officially removed the United States' recognition of Taiwan's sovereignty as an independent country. The nullification of the treaty was done to strengthen economic ties with mainland China. In response, Congress moved swiftly

on this topic and passed the Taiwan Relations Act which guaranteed that the United States would safeguard the peace of the Taiwanese nation.<sup>9</sup> Commenting on the action taken by Congress, then Senator Jacob Javits voiced the sentiment of many legislators when he said, "...the important point is that we must substantively protect our responsibility to Taiwan, and it is in our highest national interest to do so."<sup>10</sup> While the language in the Taiwan Relations Act stopped short of guaranteeing an armed response, under the law, the United States would have to provide some form of assistance to Taiwan to preserve its sovereignty and peace if it were attacked (presumably by China).<sup>11</sup> Protection of Taiwan is a principle clearly enunciated in the legislative intent of the Taiwan Relations Act.

The current Taiwanese independence and protection situation is somewhat reminiscent of Poland's position in the late 1930s facing unbridled aggression from Nazi Germany. Great Britain and France promised to declare war if Germany attacked Poland. However, after Germany attacked Poland on September 1, 1939, neither Great Britain nor France deployed troops to Polish soil to rebuff the attack and restore Poland's sovereignty. The promise of assistance was an empty promise for which the Polish people paid dearly. History teaches us that an ambiguous policy of assistance will not stop naked aggression. From a diplomatic standpoint, a firmer stance and clearer policy in support of Taiwan independence and statehood is warranted.

## Taiwan is an Independent State

In international law, a state is an independent and sovereign entity that has a defined territory; a permanent population; exists under the control of its own government; and that engages in formal relations with other such entities.<sup>12</sup> A territory that resembles a state must have sovereign independence. The territory cannot fall under the control of another state. As a result, a state in the international arena is equal before the law and entitled to the equal protection in the exercise of rights.<sup>13</sup> A state is equally bound to fulfill its obligations. In the Nineteenth Century, scholarly thought developed the notion that the state can only be subjected to extraterritorial law by its own consent.



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Although Taiwan has not officially declared itself as a state, the nation and its corresponding government complies with all the required indicia to qualify as a state under accepted norms of international law. It is this de facto qualification as an independent state that causes China such angst. China is afraid that if Taiwan declares its independence, then the rest of the world will quickly recognize that declaration, a point from which any action by China to exert control and influence would flout international law.

“Under international law, a state is an entity that has a defined territory and a permanent population, under the control of its own government, and that engages in, or has the capacity to engage in, formal relations with other such entities.”<sup>14</sup> The definition breaks down into criteria that lend credence to the recognition of Taiwanese sovereignty. First, sovereignty exists when government officials in one state are free from the control of government officials in other states.<sup>15</sup> In the case of Taiwan, the territory has its own government that is elected by the people living in Taiwan. A good comparison to show that sovereignty exists is to compare Taiwan’s government to that of Hong Kong. While Hong Kong’s leaders are elected locally, Carrie Lam, the current leader of the Hong Kong government, answers to Chinese government officials. In contrast, in Taiwan, the government officials are also elected locally. However, the difference is that the government officials in Taiwan actively pursue policies and initiatives that contradict the policies and wishes of China.

The next criterion requires that within a specified area, the prescription and enforcement of legal rules are vested exclusively in the government of the territory.<sup>16</sup> On this point, the elected government of Taiwan exercises control through its national government, police, and military over Taiwan’s geographically claimed land. The third criterion requires that government officials act freely to set policy absent control by another state. Evaluation of this criterion garners a lot of contention. Taiwan’s government repeatedly pursues policies that are designed to protect its sovereignty and independence. However, China maintains that Taiwan is an inherent part of China, and it is China that has the final say on decisions regarding Taiwan’s policies. However, this stance by China is further complicated by China’s stated policy of “One Country, Two Systems”.<sup>17</sup> Through this policy, China granted the territory of Taiwan semi-autonomous status, keeping in mind that reunification of Taiwan with China was and is always the end goal. The result is that a strict constructionist reading of the government freely setting policy requirement mandates a conclusion that Taiwan satisfies this condition because Taiwan consistently pursues governmental agenda items

contrary to China’s wishes.

For the fourth criterion, in the international arena, a state gives up a portion of its sovereign authority by entering a treaty or participating in an international organization. International Law recognizes this cession of power and decision-making as a characteristic of an independent state through the exercise of its capacity to enter into international agreements and to become a member of international organizations.<sup>18</sup> Taiwan has entered numerous treaties such as the General Agreement on the Application of Sanitary and Phytosanitary Measures<sup>19</sup>; the TRIPS Agreement<sup>20</sup>, Biological Weapons Convention<sup>21</sup>; and the Agreement on Technical Barriers to Trade<sup>22</sup>. Taiwan also gained membership into the World Trade Organization.<sup>23</sup> Evaluation of this criterion on entering international agreements and organizations weighs in favor of characterizing Taiwan as a state.

The final criterion for sovereignty requires that a territory gain from relationships by getting access to new resources, legal opportunities, and increase its role in deciding issues that affect its national interests. To assess whether this condition is met, the following question must be answered in the affirmative: *Does the territory’s government get a seat at the table when decisions are made about the territory or the region?* Evaluation of this aspect of statehood weighs in favor of categorizing Taiwan as a state. Since 2002, Taiwan has taken affirmative measures to join international organizations as well as international agreements all while increasing its role in Asian-Pacific affairs. Recently, Taiwan formally applied for membership in the eleven member CPTPP. China, upon learning of Taiwan’s pending application, in an effort to block international recognition of Taiwan independence and sovereignty, submitted its own application to join the CPTPP ahead of Taiwan’s submission by only a few days.<sup>24</sup> The administration of the CPTPP allows any member to block the admission of a new prospective member with a veto of the application.<sup>25</sup> China’s move to block Taiwan’s entry into the CPTPP with either a veto, by itself as a new member, or through strong arm persuasion tactics directed at the current CPTPP members is not surprising considering the additional soft requirement needed for international statehood recognition.

Recognition in international law is the doctrine that represents formal acknowledgement by another state that an entity possesses the qualifications for statehood and implies a commitment to treat that entity as a state. It is significant to note that under international law, an entity that satisfies the requirements for statehood is a state whether its statehood is formally recognized by other states or not.<sup>26</sup> In essence, China is wielding its international economic influence in attempting to block Taiwan’s entry into the

CPTPP to deprive Taiwan of the status that it already holds by preventing other states from entering into formal trade agreements with Taiwan. Japan, the current chair of the CPTPP, welcomed and strongly backed Taiwan's application for membership into the trade pact to counter China's influence on trade in the region.<sup>27</sup> Initial polling of the CPTPP members show that in addition to Japan, New Zealand, Singapore, and Australia support Taiwan's admission. The state most likely to contest Taiwan admission is Malaysia. The remaining members, Canada, Mexico, Brunei, Chile, Peru, and Vietnam, have not expressed views on acceptance or rejecting Taiwan's application for admission.<sup>28</sup>

### ***Is Taiwan About to be Invaded by China?***

China's actions recently serve as a testament to the need for not just promises but meaningful action by the United States to protect Taiwanese independence. In January 2019, the Chinese President, Xi Jinping, made a speech in which he unequivocally stated that China would use force if necessary to reunite Taiwan with mainland China.<sup>29</sup> China's actions prior to and after President Xi's speech support this aggressive stance and serve as a threat to the national security and peace of Taiwan. For instance, in 2018 China engaged in a series of acts against Taiwan rightfully perceived as confrontational. China sent fighters and bombers from its air force to violate Taiwanese airspace, which prompted Taiwan to scramble its jets in response.<sup>30</sup> In April 2018, China released footage of its army conducting a mock invasion of a Taiwanese village.<sup>31</sup> Then in June 2018, the Chinese navy conducted military drills in the Taiwan Strait simulating an invasion of Taiwan.<sup>32</sup> In August 2018, China issued a rebuke to the United States seeking to block Taiwanese President Tsai Ing-wen's visit to the National Air & Space Administration (NASA).<sup>33</sup>

Actions in the last six months show an increase in aggressive and threatening acts from China toward Taiwan. On June 15, 2021, and on September 5, 2021, China again sent a large armada of aircraft into airspace adjacent to Taiwan, which prompted Taiwan to scramble fighter jets to observe and protect its airspace.<sup>34</sup> Recently, on September 26, 2021, in an ever-threatening move, China renewed its claim to Taiwan as an integral part of China and refused to recognize its independence and sovereignty.<sup>35</sup> On October 22, 2021, Taiwan's Ministry of Foreign Affairs convened a forum with the US Department of State to lobby for support and assistance on expanding Taiwan's participation at the United Nations and in other international fora.<sup>36</sup> The most shocking development to date occurred on October 28, 2021, when the presence of US troops in Taiwan serving as military advisers was revealed by Taiwan.<sup>37</sup> The danger of

all-out war over Taiwanese independence is stronger now than it has been in years.

China's overtly provocative acts have been accompanied by a diplomatic strategy in trade that has led many of Taiwan's allies to isolate and sever ties with the country to foment an economically prosperous relationship with China.<sup>38</sup> Collectively, President Xi's speeches, the provocative military moves, and the economic isolation send a clear message that China is pursuing a path designed to achieve repossession of Taiwan's territory and culture. With the proverbial noose tightening, Taiwan, especially after observing the sequence of events in Hong Kong<sup>39</sup>, may be forced into the position of declaring independence from China to protect its sovereignty and democracy. The potential for disaster exists if the issue of Taiwanese independence is not handled with sound policy decisions, diplomacy, and forethought in lieu of a reaction to aggressive economic and military moves by China.

Since the passage of the Taiwan Relations Act, different U.S. administrations have taken different approaches to foreign policy with respect to Taiwan. Some administrations have directly provided Taiwan with the resources that it needs to mount a defensive posture against Chinese aggression. Other administrations pursued a more muted policy designed to appease mainland China wherein the United States did not supply significant military hardware. During the Trump Administration, there were advisers who favored providing big ticket military items such as fighters for an air force, armed drones, and smart mines. Those advisers faced pushback based on the former President's stated position of asking the United States' allies to increase their own spending on self-defense versus relying on costly military aid supplied by the United States at the expense of its taxpayers. In the end, the United States sold more than \$1.8 billion dollars worth of arms to Taiwan which was significantly more than previous administrations.<sup>40</sup>

An examination of different administrations' policies towards Taiwan since President Carter's abandonment of the Sino-American Mutual Defense Treaty shows a record of inconsistent long-term policy toward Taiwanese independence and the scope of military aid provided by different United States Presidents. As a result, some forty years since abandonment of the Sino-American treaty, the US still does not have a clear policy on the scope of assistance to be rendered to Taiwan to protect its sovereignty and independence if the country were attacked as part of a reclamation effort by China. The inconsistency is a result of the sovereignty limbo that Taiwan has existed within since 1951. For decades, Taiwan branded itself as the capital of China when, in reality, Taiwan has been and continues



to be an independent state empowered and imbued with sovereignty and the right to decide its own affairs. China, as part of its One Country Two Systems policy, sees Taiwan as an extension and territory subject to its governance.

Examining the economic impact of an ambiguous assistance policy lends credence to the premise that a clearer stance is needed. In 2019, Taiwan's Gross Domestic product (GDP) was estimated at \$586.1 billion with a population of 24 million people.<sup>41</sup> Trade between the United States and Taiwan in 2019, was estimated at \$103.9 billion with more than \$40 billion worth of trade exported from the US and more than \$60 billion worth of trade imported into the US from Taiwan.<sup>42</sup> For the United States, Taiwan is the 13<sup>th</sup> largest goods export market.

Consider the negative ramifications to the global aviation industry if Taiwan loses its independence. For example, the aviation industry contributes \$2.7 trillion dollars to the world gross domestic product. China Airlines, the national airline of Taiwan, operates a fleet of aircraft that consists of 38 Airbus aircraft and 51 Boeing aircraft.<sup>43</sup> A major shift in the purchasing habits of Taiwan could significantly alter this segment of the economy to the detriment of the US and Europe. The Chinese Commercial Aviation Company (COMAC) is making significant inroads into carving away market share from Airbus and Boeing through its sales of recently certified commercial airliners to companies throughout Asia. If Taiwan were to be subsumed back into mainland China, then any future sales of commercial aircraft would likely be directed by the state towards COMAC. The US (Boeing) and Europe (Airbus) would lose out on billions of dollars in trade. These lost sales to China would result in significant job loss and a decline in economic activity within the aviation sector of both the United States and European countries. The impact of an unclear policy on Taiwan contains the potential to do great harm to global trade, including Taiwanese and American trade interests.

The failure of not having a clear foreign policy on how to support Taiwan in case of an independence declaration has the potential to subsume other issues, such as global trade and immigration, into the sphere of influence and decision making. Could Alaska, Hawaii, Washington, Oregon, and California handle a sudden mass migration of fleeing Taiwanese people seeking to escape Chinese communist rule or a senseless war?

Consider how two seemingly unrelated issues could be fused together to cause the United States to seriously consider agreeing to sacrifice Taiwan's independence. First, the US wants the Korean peninsula to be denuclearized. Is the US willing to forego safeguarding Taiwan independence in exchange for China's promise to reign in North Korea

to denuclearize and end the Korean War? Alternatively, is the US amenable to sacrificing Taiwanese independence in exchange for the cessation of Chinese construction on atolls in the South China Sea? Both moves would signify major shifts in the stability of the Asian-Pacific region. The removal of a nuclear threat combined with the absence of threat of war would enable South Korea to entertain the notion of reforming its compulsory military service and possibly recharge reunification talks. Alternatively, the cessation of Chinese build-ups in the South China Sea would serve to guarantee the security of open sea lanes for passage of international trade. One of the results would be reduction in global insurance rates for the maritime industry, which in turn would reduce costs for trade.

Navigating complicated and thorny issues in the realm of international law is fraught with difficulties on any given day. However, with Taiwan's independence, there is the real possibility that in a worst-case scenario with missteps in foreign policy; through inexperience and a failure to appreciate the consequences of certain actions, the situation could precipitate into one that draws American soldiers into direct, armed conflict with China. President Biden could work with Congress to create and then pursue a policy that supports Taiwan's declaration of its independence and then incentivizes China to recognize Taiwanese independence as a sovereign nation. Ignoring the problem is not going to make it go away, and kicking the proverbial can down the road is not going to make resolving the issue easier later.

### ***To Achieve Lasting Peace Taiwan's Independence Must be Recognized Worldwide***

While the signposts on Taiwan independence signify troubled waters ahead, what appears to be missing is a thoughtful long-term policy initiative supporting Taiwanese independence and recognizing statehood, along with clear-cut strategies to achieve those goals peacefully. Instead, the situation has been stoked to a higher level of fervor with the sale of arms to Taiwan in 2020; and the policy announced by the US State Department in 2021 encouraging federal government officials to embrace meeting with Taiwanese officials. China responded to both moves by increasing its military activities in the Taiwan Strait, increased incursions into Taiwan airspace, and amplified warnings to the United States not to give support to those in Taiwan who seek to declare formal independence.<sup>44</sup> Policy makers should not sit back and allow the situation to unfold on China's timeline without having a plan. Why not? Because the outcome will be one that sacrifices Taiwanese independence and sovereignty, which has been a fundamental part of the United States' foreign policy in Asia since 1949. ■

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## ENDNOTES

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