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OVERSIGHT OF TAIWAN RELATIONS ACT

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HEARING

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BEFORE THE

SUBCOMMITTEE ON EAST ASIA AND PACIFIC

AFFAIRS

OF THE

COMMITTEE ON FOREIGN RELATIONS

UNITED STATES SENATE

NINETY-SIXTH CONGRESS

FIRST SESSION

ON

THE ADMINISTRATION'S INTENT REGARDING THE EXISTING
TREATIES AND AGREEMENTS BETWEEN THE UNITED STATES
AND TAIWAN, WITH SPECIAL EMPHASIS ON THE CIVIL AIR
AGREEMENT

NOVEMBER 15, 1979

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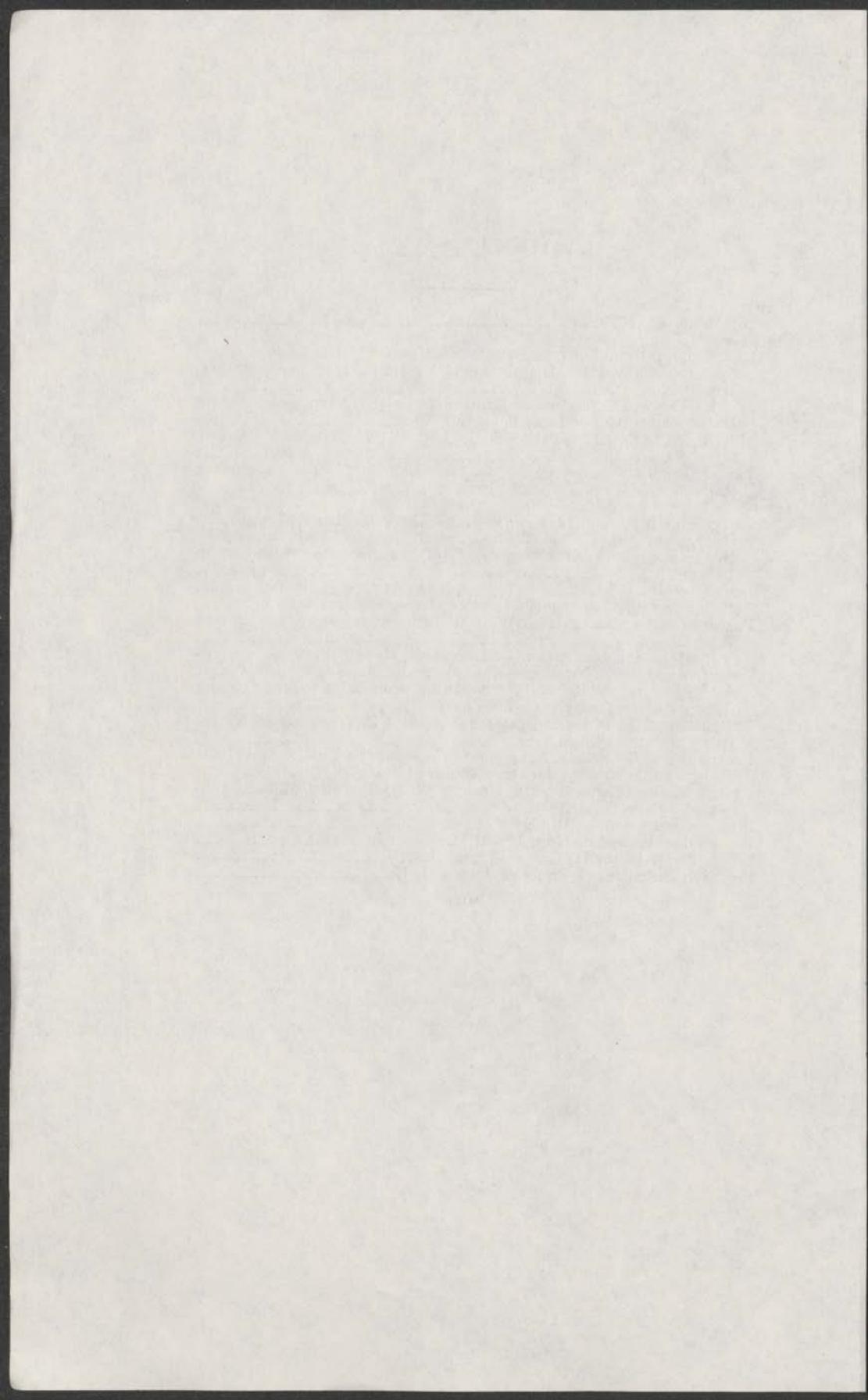
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OVERSIGHT OF TAIWAN RELATIONS ACT

THURSDAY, NOVEMBER 15, 1979

UNITED STATES SENATE,
SUBCOMMITTEE ON EAST ASIAN AND PACIFIC AFFAIRS
OF THE COMMITTEE ON FOREIGN RELATIONS,
Washington, D.C.

The subcommittee met, pursuant to notice, at 2:06 p.m., in room 4221, Dirksen Senate Office Building, Hon. John Glenn (chairman of the subcommittee) presiding.

Present: Senators Glenn, Stone, Javits, and Helms.
The CHAIRMAN. The hearing will come to order.

OPENING STATEMENT

The hearing today will consider the Taiwan Relations Act [TRA]. We are performing the oversight hearing function of the Foreign Relations Committee, this being the Subcommittee on East Asian and Pacific Affairs.

Secretary Christopher, I welcome you here today and hope you will be able to enlighten us on the intentions of the administration regarding the treaties and agreements that we have with Taiwan.

I particularly am concerned about the air transport agreement which I understand the administration plans to terminate.

It was my understanding throughout the Taiwan Relations Act debate, and I am sure other Senators would agree with me, that, except for the Mutual Defense Treaty and related military agreements our treaties and agreements with Taiwan would remain in force.

You and others in the administration repeatedly presented this view, and, frankly, I was somewhat shocked to discover that this was not the intention by what we have seen from subsequent events.

Clearly, terminating the air transport agreement goes beyond anything I contemplated when we voted to establish our new and unofficial relationship with Taiwan. Replacing it with an "arrangement" does not really change that fact.

I also am somewhat disappointed there was not more consultation on this once you had discovered there was a problem. I would have thought the administration had learned its lesson when it failed to consult adequately with us concerning normalization. In large measure, that is what the TRA was all about in the debate and discussion we had on the Senate floor in regard to it.

We in the Congress wanted to insure that there were no more surprises and that we would play an active role in maintaining our unofficial, but extremely important, relationship with Taiwan.

Despite the lack of consultation, I approve normalizing our relationship with mainland China. I want to see that relationship improve. For too long we have closed our eyes to the reality of PRC [People's Republic of China] control of the mainland and one-quarter of the total world population. I also do not want to turn back the clock on Taiwan, as some might desire. But I also do not think it is necessary to walk constantly on egg shells for fear of upsetting the PRC. It is high time they understand that we intend to maintain close, friendly, but unofficial, relations with Taiwan, the details of which are our business and not theirs. We met their conditions when we normalized—period.

If they cannot accept this or are unhappy with the details of that relationship, so be it. I, for one, do not believe we can afford to make further concessions regarding Taiwan.

Having said this, I think it is important now that we realize there is going to be a problem with treaties and agreements, that we approach each one on a case-by-case basis. In most instances, I do not think it should be necessary to terminate the existing arrangements. We should be able to amend or extend most of them through the respective institutes as circumstances and the passage of time require.

However, there may be cases where termination is most appropriate. In fact, the air transport agreement may be such a case. But I think it is up to the administration to prove this, and PRC threats or demands should not be the sole determining factor of our policy.

Before we proceed, I also would like to announce that I intend this session today to be the first in a series. I consider oversight of the TRA an extremely important matter and will give it my close attention in the coming months. I already anticipate that we will need to examine the question of arms sales to Taiwan, for example, as we will other issues.

In any event, soon after the first of the year, probably in the early spring, to coincide with the first anniversary of the act, I plan to conduct comprehensive hearings and look closely at the overall implementation of the TRA. In this regard, I have requested GAO [General Accounting Office] assistance.

I would be glad to give you a copy of the letter I have sent to them so you will know the details of our request.

[The letter referred to follows:]

U.S. SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, D.C., November 6, 1979.

HON. ELMER B. STAATS,
Comptroller General of the United States,
Washington, D.C.

DEAR MR. STAATS: I am writing to request that the General Accounting Office conduct an investigation of the operation of the "American Institute in Taiwan," which, as you know, is an organization that was established by the Taiwan Relations Act of 1979 to carry out U.S. Government "Programs, transactions, and other relations . . . with respect to the people on Taiwan." Such a study would be a central piece of evidence tabled at oversight hearings I plan to hold in the spring regarding the implementation of this Act.

I have in mind an investigation that examines the Institute's problems and successes during the first year, both here in Washington and on Taiwan, and includes an examination of the Taiwan Defense Command's operations since moving to Hawaii. The status of military equipment deliveries planned and scheduled for Taiwan is another area of interest to me.

Obviously, these are very complicated matters involving not only the letter of the Act itself, but also congressional intent, and matters I do not want to make

more difficult by dictating too precisely how you should proceed with your investigation. Instead, I suggest that members of your staff contact Carl Ford of the Committee on Foreign Relations staff, who is assisting me with this matter, to work out details. This procedure has worked well in the past, due primarily, I believe, to the excellent input of your experienced and highly-motivated staff. I think it is the wise course to follow on this occasion.

Best regards,
Sincerely,

JOHN GLENN,
*Chairman, Subcommittee on East
Asian and Pacific Affairs.*

The CHAIRMAN. Other studies are planned, and I intend to dispatch staff to Taiwan to view the situation firsthand and report back to the committee in preparation for the oversight hearings which will follow.

Today we will hear from the Honorable Warren Christopher, Deputy Secretary of State. After Secretary Christopher's testimony, we will hear from a panel comprised of Mr. Robert P. Parker, president of the American Chamber of Commerce in Taiwan, William N. Morell, president of the USA-ROC Economic Council; and Victor Li of the Stanford University School of Law.

Mr. Secretary, we welcome you here today. We look forward to your statement and testimony, either in summarized version or its entirety, as you may choose.

Senator Stone, Senator Javits, Senator Percy, and Senator Helms have indicated they will try to attend this meeting. I know Senator Stone plans to be here because I talked with him just a few minutes ago. I presume other Senators will be joining us shortly.

We await your statement.

STATEMENT OF HON. WARREN CHRISTOPHER, DEPUTY SECRETARY OF STATE, ACCOMPANIED BY JAMES R. ATWOOD, DEPUTY LEGAL ADVISER, DEPARTMENT OF STATE, WASHINGTON, D.C.

Mr. CHRISTOPHER. Thank you, Mr. Chairman. I am pleased to have a chance to appear before your committee today to review our experience with the unofficial arrangements we have established with Taiwan.

I have a relatively short statement which I would like to have put into the record in its entirety. I will try to abbreviate it even further.

The CHAIRMAN. Your whole statement will be included in the record after your oral statement.

Mr. CHRISTOPHER. Thank you.

As you well know, for a number of years the United States alone among the major nations refused to accord recognition to the PRC. This was an anomaly which hindered our diplomacy in Asia and thwarted the development of economic relations with a country, as you pointed out in your opening statement, which is the home of one-fourth of the world's population.

Following 6 months of intense discussions both here and in Beijing, President Carter announced almost a year ago—as you point out—that the United States henceforth would recognize the PRC as the sole legitimate Government of China. At that time, the President announced our intention to sever official relations with Taiwan.

I think the experience over the last year in our relations with the PRC stands as testimony to the wisdom of the President's decision.

As this committee is aware, the administration has submitted to the Congress the agreement on trade relations that would extend nondiscriminatory trade status to the People's Republic of China.

As coincidence would have it, Mr. Chairman, I testified on that very agreement earlier today before the Senate Finance Committee.

I would want to emphasize that while we have been pleased and gratified by the improvement in our relations with the PRC, I am equally pleased by the fact that severing formal diplomatic relations with Taiwan has not affected adversely the welfare of the people on that island, nor has it breached in any way the practical ties that exist between the United States and Taiwan.

Taiwan's economy, I am glad to say, is even more vigorous now than it was before we normalized relations with the PRC. Its gross national product is growing robustly and its industrial production is increasing at 9 percent per year. Overall, we have had an increase both in our exports to Taiwan and our imports from Taiwan.

One statistic which I do want to mention is an increase in private investment in Taiwan, which is a very good indicator of confidence in the island's future. U.S. private investment in Taiwan was \$68 million for the first half of this year, as compared to \$27 million in the same period in 1978, a really impressive increase.

Mr. Chairman, I do not mean to suggest that the transition from official to unofficial relations has been totally without problems. Nobody would expect that so important a change would be problem-free. But, the Taiwan Relations Act, for which Congress deserves great credit, has afforded the basis for new relations, for the flexibility to deal with our problems in a cooperative and imaginative way. In particular, our unofficial instrumentalities, the AIT [American Institute in Taiwan] and CCNAA [Coordination Council for North American Affairs], have shown themselves to be effective instruments during the course of this transition.

As you know, in accordance with the Taiwan Relations Act, the President issued an Executive order that, among other things, delegates to the Secretary of State authority to extend functional privileges and immunities on a reciprocal basis to the CCNAA.

We have given them, through the AIT, a copy of a draft agreement on privileges and immunities. We did this last September 20, and they now have responded. The differences are relatively narrow and we think that agreement between the parties on the functional privileges and immunities should soon result.

In the interim we have accorded them functional privileges to allow for effective operation. The CCNAA has opened nine offices in this country, a number which we regard as being appropriate for the new relationship with Taiwan.

Mr. Chairman, although our unofficial relations with Taiwan are coordinated through the AIT, we also have recognized that issues could arise which are beyond the technical competence of AIT. We have made it clear that, to the extent necessary and appropriate, we would arrange for technical contacts with U.S. Government employees through AIT. Such instances have arisen and appropriate contacts have been made.

Now I would like to address some of the issues regarding agreements and attempt to clarify the administration's intentions and, I hope, to dispell misunderstandings which may have arisen.

This is by way of augmenting a letter which was sent to Senator Javits and a copy to you, Mr. Chairman, and which I would like to ask be made a part of the record. It is dated October 30.

The CHAIRMAN. It will be made a part of the record.

[The information referred to follows:]

DEPARTMENT OF STATE,
Washington, D.C., October 30, 1979.

Hon. JACOB K. JAVITS,
U.S. Senate.

DEAR SENATOR JAVITS: This letter is in reply to your inquiry of Assistant Secretary Holbrooke at the September 27 hearing of the Senate Foreign Relations Committee concerning our intentions toward the treaties and agreements we maintain with Taiwan.

At the time of the normalization of relations with the People's Republic of China we made clear our intention to maintain, on an unofficial basis, trade, cultural and other relations with Taiwan. Since all other countries which had previously normalized relations with the PRC had without exception taken the position that all their bilateral agreements with Taiwan automatically became null and void simultaneously with the severance of their diplomatic relations with Taiwan, we believed it essential that we make clear that there would be no hiatus in relationships and that the agreements with Taiwan continued to have legal validity despite the withdrawal of recognition. The President therefore issued a Presidential Memorandum on December 30, 1978 which stated that "existing international agreements and arrangements in force between the United States and Taiwan shall continue in force." The Administration welcomed the addition of Section 4(c) of the Taiwan Relations Act (Public Law 96-8), which approved the continuation in force of such agreements "unless and until terminated in accordance with law," because that provision further removed any doubt about the continued legal validity of those agreements under U.S. law.

Although our relationship with Taiwan is unofficial, it is not static. Some of our agreements with Taiwan will expire, perhaps calling for replacement with new agreements, some will require changes or updating, and others, having completed their purposes, will become obsolete. As circumstances change, agreements on subjects not now covered by agreements may be required. As Assistant Secretary Holbrooke stated at the Senate hearing, we do not have a policy to convert or terminate all of the treaties and agreements we maintain with Taiwan. Each agreement as the circumstances require, will be treated on its own merits on a case-by-case basis.

You asked about the "size of the problem," about our outlook for the various agreements. We have undertaken a review of agreements with Taiwan and I will share with you our preliminary views on them. There are five agreements which require current attention. There is an agreement on scientific cooperation which expires in January 1980, and since both sides are interested in maintaining the mutually beneficial programs carried out under this agreement, we are preparing to begin negotiations on an AIT/CCNAA agreement to replace this agreement when it expires. Under the Taiwan Relations Act, agreements concluded by the unofficial instrumentalities have full legal force and effect under U.S. law. With regard to our civil aviation agreement, it was concluded in Nanking in 1946 with the then Government of China. It is inappropriate and a hindrance to maintain with Taiwan an agreement which purports to provide us landing rights in Nanking and Shanghai at a time when we are about to begin talks with the Chinese Government on a PRC/U.S. aviation agreement. Vice President Mondale during his trip to China in August informed Peking that we planned to replace the Nanking agreement with a new agreement between the American Institute in Taiwan (AIT) and the Coordination Council for North American Affairs (CCNAA). A new agreement with Taiwan would be appropriate in any case in view of the need to improve United States-Taiwan air services and bring the current agreement into conformity with our international aviation policy. We have begun negotiations for an AIT/CCNAA civil air agreement to replace the old one. Our textile agreement with Taiwan requires some minor implementing modifications and these can be affected by AIT/CCNAA letters of understanding. Action will also have to be taken with respect to the nuclear cooperation agreement to fulfill the requirements of the Nuclear Nonproliferation Act of 1978. Finally, on October 24, CCNAA and AIT had an exchange of letters implementing MTN-related reductions in tariff and non-tariff barriers.

Based on our review to date, no other agreements appear to require current attention.

A second group of 29 agreements relate to active programs or contain provisions of continuing value. These include agreements on such matters as education, fisheries, investment, postal affairs and the Treaty of Friendship, Commerce and Navigation. Many of the rest of these agreements appear relatively inactive, but do contain provisions which remain active. Two agricultural sales agreements relate to commodities previously furnished, but for which payment is still being received. Seven agreements relating to the provision or loan of military equipment contain provisions on reversionary rights or third party transfer limitations. We see no reason at this time for any action to be taken with respect to these agreements.

A third category includes the Mutual Defense Treaty and six agreements in the military field. One agreement relating to the status of U.S. armed forces in China is coterminous with the Mutual Defense Treaty. Three other agreements relate to the former U.S. military presence on Taiwan and two to the construction of communications facilities which has been completed. The President has given notice that the MDT will terminate on January 1, 1980 and we are committed to taking the necessary steps so that the termination will occur as scheduled. Accordingly, the related military agreements will also terminate with the MDT at the end of the year.

In addition, two non-military agreements have been rendered inoperative by normalization. These relate to entry-free privileges for consular officers and the status of the American Embassy Language School. We no longer have consular officers on Taiwan and the American Embassy School in Taiwan ceased to function on February 28. We plan to delete these agreements from the January, 1980 Treaties in Force.

In the final group are fourteen agreements which appear to be either fully executed or inactive. These include five agricultural agreements relating to commodities previously furnished and for which payment has been received in full, a fully executed agreement for provision of nuclear research and training equipment and two agreements relating to our economic aid program to Taiwan. (Two additional agreements relating to economic aid which were listed in the January, 1979 Treaties in Force terminated in March, 1979.) We wish to take more time to review these agreements and AIT will discuss them with Taiwan to assure that they contain no active provisions before deciding on their disposition.

After further review and as changing circumstances warrant, we may wish to take further action with respect to certain of our agreements. I wish to assure you that we intend to maintain close contact with Congress on this subject. We will, of course, notify Congress of any agreements concluded between the AIT and CCNA as provided in Section 12(c) of the Taiwan Relations Act.

As a general comment on the new arrangements with Taiwan, we believe the evidence, including the dramatic increase in U.S. trade and investment with Taiwan, clearly demonstrates that we have been able to make the transition to the new relationship with Taiwan in a way that is fully consistent with normalization with the PRC while maintaining the substance of our relations with Taiwan as provided in the Taiwan Relations Act.

Sincerely,

J. BRIAN ATWOOD,

Assistant Secretary for Congressional Relations.

Mr. CHRISTOPHER. When we normalized our relations with the People's Republic of China, we made it clear that we had an intention on an unofficial basis to maintain trade, cultural, and other relationships with Taiwan. We believed it essential that our existing arrangements with Taiwan would continue to have legal validity, despite the withdrawal of recognition.

As the President said in his Presidential memorandum, "Existing international agreements and arrangements in force between the United States and Taiwan shall continue in force."

Congress recognized this in section 4(c) of the Taiwan Relations Act, which we welcomed and which provided for a continuation in force of such agreements "unless and until terminated in accordance with law." This treatment of existing agreements by the administra-

tion and Congress stands in contrast to what most other nations in similar circumstances did. As you know, Mr. Chairman, other nations abrogated their agreements with Taiwan upon recognizing the People's Republic of China.

Mr. Chairman, it is important to recognize that our relationship with Taiwan is not static. It has not been frozen in the status quo that existed at the moment we recognized the People's Republic of China. Some of the agreements that we have with Taiwan will expire; some will require changes or updates; others, having completed their purposes, have become obsolete.

Having said this, I want to emphasize that we do not have a policy of converting or terminating all of the treaties and agreements we have maintained with Taiwan. Each agreement, as the circumstances require, will be considered on its own merits on a case-by-case basis.

I am glad to note that in your opening statement, Mr. Chairman, you used that same phrase, which is the one I would stand by, and that is that we will consider them on a case-by-case basis.

In this context, we have undertaken a review of our agreements with Taiwan. I would like to share with you our preliminary appraisal.

There are five agreements which I think require current attention. I will mention them briefly.

First, there is the agreement on scientific cooperation, which both sides have found beneficial and which expires in about 2 months, in January 1980. We have negotiations underway for a new agreement between AIT and CCNAA.

Second, the air transport agreement, which the chairman mentioned, was an old agreement, concluded in Nanking in 1946. It has become a hindrance to our relationship on aviation matters with the PRC. It was only after Vice President Mondale during his trip to China in August informed Beijing that we would plan to replace this outdated Nanking agreement with a new agreement between AIT and CCNAA that the People's Republic of China agreed to begin negotiations on a civil air agreement between the United States and the People's Republic of China.

In any event, there is a new basis for air links with Taiwan which would be useful in improving United States-Taiwan air services. Negotiations currently are underway between the AIT and the CCNAA on a civil air agreement. Good progress is being made in those talks and we would hope to have a new agreement in the very near future.

The civil aviation agreement, Mr. Chairman, is one of those relatively rare instances where the changes are so fundamental that it is necessary to have a new agreement. Whatever the circumstances, we would have wanted to have a completely new agreement, a novation with Taiwan, because of the changes in U.S. aviation policy which we want to reflect.

A third agreement that required current and prompt attention is the textile agreement, which requires some implementing modification. This is one of those instances, Mr. Chairman, where we believe that changes could be handled through a letter of understanding between AIT and CCNAA which will keep in force the basic underlying agreement.

Fourth, and a matter of particular interest, I know, to the chairman, is the matter of nuclear non-proliferation. We are reviewing the nu-

clear cooperation agreement pursuant to the requirements of the Nuclear Non-Proliferation Act of 1978.

Fifth, only about 1 month ago, on October 24, CCNAA and AIT exchanged letters implementing the MTN-related reductions in tariff and nontariff barriers.

These are the five agreements which require some current attention. Our review has indicated that no other agreement requires immediate attention.

A second group of 29 agreements contain active programs or contain provisions of continuing relevance. For example, this group contains agreements on active programs in the fields of education, fisheries, investment, postal affairs and the Treaty of Friendship, Commerce, and Navigation. Two agricultural sales agreements contain provisions of continuing relevance because they relate to commodities which previously have been furnished but for which payment still is being received by the United States.

We see no reason at this time to take action on these 29 agreements.

Mr. Chairman, I think it is significant that there are only five agreements that we think need immediate or current work, and 29 which we feel can go forward without any change at the present time.

A third category includes the Mutual Defense Treaty and six agreements in the military field. As you know, the President has given notice that the Mutual Defense Treaty will terminate on January 1, 1980, and we are committed to taking the steps necessary so that the termination will occur as scheduled.

Accordingly, it is appropriate that all related military agreements also will terminate with the Mutual Defense Treaty as of the end of the year.

In addition, two nonmilitary agreements have been rendered moot by normalization. One agreement calls for entry-free privileges for consular officers and the other concerns the status of the American Embassy Language School.

I think it is appropriate here to try to dispel a rumor or a notion that arises from time to time. There is no substance to the thought that we are planning an additional 1 year moratorium on new arms sales to Taiwan. When the Mutual Defense Treaty terminates at the end of the year, we will continue to provide Taiwan access to selected defense articles.

The final group of 14 agreements are those which appear either to have been fully executed or inactive. This includes five agricultural commodities agreements, a fully executed agreement for the provision of nuclear research and training, and two agreements relating to our economic aid program to Taiwan. We wish to take more time to review these agreements, AIT will discuss them with CCNAA to assure that there are no active provisions in them before we decide to drop them.

After further review, and as circumstances change in the future, we may need to take further action with respect to certain of these agreements. But I want to assure you that we will maintain close contacts with Congress on this subject.

This is an area in which we never quite reach 100 percent, Mr. Chairman. We never do quite as well as we would like to do. We need to remind ourselves over and over again about the need for consultation.

I take your point on the need for consultation and our shortcomings in that regard. It is not a matter of failure of good intentions. It is

simply a matter of failure of execution. We certainly will notify Congress of any agreements concluded between AIT and CCNAA under the Taiwan Relations Act.

I think the experience over the last year has demonstrated the vitality and the viability of the new relationship. Recognition of the People's Republic of China has not resulted in an interruption of our relations with Taiwan. By avoiding a dogmatic approach, we have been able to promote ties with Taiwan that are consistent with our diplomatic relations with the People's Republic of China.

I think the last year has demonstrated the success of the transition. At the same time that trade and investment in Taiwan have increased, we have preserved the terms upon which we have normalized our relations with China.

It has not been perfect or always smooth, but I think the net result is one in which Congress can take a great deal of pride for the skill with which the Taiwan Relations Act was constructed to take care of this transitional period.

I would be happy to try to answer any questions that you may have, Mr. Chairman.

[Secretary Christopher's prepared statement follows:]

PREPARED STATEMENT OF HON. WARREN CHRISTOPHER, DEPUTY
SECRETARY OF STATE

I am pleased to appear today before the committee to review our experience with the unofficial arrangements that we have established with Taiwan.

For years the United States, alone among the major nations of the world, refused to accord recognition to the People's Republic of China. This anomaly hindered our diplomacy in Asia and thwarted the development of economic relations with a country that is the home of one-fourth of the world's population.

Following 6 months of intense discussions both here and in Beijing, President Carter announced almost a year ago that the United States would henceforth recognize the PRC as the sole legitimate Government of China. At the same time the President announced our intention to sever official relations with Taiwan.

The development of our relations with the PRC over the past year stands as testimony to the wisdom of the President's decision. As this committee is aware, the administration has recently submitted to the Congress the Agreement on Trade Relations that would extend most-favored-nation nondiscriminatory trade status to the PRC.

While our improved relations with China have been gratifying, I am equally pleased by the fact that the severing of our diplomatic relations with Taiwan has not adversely affected the welfare of the people. Nor has it breached the practical ties that exist between Taiwan and the United States.

Taiwan's economy today is even more vigorous than it was before we normalized relations with the PRC. Taiwan's GNP is growing robustly and industrial production is increasing at 9 percent per year. Projected United States-Taiwan trade for 1979 is \$10 billion compared with \$7.5 billion in 1978. This represents an increase of 33 percent. U.S. private investment in Taiwan, a very good indicator of confidence in the island's future, was \$68.7 million in the first half of this year compared to \$27.1 million during the same period in 1978: A striking increase.

I do not mean to suggest that the transition from official to unofficial relations has been problem-free. But the Taiwan Relations Act, the basis for our new relations, has afforded us the flexibility to deal with problems cooperatively and imaginatively. In particular, the unofficial instrumentalities of our new relationship, the American Institute in Taiwan (AIT) and the Coordination Council for North American Affairs (CCNAA), have proved their effectiveness during the transition.

In accordance with the Taiwan Relations Act, the President issued an Executive order that, among other things, delegates to the Secretary of State the authority to extend functional privileges and immunities on a reciprocal basis to the CCNAA.

AIT provided CCNAA a copy of a draft agreement on privileges and immunities on September 20, 1979, to which CCNAA has responded. Differences are minimal, and agreement between the parties should soon result. In the meantime, the two sides have extended functional privileges to allow for effective operations of the two organizations. To conduct its affairs, the CCNAA has opened nine offices in our country—a number that is appropriate for our new relationship with Taiwan.

Although our unofficial relations with Taiwan are coordinated through the AIT, we have recognized that issues could arise which are beyond the technical competence of the AIT. We have made it clear that, to the extent necessary and appropriate, we would arrange for technical contacts with U.S. Government employees through AIT. Such instances have, in fact, arisen, and the appropriate contacts have been arranged.

I would now like to address for the record some of the issues regarding agreements in an attempt to clarify the administration's intentions and, I hope, to dispel any misunderstandings. These remarks will augment the letter our Department sent to you, Mr. Chairman, and to Senator Javits, on October 30, and which, with your permission, I would like to make a part of the official record.

When we normalized our relations with the People's Republic of China, we made crystal clear our intention to maintain, on an unofficial basis, trade, cultural and other relations with Taiwan. We believed it essential that our existing agreements with Taiwan would continue to have legal validity, despite the withdrawal of recognition. The President therefore issued a memorandum on the last day of 1978, which stated that "existing international agreements and arrangements in force between the United States and Taiwan shall continue in force." The administration welcomed the addition of section 4(c) of the Taiwan Relations Act, which approved the continuation in force of such agreements "unless and until terminated in accordance with law." because that provision further removed any doubt about their continuing validity. This treatment of existing agreements by the administration and Congress stands in contrast to that of most other nations, which abrogated their agreements with Taiwan upon recognizing the PRC.

Our relationship with Taiwan is not static. It has not been frozen in the status quo that existed at the moment we recognized the PRC. Some of our agreements with Taiwan will expire, perhaps calling for replacement with new agreements; some will require changes or updating; and others, having completed their purposes, will become obsolete. However, I want to emphasize that we do not have a policy to convert or terminate all of the treaties and agreements we maintain with Taiwan. Each agreement, as the circumstances require, will be considered on its own merits, on a case-by-case basis.

In that context, we have undertaken a review of these agreements with Taiwan and I will share with you our preliminary views on them. There are five agreements that require current attention.

First, our agreement on scientific cooperation, which both sides have found beneficial, expires in January 1980. Negotiations for a new agreement will soon begin between the AIT and CCNAA. Under the Taiwan Relations Act, agreements concluded by these unofficial instrumentalities have full force and effect under U.S. law.

Second, the Air Transport Agreement concluded in Nanking in 1946 has become a hindrance to development of aviation relations with the PRC. It was only after Vice President Mondale, during his trip to China in August, informed Beijing that we planned to replace the Nanking agreement with a new agreement between the AIT and the CCNAA, that the Chinese Government agreed to begin negotiations for a U.S.-PRC civil aviation agreement. In any event a new basis for air links with Taiwan would be useful in improving U.S.-Taiwan air services. Negotiations currently are underway between AIT and CCNAA on a civil air agreement.

Good progress is being made in the talks and we would hope to have a new agreement soon.

Third, our textile agreement with Taiwan requires some implementing modification. These are being handled by AIT/CCNAA letters of understanding.

Fourth, pursuant to the Nuclear Non-Proliferation Act of 1978, we are reviewing the Nuclear Cooperation Agreement.

Fifth, on October 24, CCNAA and AIT exchanged letters implementing MTN-related reductions in tariff and nontariff barriers. Having mentioned these five categories that require action, no other agreements appear to require current attention.

A second group of 29 agreements concerns active programs or contains provisions of continuing relevance. For example, this group contains agreements on active programs in the fields of education, fisheries, investment, postal affairs and the Treaty of Friendship, Commerce and Navigation. Two agricultural sales agreements, on the other hand, contain provisions of continuing relevance. They relate to commodities which have previously been furnished, but for which payment is still being received by the United States. We see no reason at this time to take any action with respect to these agreements.

A third category includes the Mutual Defense Treaty and six agreements in the military field. The President has given notice that the MDT will terminate on January 1, 1980, and we are committed to taking the steps necessary so that the termination will occur as scheduled. Accordingly, all related military agreements will also terminate with the MDT at the end of the year.

In addition, two non-military agreements have been rendered moot by normalization. One agreement calls for entry-free privileges for consular officers, and the other concerns the status of the American Embassy Language School. We no longer have consular officers on Taiwan and the American Embassy School in Taiwan ceased to function on February 28. We plan to delete these agreements from the January 1980 Treaties in Force.

It is appropriate here to dispel a notion that arises from time to time. There is no substance to the rumor that we are planning an additional 1-year moratorium on new arms sales to Taiwan. When the Mutual Defense Treaty terminates at the end of this year, we shall continue to provide Taiwan access to selected defensive weapons.

The final group concerns fourteen agreements that appear to be either fully executed or inactive. These include five agricultural commodities agreements, a fully executed agreement for provision of nuclear research and training equipment, and two agreements relating to our economic aid program to Taiwan. We wish to take more time to review these agreements. AIT will discuss them with CCNAA to assure that they contain no active provisions before deciding on their disposition.

After further review and as changing circumstances warrant, we may want to take further action with respect to certain of our agreements. I want to assure you that we intend to maintain close contact with Congress on this subject. We will, of course, notify Congress of any agreements concluded between the AIT and CCNAA as provided in the Taiwan Relations Act.

Although our new relationship with Taiwan has required creativity and flexibility on the part of officials on both sides, the experience of the past year has demonstrated the viability of that new relationship. Recognition of the People's Republic of China has not resulted as some feared, in the interruption of our relations with Taiwan. Avoiding a dogmatic approach, we have sought to promote those ties with Taiwan that are consistent with diplomatic relations with the People's Republic of China.

I believe that the evidence demonstrates the success of the transition. At the same time that U.S. trade and investment in Taiwan have increased dramatically, we have successfully preserved the terms upon which we normalized relations with the People's Republic of China.

I will be happy now to answer any questions that the committee may wish to ask.

The CHAIRMAN. Thank you, Mr. Secretary.

RECENT TERMINATION OF CIVIL AIR AGREEMENT WITH TAIWAN

When we were considering the Taiwan Relations Act, during our hearings, Senator Stone asked, "What specifically would the State Department plan to do following normalization with the (a) Friendship, Commerce and Navigation Treaty; (b) the air transport agreement; (c) the agreement on civil uses of atomic energy; (d) the textile agreement; (e) the agreement of double taxation on earnings for the operation of ships and aircraft?"

The administration responded at that time, "All international agreements will remain in force except for the Mutual Defense Treaty and related agreements which will terminate on January 1, 1980."

This theme was echoed again by President Carter in his memorandum to all departments and agencies prior to passage of the TRA and by you in your testimony before the committee. Despite all these assurances, the Vice President went to China and just announced that we were going to terminate the air agreement and enter into some sort of unofficial arrangement. That certainly caught all of us unaware. It certainly was not what we thought was intended by the testimony that had been given at the time the TRA was passed.

I might add that I do not think there have been any two people in Government who have communicated any more fully than I have with Secretary Holbrooke of the East Asian Bureau. We talk almost daily, or certainly several times a week, about mutual problems. I consider myself to be one of the fortunate few in Government who does feel that he is adequately consulted and talked with about these things. We have developed a rapport through the years that I think has stood us in good stead on the committee and in the administration.

In the conversations that I had with Mr. Holbrooke prior to the Mondale visit, while we talked about MFN [most favored nation], about trade, about commerce, about all the things that might or might not come up during the Mondale visit, I thought I had been thoroughly briefed; nevertheless, this business of terminating the air agreement never was mentioned and caught us all by complete surprise.

Can you shed any light on why this came up so suddenly and why this became such a big issue? Did the PRC bring this up and just insist upon this? What was the genesis of this situation?

Mr. CHRISTOPHER. First, Mr. Chairman, let me go back to the beginning of your question.

It certainly is true that at the time of the Taiwan Relations Act we testified that all agreements, except the Mutual Defense Treaty, would remain in force. But I think it also is accurate to say that this statement was not meant to be one which would have continuing validity for the indefinite future. Indeed, I think it would be quite an absurdity to suggest that the 59 agreements that we had with Taiwan at the time of the Taiwan Relations Act would remain untouched, unchanged, and unmodified for the indefinite future. Indeed, if you read one answer that was given by the State Department, I might read another one that was given in response to a question from Senator Stone in which we said that we have only one operational treaty with the Taiwan authorities—the 1946 Friendship, Commerce and Navigation Treaty, that has no expiration date. New agreements, including renewals and extensions of existing ones that may expire will be concluded by AIT and its Taiwan counterpart. They will not be signed by government officials but they will be fully effective to enable relations to continue and prosper.

That was our answer.

I think, Mr. Chairman, that the Congress was on notice that there would be agreements that would expire or would need to be modified or terminated. As I have indicated to you, there are five agreements which in our review we think need some immediate or current attention. The civil aviation agreement fell into that category.

When we began to consider an aviation arrangement with the People's Republic of China, it became plain that the old Nanking agreement with Taiwan was an obvious impediment. It covered the entire mainland of China. It was outdated in its form; it was outdated in its

concept; it simply was so behind the times that it needed to be revised. The CHAIRMAN. Mr. Secretary, we will have to leave the hearing to vote. We will be right back.

My next question will be this. Why was the first public announcement of our intention to terminate the civil air agreement with Taiwan made by a U.S. official while in the People's Republic of China and with only a few hours notice given to the authorities in Taiwan and none to us?

Senator JAVITS. Warren, I may not be able to come back after this vote. Let me say this before I leave.

Would you undertake to keep us closely apprised of the course of the negotiations on these four agreements which still remain to be renegotiated?

Mr. CHRISTOPHER. I give you that commitment, Senator.

Senator JAVITS. I believe, in all frankness, that our interest in Taiwan is a counterbalance to any deep feelings in the People's Republic of China. We feel very strongly about it here. We are going to monitor it very closely to see that the purpose and intention of the Taiwan Relations Act are met.

Mr. CHRISTOPHER. Thank you, Senator. I will give you that commitment.

The CHAIRMAN. Senator Stone went to vote and will return as soon as he can. As I believe he will be back before I will, he no doubt will resume these hearings upon his return.

Forgive us for this brief recess.

[A brief recess was taken.]

Senator STONE [presiding]. The hearing will come back to order until the next vote, and I am informed that may be in about 30 seconds, as soon as the lights go off. But we will do the best we can until the next vote.

CONFLICT OF PREVIOUS TESTIMONY PERTAINING TO TERMINATION OF AGREEMENTS

Secretary Christopher, Senator Glenn started to ask you about your answer to question 17, which is what specifically would the State Department plan to do following normalization with the Friendship, Commerce and Navigation Treaty, the air transport agreement, the agreement on civil use of atomic energy and nuclear materials, the textile agreement, the agreement on double taxation on earnings from the operations of ship and aircraft. Your answer was that all international agreements will remain in force, except for the Mutual Defense Treaty and related agreements which will terminate on January 1, 1980. I understand that your answer was something to the effect that this was not intended to continue for an indefinite period.

Would you please tell me exactly what you said?

Mr. CHRISTOPHER. I will try to, Senator, as best I can from memory.

What I said was I think the answer was correct in the sense that all of the agreements did continue in force. But that was not a commitment that there never would be any change in any one of the 59 agreements. Indeed, another answer that I gave to the committee, or that the State Department gave to the committee, made it clear that there would be renewals or modifications of agreements and they would be between the AIT and CCNAA. So I think, Senator Stone, that

those two concepts are quite properly harmonized by the understanding that they remained in force, which they have. All 59 have remained in force. I have pointed out that there are five that need current attention, and that seems to me to be a relatively appropriate number in relation to the number that has remained in force without any change.

Senator STONE. Secretary Christopher, the answer to the other question that you referred to is question 1 on page 74 of the hearings,¹ is that not right?

Mr. CHRISTOPHER. That's correct.

Senator STONE. Would you not say that a reading of that answer is just as consistent with the conclusion that only one operational treaty has no expiration date and that new agreements, including renewals and extensions of existing ones that may expire are to be by the informal entities? In other words, the exceptions to the general principle that all agreements, except for the defense agreement, would continue in force are that new agreements would not be by the official process and that those renewals or extensions which expire would be by the informal entity. Isn't that just as consistent with what you have just said?

Mr. CHRISTOPHER. I think that is a possible interpretation, Senator Stone. But it seems to me to go against logic and commonsense.

It seems to me that your construction, Senator, would mean that all 59 agreements would continue in force for the indefinite future without change. I think that in view of the number of changes that take place in international and commercial life, this is not the best construction of that position.

Senator STONE. Not at all, Secretary Christopher. My interpretation is that amendments would be conducted by the informal entities, but that the existing agreements would continue, and this is not only my logical interpretation, it is what I understood.

In fact, I think if you were to survey our committee, as I have done, you would find that this is what everybody understood.

Furthermore, I would like to return to question 17 and ask you to look at the specific wording of the question. In other words, what I asked you in that written question was not a general principle at all. I asked you specifically—and I even used the word “specifically”—“what specifically would the State Department plan to do following normalization” with five different specific agreements. The answer was that they would remain in force.

Don't you think it is a little bit misleading to come in, just a few weeks later—and that is really all the time that has elapsed, it is only 10 or 12 weeks or so since we legislated the Taiwan Relations Act—and say it was never intended that these agreements would continue indefinitely, particularly as to these specific treaties when the specific question was asked about those treaties and your answer was that they would remain in force?

Mr. CHRISTOPHER. Senator, I certainly did not intend to mislead you or the committee on that subject. The contrast that was in my mind at that time was between the pressure to abrogate existing agreements, which is what most other countries had done when they recognized the PRC, and a continuation in force of those agreements.

¹ Hearings held by the Senate Foreign Relations Committee on relations with the people on Taiwan, Feb. 5, 6, 7, 8, 21 and 22, 1979, 96th Congress, 1st session.

As you know, when Japan, Canada, and other countries recognized the PRC, they immediately abrogated their existing agreements with Taiwan. The contrast that I was drawing was between that abrogation and the policy we followed of a continuation in force of the agreements. I did not think, and I may not have conveyed it well, that this prevented us from reviewing those agreements and, over time, modifying or terminating those where it was in our interest to do so.

Senator STONE. Well, it doesn't. The course that we understood in legislating the Taiwan Relations Act that is open to the U.S. Government is that when modifications are needed, they will be made by the informal entity. This readily can be done.

May I say, Secretary Christopher, that when you referred to what you answered, that is not entirely accurate either because what I am referring to are the questions we submitted to you formally and which the State Department answered in writing following your appearance. So this is a consensus position of the State Department, is it not? It was not just your immediate answer to an immediate question.

Mr. CHRISTOPHER. That is correct, Senator. I deliberately did not try to dissociate myself from those answers. They are departmental answers and I think it is fair for me to be held by them. I did not prepare them, but I regard myself as being bound by them.

Senator STONE. I think that is appropriate and fair. The reason I am reciting it that way is this. For example, if you look at question 32, which follows question 17, you will see this kind of description in the answer: "As Deputy Secretary Christopher stated, the Department of State is willing" and so on. In other words, this is clearly a set of written answers prepared by the Department which referred to your testimony and incorporated it; but it is an official position.

May I say, Secretary Christopher, that we thought, and I personally thought, that what we were legislating with your support and approval was a process by which, when any of the agreements, other than the defense agreement, needed amendment or supplementation, the informal entity would operate on that and would do that; but, on the other hand, where agreements that specifically were cited, such as the ones to which I referred in question 17, were concerned, they would continue in existence along with whatever supplementation or amendments the informal entity would conclude.

That is not a strained construction, Secretary Christopher. It is what we thought.

Why were we wrong?

Mr. CHRISTOPHER. Senator, I often admire your lawyer's skills, and I do again today.

Senator STONE. Coming from a leader of the American Bar, I am very gratified for that comment.

Mr. CHRISTOPHER. I meant it.

I simply would point to section (4) of the Taiwan Relations Act where Congress, in legislation, clearly recognized that all agreements would remain in force and effect unless and until terminated in accordance with law.

When you put in that provision, you must have recognized that some of the existing agreements would be terminated. Otherwise, the provision was a nullity.

Senator STONE. Yes. Where the entire agreement is clearly outmoded and wrong, you would have to do that. In this particular case, the avia-

tion agreement is not entirely outmoded and wrong. Some provisions of it relates to the mainland, and I quite understand that you would want to delete those in further amendments and supplement the agreement in line with the deregulation of aviation here in this country and the opportunity for greater access in both countries. But this is not to say that the aviation agreement by its own terms has to be cancelled, because the opposite is the case, or at least it seems to me.

Mr. CHRISTOPHER. Senator, we may have an impartial arbiter on this question. I understand Victor Li, one of the outstanding scholars in this field, is going to be testifying later today. Although I have only glanced at his testimony, I think he feels, as we did, that the aviation agreement is one where the changes are so substantial that it is necessary and desirable to have a new arrangement which then must be made between the unofficial entities.

You will have an opportunity to ask him about that.

Senator STONE Yes; and I shall.

STATUS OF THE TEXTILE AGREEMENT

Secretary Christopher, is that your view of the textile agreement as well and the other agreements?

Mr. CHRISTOPHER. No, sir. As I said earlier, perhaps when you were not here, we will take this on a case-by-case basis.

Senator STONE. What about the case of the textile agreement?

Mr. CHRISTOPHER. In the case of the textile agreement, I think the amendment is so relatively simple and not so substantial that it can be accomplished by a letter of understanding between AIT and CCNAA.

Senator STONE. What about the Friendship, Commerce and Navigation Treaty?

Mr. CHRISTOPHER. I was somewhat perplexed by that, Senator. I am reassured by my colleagues that we do not intend any change in that or see the need for any change.

Senator STONE. How about the agreement on civil uses of atomic energy?

Mr. CHRISTOPHER. That is an agreement where we are required to review it under the Non-Proliferation Act of 1978. It will be necessary to modify some of the provisions quite substantially. We have not concluded whether or not that can be done by a letter of understanding or whether a new agreement will be made.

I will give you this commitment about that, Senator. We certainly will consult with this committee in connection with the form that takes.

One thing I would like to do is try to come back to the substance of the matter.

The agreements between AIT and CCNAA have equal stature as a matter of U.S. law. They are equally enforceable. What we ought to be talking about here is how we can improve the commercial relations and enhance the trade between the two sides.

Senator STONE. But you see, the problem is there is more involved in our bilateral relations than our bilateral relations. The United States is the largest factor in the economic and foreign relations of Taiwan. When we create uncertainty in that bilateral relationship, it radiates outward to the commercial, financial, and other relationships as to all the other countries with which Taiwan does business.

It was quite a shock when we canceled our official recognition of the ROC, and even though bilaterally it has recovered very well from that shock, largely I think due to the joint efforts of all of us in the Taiwan Relations Act, nevertheless, the uncertainty about whether the attempted termination of the air agreement would presage termination of all the others is the kind of thing that upsets market relationships and financial relationships, not only between our two countries, but between Taiwan and all the other countries with which it does business.

This is why I am going through these agreements with you again, and this is why I asked question 17 officially of the State Department.

Mr. CHRISTOPHER. Senator, there is no evidence at all that there is any lack of confidence in the Taiwan authorities or in the Taiwan commercial picture. The increased investment is strong evidence to the contrary.

I would submit to you that the need to substitute 1 new agreement out of the 59 that exist is certainly a very good batting average.

Perhaps you were not here when I did so, but I also told the committee that there were only five that we thought were in need of substantial change. Some of those, including the textile agreement, we believe can be handled without interfering with the underlying agreement.

So I hope this will be a message to the committee and also to the people on Taiwan that we do not intend any wholesale abrogation of their agreements. We are going to go case by case and make as few changes as possible.

Senator STONE. I have a wire here from Mr. Parker, the head of the American Chamber of Commerce in Taiwan, from Taipei which I will place into the record. I will read two lines from it: "We do not accept the contention that replacing a treaty with an 'informal, unofficial arrangement' is only a change in form and not in substance. This concern relates not only to the Aviation Treaty." There is more.

[The information referred to follows:]

[Telegram]

September 19, 1979.

Senator RICHARD STONE,
U.S. Senate,
Washington, D.C.

In light of the congressional oversight function written into section 14 of the Taiwan Relations Act, the text of a message cabled today to President Carter, is provided as follows:

President JIMMY CARTER
The White House, Washington, D.C.

The American Chamber of Commerce in Taipei is deeply concerned by your administration's proposal to terminate the air transportation treaty with Taiwan and replace it with an "informal, unofficial arrangement," as announced by Vice President Mondale in Canton. Such action is directly contrary to representations made to us and to the Congress by your administration at the time of normalization. We were repeatedly assured, in the words of the State Department's legal advisor in testimony before the Senate Foreign Relations Committee, that "Treaties and other international agreements between the United States and Taiwan at the time of normalization will remain in force, except that the mutual defense treaty and related agreements will terminate at the end of this year."

Now we are told by Assistant Secretary of State Holbrooke that the administration wants to terminate all the remaining formal agreements with Taiwan and put them on an unofficial basis, with "replacement" of the Aviation Treaty as merely the first step.

Whether or not we were misled, our foremost concern as businessmen is with the substance of agreements affecting our business. We do not accept the contention that replacing a treaty with an "informal, unofficial arrangement" is only a change in form and not in substance.

This concern relates not only to the Aviation Treaty, but to other important commercial agreements with Taiwan including the vital treaty of friendship, commerce and navigation. Section 4.C of the Taiwan Relations Act expressly provides for the continuation of existing treaties between the U.S. and Taiwan, making clear the legal effect of such treaties and executive agreements in the U.S. and Taiwan courts. The legal effect of "informal, unofficial arrangements" between the American Institute in Taiwan and the coordination council for North American affairs is far less certain, even under section 6.B of the Act. It therefore cannot be definitively said that the proposal announced by Vice President Mondale is a matter only of form.

We do not oppose the conclusion of aviation and other agreements with mainland China, provided they are in the U.S. national interest and are not at the expense of Taiwan or American interests in Taiwan. We therefore urge that you direct the State Department and the American Institute in Taiwan to honor your pledge and congressional intent in the Taiwan Relations Act by keeping in force all existing commercial treaties and executive agreements with Taiwan until they expire in accordance with their terms. These agreements, which can be amended by both parties if necessary, are a crucial part of our country's relations with Taiwan and must not be sacrificed for questionable reasons of political expediency.

Your leadership in enactment of the Taiwan Relations Act is recalled with admiration. Your action now in seeing that the letter and spirit of the act are adhered to by the administration with regard to commercial treaties and agreements between the U.S. and Taiwan will be greatly appreciated.

Respectfully,

ROBERT P. PARKER,

President, American Chamber of Commerce in the Republic of China, Kirkwood, Kaplan, Russin & Vecchi, Suite 1002, CHIA, HSIN Bldg., 96 Chung Shan N. Road, SEC. 2, Taipei, Taiwan.

Senator STONE. I will have to go to the floor to cast yet another vote. The chairman will be back shortly.

Mr. CHRISTOPHER. I will be glad to wait here.

Senator STONE. Thank you, Secretary Christopher.

This hearing will be in brief recess.

[A brief recess was taken.]

The CHAIRMAN [presiding]. The hearing will come to order.

Once again, I apologize for the delay. One of the difficulties of having hearings in the afternoon is that we may be interrupted for votes on the floor. But sometimes we feel that matters are important enough and we want to get the record made because the subject is very timely, so we schedule an afternoon meeting, taking a chance that floor action will not be heavy. But sometimes we do get caught, as appears to be the case today.

I'm sorry for the delays.

DISTINGUISHING BETWEEN "AGREEMENT" AND "ARRANGEMENT"

Mr. Secretary, how do you distinguish between an "agreement" and an "arrangement"?

Mr. CHRISTOPHER. I think there is no fundamental difference between the two. The arrangements between AIT and CCNAA are in fact agreements, which have full force and effect under U.S. law. I think we ought to emphasize the importance of those agreements from a commercial standpoint, rather than trying to denigrate them in any way.

I think those terms are used, but not with any precision or any distinction between the two of them.

PEOPLE'S REPUBLIC OF CHINA POSITION ON UNITED STATES-TAIWAN AIR
TRANSPORT AGREEMENT

The CHAIRMAN. Did the PRC at any time indicate that the United States would have to terminate its air transport agreement with Taiwan before the PRC would be willing to negotiate a similar agreement with the mainland?

Mr. CHRISTOPHER. Senator, I think it is accurate to say that only when we indicated that we were prepared not immediately to abrogate but to take steps to develop a new arrangement between the unofficial United States and Taiwan entities was the PRC willing to commence negotiations on an aviation agreement. We thought it was commercially important for us to have an agreement both with the PRC and with Taiwan. That is the course we are on.

The CHAIRMAN. Had there been a proposal to the PRC to get air service prior to that time?

Mr. CHRISTOPHER. Ever since normalization we have been talking with the PRC about the need to develop an aviation agreement.

The CHAIRMAN. Had they indicated they would not do that, would not even discuss it, would not come to any agreement until we terminated with Taiwan?

Mr. CHRISTOPHER. Senator, I think the most accurate thing I can say without reviewing that record precisely is that it was only after we told them we were going to work out a new agreement between the unofficial entities that they were willing to begin to negotiate on a civil aviation agreement.

The CHAIRMAN. But you said this previously had been brought up. Apparently they refused to go ahead with making any agreement until we went ahead and said that we would change the Taiwan arrangement.

Is that correct?

Mr. CHRISTOPHER. Yes. They said they were willing to begin negotiations on a new civil aviation agreement only after we indicated we were going to work out a new arrangement with Taiwan.

The CHAIRMAN. Work on the new agreement which they previously had failed or refused to do until we had made that statement, is that correct?

Mr. CHRISTOPHER. That's correct.

AMENDING EXISTING AGREEMENT UNACCEPTABLE

The CHAIRMAN. Why is just amending the existing agreement with Taiwan unacceptable to the United States and to the PRC?

Mr. CHRISTOPHER. Well, Mr. Chairman, it is unacceptable to us for fundamental aviation reasons. It is an outdated agreement which does not reflect the modern trends, modern philosophy of low fares, and deregulation, which is part of the aviation philosophy of this administration. I think it has served the people well.

So, when fundamental changes are being made, it is desirable to substitute a new agreement rather than to try to amend an old agreement. This is the problem lawyers have over and over again. If you are making modest changes, you do it by way of amendment. If you are making fundamental changes, it is much more sound to start over again.

The CHAIRMAN. I would tend to agree with you in principle, normally. But in this particularly sensitive situation, I think Taiwan's primary concern is not the mechanics of change so much as the PRC's ability perhaps to dictate the terms and conditions of even this unofficial United States-Taiwan relationship. I think we exacerbate that situation by the lack of constancy even in what we call this, whether it is an agreement, treaty, or understanding. This just makes the situation worse.

I would think in this existing situation the least change we could have made to make it acceptable and still do what we want to do would have been the advisable way to go. But, then, I guess this is up to the State Department to determine.

PRECEDENT SETTING NATURE OF TERMINATION OF AIR TRANSPORT AGREEMENT

Does termination of this air transport agreement set a precedent for how we plan to handle other important treaties and agreements with Taiwan?

Mr. CHRISTOPHER. Absolutely not, Senator. We will do it on a case-by-case basis. Only where fundamental, sweeping changes are necessary in the underlying concept will new agreements be necessary. Otherwise, we will try to handle them in other ways.

We will look at each one.

I give you, as chairman of this subcommittee, a commitment that we will consult with you and your staff, better, I hope, than we have in the past in connection with subsequent agreements.

POSITION OF TAIWAN GOVERNMENT TOWARD TERMINATION

The CHAIRMAN. I understand informally that Taiwan has indicated that it is not so much against the substance of what you have been trying to do as against the form. As I mentioned, it could have been done with less formal change in the type of agreement than what was done.

What has been the indication to you from the Taiwan Government?

Mr. CHRISTOPHER. I think this has gotten into a rather unfortunate and impractical status, Mr. Chairman. My understanding is that the negotiators have agreed on all of the substantive provisions. So we have the commercial arrangements, the trade arrangements, all worked out. The only question is the form of the agreement.

This seems to me to be one of those situations where the parties have elevated form over substance. I think it is quite unfortunate that we do not put our aviation relationships on a new and sound keel by entering into the agreement or arrangement between the unofficial entities and move on from there. By insisting on the matter of form, it seems to me that the Taiwan authorities are impeding the progress that both parties want to make in commercial and trade relationships.

The CHAIRMAN. I would agree with you up to a point and then I would part drastically from you. You certainly are aware that in the Far East "face," as it is called, or stature, the way one group appears to another group, whether it is in ascendancy or being subjugated to the interests of another group, is all important. This was half of our argument. This was half of our consideration when we were consider-

ing this act to begin with. What was form and what was substance was considered to be important. A great deal of it was form; a great deal of it was national pride, sovereignty, and all such things that were of importance to the people there and perhaps are even more important to the East Asian eye than is our American contractual way of doing business, free enterprise, the aggressive method of doing business to which we have become accustomed along with our European partners, and heritage. It would indicate that we should move in their direction.

So, I would say that form is important in this case. This is one reason I was following up on why we needed to change some of this in the past.

Mr. CHRISTOPHER. Senator, this is one of those things that, to some extent, falls into the category of self-executing prophecy. If you say it is a matter of great importance that the form be "x," then perhaps you create a problem for yourself. The commercial relationships can be handled perfectly well under the AIT-CCNAA relationship.

Indeed, I want to come back to the point that Congress provided for the AIT and for these unofficial relationships so that trade and commerce could be carried out in that way. I want to say here, so that there will be no mistake about it, that the United States does not intend to enter into an official agreement with Taiwan regarding civil aviation. We think the right way to do it is what we have proposed to them. We hope that can be accepted so we can get on with the practicalities and the substance of the matter.

CHANGES ACCOMPLISHED BY A "NOVATION"

The CHAIRMAN. The staff has given me a question. Why could this not have been accomplished by a novation, "novation," meaning changes of substance but maintaining the skeleton of the old agreement? Was that given consideration?

Mr. CHRISTOPHER. Yes; it was given consideration. But where there are fundamental and sweeping changes in an agreement, it seems to us that the right way, under the concept created by the statute and under the concept created by the whole normalization process, would be to enter into an unofficial agreement between the unofficial entities.

IMPROVEMENTS OF NEW AIR TRANSPORT AGREEMENT

The CHAIRMAN. A little while ago I understood that Taiwan did not necessarily object to the specifics of this new contemplated arrangement. In what specific respects is the new air transport agreement contemplated for Taiwan to be an improvement over the existing arrangements?

Mr. CHRISTOPHER. Well, let me tick off some reasons. Then, with the consent of the chairman, I might ask Deputy Legal Adviser James Atwood, who was involved in negotiating the agreement, to be more specific.

The CHAIRMAN. Fine.

Mr. CHRISTOPHER. It provides for the proper geographic coverage; that is, it involves the islands of Taiwan and the United States rather than the China mainland. It provides for more air service between the two countries. It provides for more points in the United States that can be served by Taiwan Airlines. It carries out, generally speak-

ing, the philosophy of the United States of the opportunities for lower fares and more service. It is a modern agreement rather than one which was entered into long before the jet age.

With your permission, Mr. Chairman, I would like to ask the Deputy Legal Adviser, Mr. Atwood, to be more precise than I am able to be at the moment.

The CHAIRMAN. Mr. Atwood, we are happy to hear from you.

Mr. ATWOOD. Thank you, Mr. Chairman.

The basic features of the agreement that we hope AIT and CCNAA would be able to conclude in a very few days are similar to those which we have concluded with a number of other aviation partners in the Pacific and, indeed, in Europe as well. It provides for greater route opportunities for the airlines of both sides. In this case, China Airlines would get access to two additional landing points in the United States, two points of its choosing. Additionally, we would give to China Airlines for the first time fifth freedom or beyond rights through the United States to Europe and South America.

So, in terms of route rights, it should provide some very valuable commercial opportunities for the China Airlines.

Additionally, both it and the U.S. airlines have much greater flexibility on questions of pricing, charter operations, and flexibility of operations, that should allow them to lower their costs in some important respects, and also enable them to develop new pricing techniques to try to build air service between Taiwan and the United States.

We expect the results will be enhanced profitability for China Airlines and increased travel between the United States and Taiwan.

The CHAIRMAN. Have the Taiwanese indicated acceptance of this or pleasure at the provisions of this proposed agreement?

Mr. ATWOOD. Yes, sir.

As of the last round of negotiations, there was complete agreement on all points of substance.

EXPIRATION OF AGREEMENT BETWEEN NOW AND 1985

The CHAIRMAN. What other agreements are due to expire between now and 1985?

Mr. CHRISTOPHER. Senator, I may have to furnish a more complete answer for the record. But I believe it is covered by my statement that there are five that we think require relatively early attention. Those are the five that I listed in my statement.

The CHAIRMAN. I thought you were indicating for those that there were enough changes so you thought they should be redone. I did not realize those were the ones due to expire.

Mr. CHRISTOPHER. Well, the first one I mentioned, the agreement on scientific cooperation, expires in January of 1980.

If there any others that expire in the next 5 years, Mr. Chairman, we will provide them for the record. I do not happen to carry that information in my head.

The CHAIRMAN. Thank you. That is what I want to know. You mentioned some particular ones today. If there are others that are going to expire during that time period, I would like that information furnished for the record.

Mr. CHRISTOPHER. We would certainly do that.

[The information referred to follows:]

THE FOLLOWING AGREEMENTS WILL EXPIRE BETWEEN NOW AND 1985

[Submitted by the Department of State]

(1) Agricultural Commodities Agreement, with exchange of notes dated Aug. 31, 1962 (TIAS 5151), as amended on Jan. 15, 1963 (TIAS 5282) and June 3, 1964 (TIAS 5588).

(2) Agricultural Commodities Agreement, with exchange of notes dated Dec. 31, 1964 (TIAS 5718), as amended Feb. 11, 1966 (TIAS 5958). (These agreements relate to agricultural commodities previously furnished. We are still receiving payments under these two agreements. The last installment under the first is due April 4, 1985, and under the second, March 31, 1985.)

(3) Agreement concerning the disposition of New Taiwan dollars generated as a consequence of economic assistance furnished to China, exchange of notes dated April 9, 1965 (TIAS 5782), as extended and amended (TIAS 6451, 6906 and 8184). (This agreement established a Sino-American fund for economic development (SAFED). The agreement will expire according to its terms on June 30, 1980.)

(4) Agreement concerning fisheries off the coast of the U.S. signed Sept. 15, 1976 (TIAS 8529). (This agreement contains an expiration date of July 1, 1982.)

(5) Agreement relating to cooperation in science and technology, exchange of notes dated Jan. 23, 1969 (TIAS 6639), as extended (TIAS 8013). (This agreement expires Jan. 23, 1980. AIT and CCNAA are currently negotiating a new agreement to continue cooperation in science and technology when this agreement expires.)

DECISION TO AMEND TEXTILE AGREEMENT

The CHAIRMAN. Why was the air transport agreement terminated at the same time we merely decided to amend the textile agreement?

Mr. CHRISTOPHER. I think that is a good example of the dichotomy that I was trying to explain to the committee. The textile agreement requires relatively modest changes, simply a change in some of the categories and some of the numbers, as I understand it. This can be accomplished by a letter of understanding between the unofficial entities. It is not a profound, fundamental, or sweeping change.

The CHAIRMAN. Will Taiwan be required to change the name of its air carrier "China Airlines" or remove its flag from the aircraft before landing rights are granted here?

Mr. CHRISTOPHER. I wonder if I could lean on Mr. Atwood for that information. That is a detail of the negotiation.

[Pause.]

Mr. CHRISTOPHER. He says "No."

STATUS OF 1978 MEMORANDUM OF AGREEMENT WITH TAIWAN

The CHAIRMAN. What is the status of the 1978 Memorandum of Agreement with Taiwan relating to the provision of flight inspection services? How does that differ from the air transport agreement?

Mr. CHRISTOPHER. Once again, I would like to ask Mr. Atwood. We are getting awfully deep into those negotiations.

Why don't you join us at the table, Mr. Atwood.

Mr. Atwood. Thank you.

I am afraid that I should provide a more detailed response for the record. I believe the agreement to which you referred relates to services provided by the Federal Aviation Administration in the nature of safety and technical training. That agreement still is operative, to the

best of my understanding, and I do not think we anticipate any changes in it at the present time. It is a separate agreement.

Mr. CHRISTOPHER. One thing of which you can be fairly certain, Mr. Chairman, I think is that the 5 that I have identified are the ones of the 59 which we think require some relatively early attention.

Now a review may bring others to the surface because this is not a static situation. It is a very active trading relationship and we have conscientiously tried to identify those which require some immediate attention.

The CHAIRMAN. Have you yet talked over the other ones that will be coming up with the Taiwanese so that they know they will be coming up? Are they prepared to renegotiate these others in a similar manner as was done with the air transport agreement?

Mr. CHRISTOPHER. Each one is separate, and yes, we are in constant contact with them through AIT. They are very much aware, for example, of our need to update the textile agreement and to review the nuclear cooperation agreement in accordance with the 1978 act. There is a very regular course of discussion of these matters between the officials.

ASSURANCES REGARDING TREATIES GIVEN TO PRC

The CHAIRMAN. What assurances regarding the treaties and agreements were given to the PRC during the negotiations preceding normalization?

Mr. CHRISTOPHER. Only one, Mr. Chairman, and this is that the Mutual Defense Treaty with Taiwan would be terminated in accordance with its provisions. The implication of that was that the related agreements which were tied to it would go along with it.

As you recall, Mr. Chairman, the initial position of the PRC was that this should be immediately abrogated. President Carter took the strong position that he would not abrogate it, but that he would terminate it only in accordance with article X, and that has been done.

There was no secret agreement or no other side commitment with respect to the Taiwan agreements.

The CHAIRMAN. Did the PRC understand fully what had been agreed to and that we were continuing our other agreements with Taiwan, such as the trade agreements and air agreements and so on, in full force?

Mr. CHRISTOPHER. It always is difficult to know exactly what someone else understood. They recognized that we were going to continue trade and commercial and cultural relations with Taiwan. They also understood that we were not going to engage in a sweeping abrogation of all existing agreements in the way that had been done with Canada and other nations which recognized the PRC. I do not believe I could characterize their understanding beyond that because I am talking about somebody else's understanding.

The CHAIRMAN. The reason I was getting to that point is because of the question I asked a little while ago about whether they had refused to discuss air rights into Beijing or onto the mainland until we had stopped our air agreement and air arrangements that we had with Taiwan, and I believe you had indicated that they had refused to go ahead with any agreement or words to that effect.

Mr. CHRISTOPHER. We do not have a constitutional right to have an air agreement with the PRC. It is something that we desire to have. In

connection with that, we found that negotiations were agreed to only after we indicated that we were going to move beyond the old Nanking agreement, which obviously presented some problems for the PRC since it covered all the mainland of China.

The CHAIRMAN. As I said in my opening statement, I was for normalization, but I think we need to be careful not to let the PRC dictate some of the things that happen which we thought we had guaranteed to Taiwan in this normalizing process. They understood we had made guarantees to Taiwan. As you said a moment ago, we had told them about the arrangements that would be made concerning the Mutual Defense Treaty with Taiwan. It was our understanding here, certainly, and I think the understanding of Taiwan, that these other arrangements would go on.

I realize they will not go on ad infinitum or forever; I realize that situations do change. But not much time has passed since we had guarantees of constancy regarding the other agreements we have been discussing.

Senator HELMS. Thank you, Mr. Chairman.

Mr. Secretary, I am sorry I missed your testimony. I have been plowing the north 40 on the Senate floor. If I am repetitious in any of my questions, please let me know and I would be happy to read the record for the information I need.

FOUR UNITED STATES-TAIWAN AGREEMENTS THAT HAVE BEEN CHANGED

Have there been four agreements between the United States and Taiwan which have been altered, changed, or amended: the textile agreement, the footwear agreement, the television agreement and one other?

Mr. CHRISTOPHER. The Mutual Defense Treaty is another, Senator Helms.

Senator HELMS. I meant besides that one.

Mr. CHRISTOPHER. I do not recognize the four as you state them. We are in the process of negotiating for some changes in the textile agreement. I assume the footwear agreement may be part of that, but I am not certain.

Senator HELMS. It is a small point. Somebody can drop me a note about that question, if you will.

Mr. CHRISTOPHER. Yes, Senator.

I am embarrassed that I don't know the answer to that. We will furnish for the record the references to the footwear agreement and the television agreement.

Senator HELMS. Thank you. There is some interest in that in my State.

[The information referred to follows:]

FOOTWEAR AND TELEVISION AGREEMENTS BETWEEN THE UNITED STATES AND TAIWAN

[Submitted by Department of State]

There have been no changes to the agreements on footwear or television sets during 1979. As was noted in Deputy Secretary Christopher's testimony, certain implementing changes were made in the textile agreement; and last June there were changes, also of an implementing nature, in the Education agreement. These modifications, concluded by AIT and CCNAA, shifted responsibilities, previously carried out by officials, to employees of the unofficial instrumentalities.

ALTERING TREATIES WITHOUT REVOKING THEM

Senator HELMS. Is it possible for the United States to alter or amend treaties with Taiwan that are now in force without going through the process of revoking them as former treaties or agreements between the United States and the Republic of China?

Mr. CHRISTOPHER. Senator Helms, we would take action in accordance with the terms of each of the agreements if we found it necessary to terminate them. We would not abrogate them instantaneously, but we would follow the terms of the agreement.

As I may have said when you were not in the room, other countries which recognized the People's Republic of China immediately abrogated all of their agreements with Taiwan. We decided to go another course. We decided to keep in force the 59 agreements that we had, except for the Mutual Defense Treaty. Now we are in the process of evolution. We are having to review those agreements to see whether they need to be changed in light of the new status.

I don't think there is anything unusual or abnormal about that. One of the most satisfying aspects is that commercial relations have improved since normalization, during 1979. I think that shows a good deal of confidence by the United States in their economy and vice versa.

EXISTENCE OF PEOPLE'S REPUBLIC OF CHINA INFLUENCE ON UNITED STATES-TAIWAN RELATIONS

Senator HELMS. Senator Glenn made reference to his own apprehension, which I share, that Peking may be having an undue amount of influence in connection with the nature of our relations with Taiwan. To what extent is that influence existent?

Mr. CHRISTOPHER. Senator, I think there is nothing improper or overbearing about that influence in any respect. Perhaps the major test of it will be in connection with the commitment that we have to sell to Taiwan if it so desires carefully selected defense articles.

As you know, that was one of the sticking points in the normalization negotiations. We insisted on the right to do so after the end of 1979, after the Mutual Defense Treaty was terminated. We intend to do that in the early part of 1980.

Senator HELMS. So you reject the notion that Peking is having undue influence?

Mr. CHRISTOPHER. I do, sir.

Senator HELMS. Again, let me say if you have answered these questions, please say so because I do not want to be repetitious.

Mr. CHRISTOPHER. I am glad to have a chance to discuss them with you, Senator.

Senator HELMS. Thank you.

In your testimony you say the air transport agreement has become "a hindrance to the development of aviation relations with the People's Republic of China." Did you discuss that with Senator Glenn?

Mr. CHRISTOPHER. Senator. I did mention that the existence of the old Nanking Agreement of 1946, which covers not only the islands of Taiwan but the entire mainland of China, was a natural impediment to our entering into a new aviation arrangement with the PRC, which

we very much wanted to do. We presently have a charter arrangement in which Pan Am has charter flights to Peking. But we do not have scheduled airline services to the mainland of China. We would like to do that. It would be good for our country, good for them, and good for our business.

Senator HELMS. You also said it was only after Vice President Mondale, during his trip to China in August, informed Peking that we planned to replace the Nanking agreement with a new agreement between AIT and the CCNAA that the Chinese Government agreed to begin negotiations for a United States-People's Republic of China civil aviation agreement. This indicates some influence doesn't it?

Mr. CHRISTOPHER. Yes, sir, but I do not think that is undue or improper influence. We want to have an aviation agreement with the People's Republic of China, but nothing in the normalization negotiations gave us the right to have such an agreement. I think they were quite entitled to say that before we negotiate with you about an agreement with us, we don't want you to have an agreement with Taiwan that covers our territory. Their position at least was understandable. One may not agree with it, but I think it was understandable for them to say to us get your relationship straightened out or at least start to straighten out that relationship before we begin to negotiate with you on a relationship with us.

Senator HELMS. I have one final question.

SIMILAR TREATIES BETWEEN UNITED STATES-PEOPLE'S REPUBLIC OF CHINA AND UNITED STATES-TAIWAN

Does the PRC have in force any treaty or treaties with the United States similar to the treaties in force between the United States and Taiwan?

Mr. CHRISTOPHER. On what subjects?

Senator HELMS. Well, my research indicates there is only one and this deals with science and technology. Are there any others?

Mr. CHRISTOPHER. Senator, that agreement has been entered into. We are in negotiations for a textile agreement and, as you know, that has not yet been concluded. There is a trade agreement which has been sent up to Congress which would confer nondiscriminatory treatment on the People's Republic of China. Those are the ones that come to mind.

We are just in the early stages of developing our relationship in the newly normalized circumstance.

Senator HELMS. Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Helms.

REPLACEMENT OF TREATIES WITH NEW TREATIES

Do we plan in reconsideration of any of these agreements or treaties to replace them, in turn, with treaties?

Mr. CHRISTOPHER. No, sir.

There are only four treaties among the 59 agreements and treaties between the United States and Taiwan, if my memory serves me correctly, and we do not intend to make any change in those. We would not intend for any of the new agreements to be in treaty form.

The CHAIRMAN. Is it because it would not be appropriate or because it would be objectionable to the PRC to have a treaty that covered these matters?

Mr. CHRISTOPHER. It would not be appropriate and it would not be necessary.

It would be quite unusual to replace an agreement with a treaty. But, in any event, Senator, I think a treaty denotes an official relationship whereas, under the Taiwan Relations Act, what was contemplated was an unofficial relationship.

The CHAIRMAN. Well, I will not quarrel with whatever way you want to go on that. I certainly would not push to get a treaty.

The reason I ask is because of your testimony when we were in our earlier consideration of the Taiwan Relations Act. Senator Hayakawa had asked you a question about this and you replied:

The United States, I think, would find no difficulty if the legislation is passed in treating the people on Taiwan as a valid treaty partner for purposes of important treaties, such as aviation arrangements which now exist. Under international law, I think our judgment is clear that it is legally permissible to have a treaty or an agreement with an entity that is not formally recognized as a government.

So there you indicated it was possible to have a formal treaty with someone with whom we did not have full recognition rights in both directions.

Mr. CHRISTOPHER. I think you could call something a treaty between entities that were not governmental, but they would not be official in character. As I said earlier, it does not make much difference whether you call it an arrangement or an agreement. There are sometimes treaties between private parties. There is nothing inherently wrong with that except that treaties do tend to connote officiality. I think I would want to put that gloss on this and maybe correct my earlier comment.

The CHAIRMAN. I would agree with that. I would not want my remarks to indicate that I thought you should go in a different direction and make a big effort to make treaties. I would tend to agree with you. But I wanted to clarify that with your previous statement.

Mr. CHRISTOPHER. I appreciate that.

NOTIFICATION OF CONGRESS ON NEW AGREEMENTS

The CHAIRMAN. Once you get these agreements made and they will, in effect, be as binding as treaties, whatever they are called, do those come to us for approval—that is, for review, approval, ratification, whatever?

Mr. CHRISTOPHER. My recollection is that all agreements between AIT and CCNAA are notified to Congress.

I wonder if I could ask one of my colleagues about this.

[Pause.]

Mr. CHRISTOPHER. Yes, Mr. Chairman. I am told that AIT notifies the Secretary of State who, in turn, notifies the Congress that such an agreement has been entered into. We do not come to you for ratification. But you are notified of them.

If there were some change in U.S. law that was contemplated or required by the treaty, obviously Congress would have to act on that.

The CHAIRMAN. Well, without researching this at this end, can you tell us what is the status of that? Is it something where we have a dis-

approval within a certain period of time, a one-House approval or disapproval, or whatever? Or, is it just that you notify us?

Mr. CHRISTOPHER. It is a pure notification, Senator.

The CHAIRMAN. So we are just notified that it is in effect?

Mr. CHRISTOPHER. That is correct.

Senator, as you well know, you certainly are not helpless. If you disapprove of the agreement, you could enact legislation on the subject.

The CHAIRMAN. Do we intend to terminate each agreement with Taiwan whenever a similar agreement is to be negotiated with the PRC?

Mr. CHRISTOPHER. No. This will depend upon a case-by-case analysis. I think the aviation agreement is really quite *sui generis* in this regard.

The CHAIRMAN. Why would there not be others that were similar? Is it because in the Taiwan agreement they theoretically covered the mainland air routes, too, where in regular commerce that would not necessarily be the case?

Mr. CHRISTOPHER. Certainly that is one of the distinguishing characteristics that required a new agreement, Senator.

The CHAIRMAN. What about regular shipping? Does Taiwan still claim rights to control shipping going in and out of mainland ports?

Mr. CHRISTOPHER. I don't know if we have a shipping agreement with Taiwan.

The CHAIRMAN. Oh, we must have. We have an agreement on everything else.

Surely we would not have commerce going in and out without some sort of shipping agreement.

[Pause.]

The CHAIRMAN. Isn't there an agreement entitled "Maritime" or something like that? I would presume there is.

Mr. CHRISTOPHER. Senator, we will look at that question. I will correct the record if I am in error.

[The following information was subsequently supplied.]

UNITED STATES-TAIWAN TREATY DEALING WITH MARITIME MATTERS

[Submitted by Department of State]

There is no treaty or other agreement in force between the United States and Taiwan which deals exclusively with maritime matters. Maritime relations between the United States and Taiwan are governed by the 1946 Treaty of Friendship, Commerce and Navigation (63 Stat. 1299) and particularly by Articles XXI-XXV of that treaty. In general, the treaty assures vessels of each party treatment no less favorable than that extended by the other party to vessels of any third state. In specified instances, vessels of each party are guaranteed treatment equivalent to that extended by the other party to its own vessels. The vessels of each party are entitled to come with their cargoes to all ports, places and waters of the other party which are open to foreign commerce and navigation.

Mr. CHRISTOPHER. One that comes to mind, and it is pretty obvious, is this. We entered into a science and technology agreement with the PRC without having to terminate ours with Taiwan. But that does not have the geographical problems that existed in the aviation agreement and that you quite rightly apprehend might exist in the maritime one.

The CHAIRMAN. The main point here was not to try to pin them down right now. We could do that by separate discussion with you.

If we are setting any precedent at all here, it is where there is an overlap of jurisdiction as there was in this air rights matter. What I

am trying to get at is would we look for a similar termination of agreement or termination of treaty with Taiwan whenever there was this kind of overlap with PRC interests?

Mr. CHRISTOPHER. Senator, I think this demonstrates the difficulty of trying to review or analyze this problem in the abstract or vacuum. I would not like to lay down a rule that we would not have to do it again or that we always would have to do it. I think it would depend upon the nature of the particular agreement.

The CHAIRMAN. Here is one that I happened to notice, the Treaty of Friendship, Commerce, and Navigation. This has been in effect since 1946.

Mr. CHRISTOPHER. Yes; and we do not see any reason to modify that. I think you will find that this does not present the problem because it does not name ports on the mainland.

The CHAIRMAN. OK. This covers the reporting back to us that we discussed a moment ago. In the Taiwan Relations Act under reporting requirements, section 12(c) says:

Agreements and transactions made or to be made by or through the Institute shall be subject to the same Congressional notification, review, and approval requirements and procedures as if such agreements and transactions were made by or through the agency of the U.S. Government on behalf of which the Institute is acting.

Mr. CHRISTOPHER. Yes.

Suppose there was a statutory provision that authorized the Commerce Department to enter into agreement with its opposite number in other countries, but made those agreements subject to the approval of Congress in some way. Then, if AIT were to enter into an agreement with the unofficial entity representing Taiwan, such an agreement, if it had been subject to approval, had it been made by the Commerce Department, would be subject to approval when it was made by AIT.

The CHAIRMAN. OK. That is a little different from what you said a little while ago and what I understood to be the case a little while ago. I would think this means that if an agency of the U.S. Government had a requirement to report back for either one House approval, two House approval, disapproval, congressional approval one way or the other, those same approvals and disapprovals now would apply to the agency in dealing with the Institute also.

Mr. CHRISTOPHER. Absolutely, Senator.

I thought you were asking the question whether or not these agreements were subject to advice and consent in the way treaties would be.

The CHAIRMAN. Basically I was. I am not sure but some of them might come under advice and consent if that advice and consent is written into law with regard to the agency administering this to the Institute.

Mr. CHRISTOPHER. That is correct, if there is a provision of law that so requires, but not automatically. There is not a constitutional requirement.

The CHAIRMAN. OK. I understand that.

Before we terminate our discussion, Secretary Christopher, do any staff members have any additional questions to ask on behalf of members?

[No response.]

The CHAIRMAN. Thank you, Mr. Secretary. We very much appreciate your bearing with us during our often-interrupted operation this afternoon.

Mr. CHRISTOPHER. Not at all.

Thank you, Senator Glenn.

The CHAIRMAN. Our next panel will consist of two persons instead of three. We will ask Mr. Li to appear alone at the end of hearing.

The two panelists will be Mr. Robert P. Parker, president of the American Chamber of Commerce in Taiwan, in Taipei; representing the Honorable David M. Kennedy, chairman of the board of the U.S.-ROC Economic Council will be Mr. William N. Morell, Jr., of Crystal Lake, Ill., who is the president of that organization.

Gentlemen, we welcome you here today. We would welcome your statements either in abbreviated versions or in their entirety. In any case, the entire testimony will be included in the record.

Mr. Parker, would you please lead off.

STATEMENT OF ROBERT P. PARKER, PRESIDENT, AMERICAN CHAMBER OF COMMERCE IN THE REPUBLIC OF CHINA, TAIPEI, TAIWAN

Mr. PARKER. Thank you, Mr. Chairman.

It was my privilege to appear before this committee last February when I testified on behalf of the American Chamber of Commerce in the Republic of China on what became the Taiwan Relations Act.

I appreciate the opportunity to appear before you again today on behalf of our members, more than 530 of them, in connection with the question of the administration's intent on continuing in effect the treaties and other international agreements between the United States and Taiwan, with special emphasis on the air transport agreement.

By way of background, it appeared until very recently that there was no issue regarding the continuation of the more than 50 treaties and other agreements between the United States and Taiwan as of the end of last year. Congress clearly had provided for their continuation in section 4(c) of the Taiwan Relations Act, and even the administration had been explicitly reassuring on this point at the time of normalization.

On August 31, however, Vice President Mondale announced in Canton that one of these international agreements, the air transport agreement governing civil aviation matters between the United States and Taiwan, would be terminated in connection with negotiations for a new air agreement with Peking. The Vice President added that the existing United States-Taiwan agreement would be replaced by what he called an "informal, unofficial arrangement."

This announcement was made to the press at a meeting, which I attended, between the Vice President and representatives of all American Chambers of Commerce in the Asia-Pacific area.

Assistant Secretary of State Richard Holbrooke, who was traveling with the Vice President, later said, in a conversation with me that the administration intended eventually to convert all existing treaties and executive agreements with Taiwan into unofficial agreements because this allegedly would be "consistent with the whole policy of normalization."

A similar statement was made to United Press International and I believe based on State Department background, leading them to report that "President Jimmy Carter's administration wants to terminate all the remaining agreements with Taiwan or put them on an unofficial basis."

On September 27, under questioning by Senator Javits, Assistant Secretary Holbrooke gave a different version of the policy, telling this committee that the administration's intent was "selectively to transfer some" of the treaties and agreements into "unofficial" status.

The CHAIRMAN. Who was that?

Mr. PARKER. That was Secretary Holbrooke, appearing before this committee and responding to questions by Senator Javits.

We believe that any systematic dismantling of existing agreements, whether selective or not, would be contrary to the express representations made to American business and to the Congress at the time of normalization. After all: we had been repeatedly assured, in the words of the State Department's Legal Adviser, Mr. Hansell, when he testified before this committee, that the:

Treaties and other international agreements between the United States and Taiwan at the time of normalization will remain in force, except that the Mutual Defense Treaty and related agreements will terminate at the end of this year.

Similar unequivocal assurances were given in the Presidential memorandum of December 30 of last year, the joint State-Commerce-National Security Council briefing for businessmen on January 15, 1979 at the State Department, the congressional testimony of Secretary Christopher and others.

At the urging of our chamber and others who appeared before this committee and the House Foreign Affairs Committee in February, the Congress underscored the importance of those assurances by writing them into law in section 4(c) of the act. I want to emphasize that American businessmen have placed great reliance on this provision of the act in their individual and collective decisions that normal commercial relationships with Taiwan can be successfully maintained.

Since those developments, there has been a further refinement of the issue, first in the letter sent by Assistant Secretary of State Brian Atwood to Chairman Church and Senator Javits, and also to Chairman Zablocki of the House Foreign Affairs Committee. This statement was mirrored again today in the testimony of Deputy Secretary Christopher.

This statement—essentially the same statement in all of its various forms—at least frames and more precisely refines the issue so that the balance of my remarks today will be made within its context.

Stripped of its deliberate ambiguities and qualifications, the administration statement would be, except as it relates to the air transport agreement, a welcome, useful, and acceptable response to the uncertainties previously created by mutually incompatible positions of the State Department. The statement's categorization and analysis of the existing treaties and agreements appear reasonable and reflect a degree of thoughtful consideration not found in the administration's earlier pronouncements.

It is, therefore, deeply to be regretted that the statement has been so riddled with overly careful qualifications as to deprive it of the value it might have had. Consider, for example, that in both the At-

wood letter and in Secretary Christopher's testimony, which we just have heard, the administration states that it merely is giving its preliminary views concerning these treaties and agreements with Taiwan.

We find it disconcerting in the extreme that almost 1 year after the normalization announcement and many months after passage of the Taiwan Relations Act the State Department only can give a preliminary and not a definitive statement of its position on these agreements.

We also note that whenever in the statement the State Department appears to be articulating a policy on which some reliance could be placed, this policy immediately is qualified by conditions which render it virtually meaningless.

For example, they state:

"We see no reason at this time to take any action with respect to these agreements." Or they state "After further review and as changing circumstances warrant, we may wish to take further action with respect to certain of these agreements."

American businessmen in Taiwan fully appreciate that we live in a rapidly changing world and that these changes can have relevance for U.S. diplomacy. We have no wish to deny the administration a degree of needed flexibility in this area.

Recent events plainly show, however, that unless the administration is forced to define vague phrases like "as changing circumstances warrant," neither American businessmen nor the Congress can know with assurance what section 4(c) of the act really means when it says that existing agreements with Taiwan will continue in effect until terminated in accordance with law.

The current controversy over the air transport agreement is a clear case in point.

In the Atwood letter and, less expansively, in the Christopher testimony, the State Department argues that the air transport agreement should be replaced because it was executed in Nanking in 1946, refers to landing rights on the Chinese mainland, and a new agreement with Taiwan would "improve United States-Taiwan air services and bring the current agreement into conformity with our international aviation policy."

While these arguments have at least superficial plausibility, there is reason to question whether they represent the true motive for the administration's present desire to terminate this agreement.

None of the arguments are new. All of them were well known at the time of normalization. Even so, the administration did not exclude the air transport agreement when it said earlier this year that all existing treaties and agreements with Taiwan, other than the Mutual Defense Treaty, would continue in effect.

Moreover, the administration obviously knew at the time of normalization that various agreements, including a civil aviation agreement, would be entered into with the PRC in the future. They nevertheless did not say or imply that continuation of our existing nonmilitary agreements with Taiwan would be limited only until the time any such new agreements might be reached with Peking. Likewise, they did not say that the Taiwan agreements would be continued "in substance," but not in form. If they had, and if Congress had agreed, all of the existing agreements could have been converted to "unofficial" agreements

with the stroke of a pen under section 6(b) of the act, and section 4(c) need never have been written.

One is forced to conclude that the State Department either deliberately misled the Congress and the American people or has suddenly and ill-advisedly reversed a carefully considered policy on which great reliance has been placed. We believe the latter is the case, and we find the genesis of it quite disturbing.

Deputy Secretary Christopher testified that the air transport agreement with Taiwan "has become a hindrance" to reaching a civil air agreement with the PRC and admitted that the United States agreed to drop the air transport agreement in order to pursue negotiations with Peking.

This, then, appears to be the real reason for the administration's action: Peking's bargaining ploy involved asking the administration to terminate or replace the existing agreement with Taiwan, in spite of what our Government had publicly committed itself to in section 4(c) of the act, and the administration promptly capitulated.

This is precisely why the American Chamber in Taiwan is so dissatisfied with the administration's hedging statement that it sees no reason "at this time" to terminate 29 other agreements with Taiwan, including the Treaty of Friendship, Commerce, and Navigation.

The administration clearly has shown in the context of the air transport agreement that it is unwilling to stand up to a demand by Peking for further dismemberment of American ties with Taiwan, our commitments under section 4(c) of the act notwithstanding.

We do not oppose the contemplated air agreement with the PRC or other steps to improve U.S. relations with mainland China, provided they are not taken at the expense of Taiwan or of American business interests in Taiwan. Nor do we necessarily challenge the administration's power to terminate the air transport agreement under article 12 of the agreement.

Incidentally, I learned this morning that formal notice of termination of the agreement was given yesterday, November 14, 1979, to Taiwan.

The CHAIRMAN. Let me ask you about your previous statement.

You say "at the expense of business interests in Taiwan." Do you have any indication that that is being done now? It was my understanding this is expanding the potential of U.S. business interests.

Mr. PARKER. I think when steps are taken which undermine American confidence that the commitment made by the American Government under the Taiwan Relations Act means in fact what it says, then that involves a diminishing of business confidence generally which affects the entire relationship of United States business with Taiwan.

The CHAIRMAN. Thank you.

Please continue with your statement.

Mr. PARKER. The fact that the administration yesterday did give notice, formal 1-year notice for termination of the air transport agreement, itself is a matter of some particular concern. The fact that they were not willing to wait even 1 additional day until this hearing was held is noteworthy. If that is all the deference the State Department is willing to give to congressional intent under the TRA, then American businessmen are going to be very concerned.

We submit that the administration's action regarding the air transport agreement with Taiwan contravenes the intent of Congress as

expressed in one of the symbolically and substantively most important provisions of the TRA and threatens to undermine confidence regarding our future relations with Taiwan which the TRA did so much to inspire.

We believe that new agreements can be concluded between the United States and the People's Republic of China without jeopardizing our good relations with Taiwan.

If the State Department, however, is allowed to selectively slice off yet another treaty or agreement with our ally on Taiwan each time efforts at cooperation with the PRC are pursued, we not only will damage our commercially more important relationship with Taiwan, but we also will injure our own national interests by calling into question the dependability of our public international commitments.

The American Chamber of Commerce urges this committee and the Congress to insist that the administration honor its earlier pledges and Congressional intent as expressed in the TRA by keeping in force all existing treaties and other international agreements with Taiwan until they expire in accordance with their terms. If circumstances require changes in the agreements from time to time, our national interest can better be served by amendments within the framework of the existing agreements than by allowing them to be reduced to what the administration calls "informal, unofficial arrangements."

American businessmen in Taiwan need to know that the phrase "changed circumstances" as used in the administration's statement does not mean merely a new demand dictated to the State Department by the PRC.

The Taiwan Relations Act has proven itself to be an outstanding legislative contribution to U.S. foreign policy. As well designed as the act clearly is, however, the history of its implementation to date raises certain important questions. It is vital to our country's credibility and to maintaining the excellent relations which exist with Taiwan in spite of normalization that there be no doubt the act means, in fact, what it appears to say and will not be compromised in application by the executive branch.

Thank you, Mr. Chairman.

[Mr. Parker's prepared statement follows:]

PREPARED STATEMENT OF ROBERT P. PARKER

Mr. Chairman and members of the Committee. My name is Robert P. Parker. I was privileged to appear before this Committee last February, when I testified on behalf of the American Chamber of Commerce in the Republic of China at your hearings on what came to be the Taiwan Relations Act (the "Act"). I appreciate the opportunity to appear before you again today, on behalf of our more than 530 members, in connection with an important question which has arisen under the Act: that is, the Carter Administration's intent regarding the existing treaties and other international agreements between the United States and Taiwan, with special emphasis on the Air Transport Agreement.

BACKGROUND

Until recently, it appeared that there was no issue regarding the continuation of the more than 50 treaties and other international agreements (other than the Mutual Defense Treaty) in effect between the U.S. and Taiwan as of the end of last year. Congress had clearly provided for their continuation in Section 4.C of the Act, and even the Administration had been explicitly reassuring on this point at the time of "normalization."

On August 31st, however, Vice President Mondale announced in Canton that one of these international agreements, the Air Transport Agreement governing

civil aviation matters between the U.S. and Taiwan, would be terminated in connection with negotiations for a new air agreement with Peking. The Vice President added that the existing U.S.-Taiwan agreement would be replaced by an "informal, unofficial arrangement." This announcement was made to the press at a meeting, which I attended, between the Vice President and representatives of all American Chambers of Commerce in the Asia-Pacific area.

Assistant Secretary of State Richard Holbrooke, who was travelling with the Vice President, later stated, in response to my question, that the Administration intends eventually to convert all existing treaties and executive agreements with Taiwan into "unofficial agreements" because this allegedly would be "consistent with the whole policy of normalization. A United Press International dispatch written from Canton on August 31st and obviously based on State Department "background," also reported that "President Jimmy Carter's Administration wants to terminate all the remaining formal agreements with Taiwan or put them on an unofficial basis."

On September 27th, under questioning by Senator Jacob Javits, Assistant Secretary Holbrooke gave a slightly different version of the policy, telling this Committee that the Administration's intent was "selectively to transfer some" of the treaties and agreements into "unofficial" status.

Any systematic dismantling of existing treaties and agreements, whether "selective" or not, would of course be contrary to express representations made to American businessmen and to the Congress at the time of "normalization." I so testified at a hearing of the House Foreign Affairs Committee on October 23rd. We had, after all, been repeatedly assured, in the words of the State Department's Legal Advisor in his February 4, 1979, testimony to this Committee, that "treaties and other international agreements between the United States and Taiwan at the time of normalization will remain in force, except that the Mutual Defense Treaty and related agreements will terminate at the end of this year." Similar unequivocal assurances were given in the Presidential Memorandum of December 30, 1978, the joint State/Commerce/NSC briefing for businessmen and others on January 15, 1979, the congressional testimony of Deputy Secretary of State Warren Christopher, and numerous other instances. At the urging of our Chamber and others, the Congress underscored the importance of those assurances by writing them into law in Section 4.C of the Act. American businessmen have placed great reliance on this provision of the Act in deciding that normal commercial relations with Taiwan can be successfully maintained.

THE CURRENT ISSUE

Currently, however, the operative statement of the Administration's position seems to be in Assistant Secretary of State Brian Atwood's October 30, 1979, letter to Senator Javits, responding to the Senator's September 24th inquiry of Assistant Secretary Holbrooke, and in the almost identically worded testimony of Deputy Secretary Christopher to the House Foreign Affairs Committee on November 8th. At the very least this statement frames and more precisely refines the issue. The balance of my remarks will accordingly be within the context of that statement.

Stripped of its deliberate ambiguities and qualifications, the Administration statement would (except as to the Air Transport Agreement) be a welcome, useful and acceptable response to the uncertainties previously created by mutually incompatible positions of the State Department. The statement's categorization and analysis of the existing treaties and agreements appear reasonable and reflect a degree of thoughtful consideration not found in the Administration's earlier pronouncements.

It is, therefore, deeply to be regretted that the statement has been so riddled with overly-careful qualifications as to deprive it of the value it might have had. Consider, for example, the following:

In both the Atwood letter and the Christopher testimony, the Administration states that it is giving its "preliminary" views on the treaties and agreements with Taiwan. It is disconcerting in the extreme that almost one year after the President's "normalization" announcement and months following passage of the Act, the State Department can give only a "preliminary" and not a definitive statement of its position on these agreements.

Wherever in the statement the State Department appears to be articulating a policy on which some reliance can be placed, that policy is immediately qualified by conditions which render it meaningless, as in: "We see no reason at this time to take any action with respect to these [29 specified] agreements", or, "After further review and as changing circumstances warrant,

we may wish to take further action with respect to certain of these agreements" (emphasis added).

American businessmen in Taiwan fully appreciate that we live in a rapidly changing world and that these changes can have relevance for U.S. diplomacy. We have no wish to deny the Administration a degree of needed flexibility in this area. Recent events plainly show, however, that unless the Administration is forced to define vague phrases like "as changing circumstances warrant", neither American businessmen nor the Congress can know with assurance what Section 4.C of the Act really means when it says that existing agreements with Taiwan will continue in effect until terminated in accordance with law. The current controversy over the Air Transport Agreement is a clear case in point.

In the Atwood letter and, less expansively, in the Christopher testimony, the State Department argues that the Air Transport Agreement should be replaced because it was executed in Nanking in 1946, refers to landing rights on the Chinese mainland, and a new agreement with Taiwan would "improve U.S.-Taiwan air services and bring the current agreement into conformity with our international aviation policy". While these arguments have at least superficial plausibility, there is reason to question whether they are the true motive for the Administration's present desire to terminate this Agreement. None of the arguments is new. All of them were well known at the time of "normalization"; even so, the Administration did not exclude the Air Transport Agreement (which has been understood since 1950 to apply only to Taiwan) when it said earlier this year that all existing treaties and agreements with Taiwan, other than the Mutual Defense Treaty and related agreements, would continue in effect.

Moreover, the Administration obviously knew at the time of "normalization" that various agreements, including a civil aviation agreement, would be entered into with the PRC in the future. They nevertheless did not say or imply that continuation of our existing non-military agreements with Taiwan would be limited only until the time any such new agreements might be reached with Peking. Likewise, they did not say that the Taiwan agreements would be continued "in substance" but changed in form. If they had, and if Congress had agreed, all of the existing agreements could have been converted to "unofficial" status with the stroke of a pen and Section 4.C of the Act need never have been written.

One is forced to conclude that the State Department either deliberately misled the Congress and the American people or has suddenly and ill-advisedly reversed a carefully considered policy on which great reliance has been placed. We believe the latter is the case, and we find the genesis of it quite disturbing. Deputy Secretary Christopher testified that the Air Transport Agreement with Taiwan "has become a hindrance" to reaching a civil air agreement with the PRC and admitted that the United States agreed to drop the Air Transport Agreement in order to pursue negotiations with Peking. This, then, appears to be the real reason for the Administration's action: Peking's bargaining ploy involved asking the Administration to drop or replace the existing agreement with Taiwan, in spite of what our government had publicly committed itself to in Section 4C of the Act, and the Administration promptly capitulated.

This is precisely why the American Chamber in Taiwan is so dissatisfied with the Administration's hedging statement that it sees no reason "at this time" to terminate 29 other agreements with Taiwan, including the Treaty of Friendship, Commerce and Navigation. The Administration has clearly shown, in the context of the Air Transport Agreement, that it is unwilling to stand up to a demand by Peking for further dismemberment of American ties with Taiwan, our commitments under Section 4.C of the Act notwithstanding.

We do not oppose the contemplated air agreement with the PRC or other steps to improve U.S. relations with mainland China, provided they are not taken at the expense of Taiwan or of American business interests in Taiwan. Nor do we necessarily challenge the Administration's power to terminate the Air Transport Agreement under Article 2 of the Agreement. We do submit that the Administration's proposed action¹ regarding the agreement with Taiwan contravenes the clear intent of Congress as expressed in one of the symbolically and substantively most important provisions of the Act and threatens to undermine confidence regarding our future relations with Taiwan which the Act did so much to inspire.

We believe that new agreements can be concluded between the United States and the PRC without jeopardizing our good relations with Taiwan. If, however,

¹ It was learned this morning that formal notice of termination of the Agreement was given to Taiwan yesterday, November 14, 1979.

the State Department is allowed "selectively" to slice off yet another treaty or agreement with our historic ally on Taiwan each time efforts at cooperation with the PRC are pursued, we will not only damage our commercially more important relationship with Taiwan, but we will also injure our own national interest by calling into question the dependability of our public commitments.

The American Chamber of Commerce urges this Committee and the Congress to insist that the Administration honor its earlier pledges and congressional intent as expressed in The Taiwan Relations Act by keeping in force all existing treaties and other international agreements with Taiwan until they expire in accordance with their terms. If circumstances require changes in the agreements from time to time, our national interest can certainly be better served by amendments within the framework of the existing agreements than by allowing them to be reduced to what the Administration calls "informal, unofficial arrangements."

CONCLUSION

The Taiwan Relations Act has proven itself to be an outstanding legislative contribution to U.S. foreign policy. As well designed as the Act clearly is, however, the history of its implementation to date raises certain important questions. It is vital to our country's credibility, and to maintaining the excellent relations which exist with Taiwan in spite of "normalization," that there be no doubt that the Act means in fact what it appears to say and will not be compromised in application by the executive branch.

The CHAIRMAN. Thank you very much, Mr. Parker.

I will have to leave to vote again, unfortunately.

Mr. Morell, I have read Mr. Kennedy's statement which you will present. Let me ask you to deliver it orally while I leave to vote so that we all may have the benefit of hearing it. I will return as soon as possible after voting.

I will leave Mr. Ford in charge of the hearing until I return. I will be back in only a few minutes.

Thank you.

STATEMENT OF WILLIAM N. MORELL, JR., PRESIDENT, USA-ROC ECONOMIC COUNCIL, CRYSTAL LAKE, ILL.

Mr. MORELL. Thank you.

First may I express Mr. Kennedy's regrets that he was not able to come. He had a previous commitment which he was not able to break.

I am Bill Morell. I am president of the USA-ROC Economic Council. Mr. Kennedy has given me a statement to read, and I would ask that the entire statement be placed in the record.

As I read it, I will exercise some of it in the interest of time.

I first want to thank the Senate Foreign Relations Committee and the entire Congress for providing a strong Taiwan Relations Act. I firmly believe this bill not only is of great assistance to the U.S. business community but, by extension, also benefits our national income and employment and, more broadly, our national interests. Significantly, it also enhances the future viability of Taiwan which has long been a friend and ally and a valued economic partner of the United States.

The final bill approved by the Congress and signed by the President was an enormous improvement over the bill initially proposed and for this the Senate Foreign Relations Committee can take a large measure of the credit.

While I obviously cannot speak for all of the members of our Council, most of those who have given us their views indicate that since the act was signed in April, business relations with Taiwan generally have

progressed satisfactorily. This, of course, has been a major goal of both the administration and the Congress.

As we approach the 1980's, it is important to appreciate the significance of this relationship to our economy over the next decade. Even assuming a substantial reduction in the rate of growth of our trade with Taiwan during this period—a reduction, incidentally, which may not occur—we conservatively can expect the volume of trade for all those 10 years combined to exceed \$250 billion.

I have talked to some of the top economic officials on Taiwan about these projections and they feel, as I do, that they are conservative, that the number very easily could run over this figure. But I would caution, because there has been a lot of talk in this hearing about the fact that things are going along so well, that we can expect substantially greater competition from Europe as well as Japan in the decade ahead. The Chinese on Taiwan are working very hard to expand their trading relations with Europe. Two of their leading officials, the Governor of the Central Bank, who is also head of the Planning Board, and the Minister of Finance, were in Europe recently. I am confident that they are doing what they can to expand relations with that part of the world.

If they lose confidence in our intentions for the future, they do have other alternatives than expanding trade with the United States, and we will be the loser.

Our Council recently held its Third Joint Business Conference with Taiwan this past June in Los Angeles where over 700 corporate representatives from both sides viewed future business opportunities and prospects for expanded trade under the new political ground rules. This was the largest gathering of the year for United States and Chinese company officials concerned with business relations between our two countries. The mood clearly was optimistic and I am confident that the meeting provided the Chinese representatives from Taiwan with a strong reassurance of U.S. business support for the future.

I might add that the presence of Senator Stone as our principal speaker gave considerable weight and credibility to this reassurance.

Two months ago, we arranged for representatives from all of the 50 States and from the National Governors' Association in Washington, D.C. to participate in week-long discussions in Taipei on the Taiwan market. This trade and investment forum was supported by the ROC Board of Foreign Trade in line with its "Buy American" policy, which is designed to help reduce Taiwan's large trade surplus with the United States.

I report this to the committee because here again there was little doubt among those senior state officials participating that under the Taiwan Relations Act there are impressive future opportunities for business with Taiwan. I also believe this forum helped to dramatize the immense economic stake that we have in Taiwan's future.

As for the Republic of China itself, there continues to be a rapid expansion in its economic relations, not only with the United States, but with other countries of the world as well. There is no doubt that Taiwan in the 1980's will be one of the largest trading, banking, and shipping centers in all of Asia. Its world trade this year probably will exceed \$30 billion, and in the decade ahead, under the same conservative assumptions I mentioned earlier for U.S. trade, its total imports

and exports for the 10-year period are expected to achieve and may very well exceed the staggering total of \$800 billion.

This is a bright picture, but one that well could be clouded by a number of developments presently on the horizon. In my previous testimony in February, I stressed that the future of this relationship depends on the maintenance of business confidence, not only in the United States but on Taiwan.

The psychological atmosphere is governed to a great extent by the attitudes of both governments not only toward our future business ties but toward overall relationship as well. It would not be difficult to trigger the kind of uneasiness found in the business community prior to the Taiwan Relations Act if our businessmen or those on Taiwan sensed a developing erosion in the ties between the two countries, either through neglect or through the assignment of a significantly lower priority to our relations with that country.

The recent decision to renegotiate our civil air agreement with the Republic of China through the American Institute in Taiwan and the Coordination Council for North American Affairs, whatever the intention, has caused some uneasiness in the U.S. business community and on Taiwan, not merely for reasons related to this agreement but for the precedent it could set for all other treaties and agreements.

Prior to the passage of the Taiwan Relations Act, we and the Congress were assured that all treaties and agreements would remain in force. As you know, and it has been discussed at length here today, the law itself states this specifically in section 4(c). We did not take this to mean that there would be no changes or amendments to these treaties and agreements; but we did understand that the basic agreements themselves would be retained with whatever modifications seemed appropriate.

We now understand that the plan is to have the civil air agreement renegotiated by the CCNAA and the AIT and to have the existing agreement terminated. In discussing these proposed changes, it has been said by at least one senior U.S. Government official that whatever new document is negotiated would not only be unofficial but would also be "informal." Moreover, the new document is referred to not as an agreement, but as an "arrangement."

Administration spokesmen recently have stated that the new agreement will have full force and effect under U.S. law, though we are not certain at this time whether it will be called an agreement or an arrangement.

We also have been informed that much of the new agreement will be similar to civil air agreements being negotiated with other nations around the world. We are told that the renegotiation of these agreements is prompted in part by a number of important new requirements in our international civil air policy.

The foregoing explanation suggests that there are certain unique considerations requiring the renegotiation of a new civil air agreement with Taiwan and that these considerations would not apply in the case of other treaties and agreements when changes in them might be required in the future. It would appear, therefore, that modifications of such treaties and agreements could be handled simply by amendment, rather than through renegotiation of an entirely new agreement.

Deputy Secretary of State Christopher has stated recently that it is not U.S. policy to convert or terminate all the treaties and agreements we maintain with Taiwan. Each agreement, as the circumstances require, will be considered on its own merits, on a case-by-case basis.

We, in our Council, are not qualified to judge either the legal aspects of this issue or the full meaning of the assurances recently provided by the Department of State. We do know that uncertainties have been created for some businessmen and for the Government on Taiwan. We believe that the Congress is performing a valuable service by consulting with legal authorities competent to speak to these questions and by soliciting the intentions and assurances of senior officials from within the administration.

The manner in which we handled the civil air agreement can, I believe, affect the credibility of the United States in other areas covered by the act. The law provides in section 3 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."

There were disturbing reports some months ago that the 1 year moratorium on new commitments of military supplies to Taiwan would be extended beyond 1979. These rumors were followed by official U.S. statements that these reports were incorrect. Recently, however, a new question has been raised which appears to qualify these assurances. The qualification, if we understand it correctly, is that the moratorium will be continued if the Mutual Defense Treaty does not expire on January 1, 1980.

We are not aware that this condition ever has been stated before. This, of course, adds another element of uncertainty regarding U.S. intentions in this area.

Thus far, there has been little clarification regarding Taiwan's future prospects for acquiring modern defensive weapons, particularly more advanced aircraft to replace the F-5E. Given the very long lead time required to put new aircraft into operational squadrons and the possibility that the PRC's offensive capabilities may be strengthened by acquisitions from other countries, it would be helpful if there could be reassurances regarding our intentions to help modernize Taiwan's defense forces.

The net effect of these problems and a number of others I have not discussed today, is that questions are beginning to arise both within the United States and on Taiwan as to whether the act, which provided such strong assurances when it was signed, will be carried out in the spirit intended by the Congress.

In conclusion, I want to express to you our gratitude for your efforts in strengthening the Taiwan Relations Act and in exercising your oversight responsibilities through these hearings.

That concludes Ambassador Kennedy's statement.

[Ambassador David M. Kennedy's prepared statement follows:]

PREPARED STATEMENT OF HON. DAVID M. KENNEDY

Mr. Chairman and distinguished members of the Committee, I welcome the opportunity you have provided our Council to appear before you today. In an earlier hearing held by the Senate Foreign Relations Committee in February of this year I provided you with background information on the USA-ROC Economic Council and on my role as Chairman of that organization. I will not bother

to review this with you again today except to report that our Council's membership and the scope of its activities have continued to expand.

I first want to thank the Senate Foreign Relations Committee and the entire Congress for providing a strong Taiwan Relations Act. I firmly believe this Bill not only is of great assistance to the U.S. business community but, by extension, also benefits our national income and employment and more broadly, our national interests. Significantly, it also enhances the future viability of Taiwan which has long been a friend and ally and a valued economic partner of the United States. The final Bill approved by the Congress and signed by the President was an enormous improvement over the Bill initially proposed and for this the Senate Foreign Relations Committee can take a large measure of the credit.

While I obviously cannot speak for all of the members of our Council, most of those who have given us their views indicate that since the Act was signed in April, business relations with Taiwan have generally progressed satisfactorily. This, of course, has been a major goal of both the Administration and the Congress.

As you may recall, our two-way trade with the Republic of China in 1978 stood at approximately \$7½ billion. At that time Taiwan was our number 8 trading partner in the world. This year we confidently expect that our trade volume will rise to \$10 billion—an increase of over 30 percent.

As we approach the eighties, it is important to appreciate the significance of this relationship to our economy over the next decade. Even assuming a substantial reduction in the rate of growth of our trade with Taiwan during this period—which, incidentally may not occur—we can conservatively expect the volume of trade for all those ten years combined to exceed \$250 billion.

Our Council recently held its Third Joint Business Conference with Taiwan this past June in Los Angeles where over 700 corporate representatives from both sides viewed future business opportunities and prospects for expanded trade under the new political ground rules. This was the largest gathering of the year for the United States and Chinese company officials concerned with business relations between our two countries. The mood was clearly optimistic and I am confident that the meeting provided the Chinese representatives from Taiwan with a strong reassurance of U.S. business support for the future. I might add that the presence of Senator Stone as our principal speaker gave considerable weight and credibility to this reassurance.

Two months ago, we arranged for representatives from all of the fifty states and from the National Governors' Association in Washington, D.C. to participate in week-long discussions in Taipei on the Taiwan market. This Trade and Investment Forum was supported by the ROC Board of Foreign Trade in line with its "Buy American" policy, which is designed to help reduce Taiwan's large trade surplus with the United States. I report this to the Committee because here again there was little doubt among those senior state officials participating, that under the Taiwan Relations Act there are impressive future opportunities for business with Taiwan. I also believe this Forum helped to dramatize the immense economic stake we have in Taiwan's future.

As for the Republic of China itself, there continues to be a rapid expansion in its economic relations not only with the United States but with other countries of the world as well. There is no doubt that Taiwan in the eighties will be one of the largest trading, banking and shipping centers in Asia. Its world trade this year will probably exceed \$30 billion and in the decade ahead, under the same conservative assumptions I mentioned earlier for U.S. trade, its total imports and exports for the ten year period are expected to achieve, and possibly exceed, the staggering total of \$800 billion.

Taiwan's gold and gross foreign exchange reserves are now in excess of \$7 billion—this is an exceptionally large reserve in relation to its annual imports—and it has one of the strongest international debt positions in the world. Its power production over the next decade will nearly triple and the value of its machinery production could well increase seven-fold. This is pertinent to your hearings not only because it indicates the contribution we can expect to Taiwan's security and well-being from the future growth of its economy but it also reflects the optimism of the ROC government, the business community there and the people generally. In fact, the Taiwan Relations Act as it was ultimately passed by the Congress has had a great deal to do with this optimism. We can compare this, incidentally, with the general reaction during the period immediately after the Shanghai Communique when all indicators were bearish—real estate, investment, the value of the Taiwan dollar and the stock market were all down; only capital

flight was up. By contrast, in the past six months these indicators have all reflected a quite bullish mood.

This is a bright picture but one that could well be clouded by a number of developing problems on the horizon. In my previous testimony in February, I stressed that the future of this relationship depends on the maintenance of business confidence not only in the United States but on Taiwan. The psychological atmosphere is governed to a great extent by the attitudes of both governments not only toward our future business ties but toward our overall relationship as well. It would not be difficult to trigger the kind of uneasiness found in the business community prior to the Taiwan Relations Act if our businessmen or those on Taiwan sensed a developing erosion in the ties between the two countries either through neglect or from the assignment of a significantly lower priority to our relations with that country.

The recent decision to renegotiate our Civil Air Agreement with the Republic of China through the American Institute in Taiwan and the Coordination Council for North American Affairs—whatever the intention—has caused some uneasiness in the U.S. business community and on Taiwan not merely for reasons related to this agreement but for the precedent it could set for all other treaties and agreements.

Prior to the passage of the Taiwan Relations Act, we and the Congress were assured that all treaties and agreements would remain in force. As you know, the law itself states this specifically in Section 4(c). We did not take this to mean that there would be no changes or amendments to these treaties and agreements; but we did understand that the basic agreements themselves would be retained with whatever modifications seemed appropriate.

We now understand that the plan is to have the Civil Air Agreement renegotiated by the CCNAA and the AIT and to have the existing agreement terminated. In discussing these proposed changes it has been said by at least one senior U.S. Government official that whatever new document is negotiated would not only be unofficial but would also be "informal." Moreover, the new document is referred to not as an agreement but as an "arrangement".

Administration spokesmen have recently stated that the new agreement will have full force and effect under U.S. law; though we are not certain at this time whether it will be called an agreement or an arrangement.

We have also been informed that much of the new agreement will be similar to civil air agreements being renegotiated with other nations around the world. We are told that the renegotiation of these agreements is prompted, in part, by a number of important new requirements in our international civil air policy.

The foregoing explanation suggests that there are certain unique considerations requiring the negotiation of a new Civil Air Agreement with Taiwan and that these considerations would not apply in the case of other treaties and agreements when changes in them might be required in the future. It would appear, therefore, that modifications of such treaties and agreements could be handled simply by amendment rather than through renegotiation of an entirely new agreement. Deputy Secretary of State Christopher has stated that it is not U.S. policy to convert or terminate all of the treaties and agreements we maintain with Taiwan. Each agreement, as the circumstances require, will be considered on its own merits, on a case-by-case basis.

We are not qualified to judge either the legal aspects of this issue or the full meaning of the assurances recently provided by the Department of State. We do know that uncertainties have been created for some businessmen and for the government on Taiwan. We believe that the Congress can perform a valuable service by consulting with legal authorities competent to speak to these questions and by soliciting the intentions and the assurances of senior officials from within the Administration.

The manner in which we handled the Civil Air Agreement can, I believe, affect the credibility of the United States in other areas covered by the Act. The law provides in Section 3 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." There were disturbing reports some months ago that the one year moratorium on new commitments of military supplies to Taiwan would be extended beyond 1979. These rumors were followed by official U.S. statements that these reports were incorrect. Recently however, a new question has been raised which appears to qualify these assurances, the qualification, if we understand it correctly, is that the moratorium will be continued if the Mutual Defense Treaty does not expire on January 1, 1980. We are not aware that this condition has ever

been stated before. This of course adds another element of uncertainty regarding U.S. intentions in this area.

Thus far, there has been little clarification regarding Taiwan's future prospects for acquiring modern defensive weapons—particularly more advanced aircraft to replace the F-5E. Given the very long lead time required to put new aircraft into operational squadrons and the possibility that the PRC's offensive capabilities may be strengthened by acquisitions from other countries, it would be helpful if there could be reassurances regarding our intentions to help modernize Taiwan's defense forces.

The net effect of these problems and a number of others I have not discussed today, is that questions are beginning to arise both within the United States, and on Taiwan as to whether the Act, which provided such strong assurances when it was signed, will be carried out in the spirit intended by the Congress.

In conclusion, I want to express to you, Mr. Chairman and to members of the Committee, our gratitude for your efforts in strengthening the Taiwan Relations Act and in exercising your oversight responsibilities through these hearings.

Mr. FORD [committee staff]. Senator Glenn should be back momentarily. I would propose that we pause for a moment and hold the questions until the chairman returns.

[Pause.]

HARMFUL EFFECT ON BUSINESS INTERESTS

The CHAIRMAN. Gentlemen, you both have indicated concern about constancy or consistency and the effect on longer term relationships and other treaty and agreement matters that might be placed in doubt by recent activities with regard to this air transport agreement. I share some of those concerns.

I think, however, on this particular one, while I am not here to argue the administration's case, it has been indicated by officials on Taiwan that even they see advantages in this new air agreement. I realize they don't like the way in which this was handled, and I don't particularly care for that, either. But if we replace this agreement with an arrangement that is substantially better, I don't really see how this will harm business interests.

Mr. Parker, you indicated that you felt the confidence level might go down by the way we handle this more than by the actual substance that is being negotiated. Is that right?

Mr. PARKER. That's right, Senator. Of course, American businessmen are concerned at the prospect that if there were to be an impasse in the negotiations over this agreement, especially now, given the fact that the United States has given formal notice of termination, there is, in fact, a threat of a disruption of air service when the agreement expires.

But I think the more likely concern is simply that great reliance was placed on section 4(c) of the act when the TRA was passed. If the State Department intends to engage in a "salami-slicing" tactic, picking these agreements off one by one until finally there is nothing left, that certainly is going to erode business confidence.

The CHAIRMAN. I realize that. Nothing affects business activities so much as uncertainty. Both in the stock market here at home or in the international business realm, uncertainty is the worst enemy of business.

Mr. PARKER. Absolutely.

The CHAIRMAN. But I do not think the international business community really has suffered. As you indicated, on Taiwan business is up and investment has continued to expand, and I think to expand at a

far, far greater rate than any of us anticipated would be the case almost a year ago when the normalization process was started.

I certainly did not expect to see that same amount of expansion of business over this past year. So I wonder whether the fears of the business community are well grounded or if they are not?

Mr. PARKER. I think they are well grounded. I share your sense of surprise and awe at what has happened, and I think it is all the more remarkable when you consider that there really was a period of some pause during January and February in which a number of projects that otherwise would have been committed were placed on hold until the business community could see what the Congress was going to do in the TRA.

One reason why we had such confidence in the TRA was the belief that it meant that the administration would not do what it seems to be beginning to do with these treaties and agreements.

The CHAIRMAN. As I said before, I did not come here to argue the administration's case in this. I would hope that as each one of these is considered or renegotiated, they all come out to the apparent well-being and satisfaction of Taiwan which appears to be the case in this particular issue of the air transport agreement.

Apparently the people there were more concerned about how this occurred than they were about the expanded agreement which will take the place of the old air agreement.

Mr. PARKER. That's true.

I think there certainly are features of that agreement that are out-moded. But I think you yourself made the point that in the East, the distinction which we are fond of in the West, that between form and substance, does not really exist. Form is substance in the East.

The CHAIRMAN. I agree with that, as I pointed out a while ago.

Mr. MORELL. Mr. Chairman, if I may add a point, it is that the businessmen on Taiwan, the Government on Taiwan, are pursuing very assiduously trade relations now with Europe. Certainly an ingredient in all of this is that we have created an uncertainty in their minds, first by the December 15 decision and later on by other things that we have done which indicate that we do not give as high a priority to this relationship. I think what you will see over the next 10 years is that we probably are not going to have as large a share of this enormous increase in trade as in the past. We are talking about a possible trade for the United States of \$250 billion or more in the next decade. We would like to have that much trade. We hope that this question of confidence in the United States by the ROC will not rub off on our business relationship.

The CHAIRMAN. I would hope that it is true, too, and that it does not rub off.

With the Japanese experience before us having run a number of years, I wonder if that sets any precedent? Since they went through a "normalization" process, or whatever you want to call it, as we did, with Taiwan, look at what has happened to their trade. It has quadrupled, I think.

Mr. MORELL. They had very substantial increases in their trade.

The CHAIRMAN. Yes; they did. So apparently it did not affect them as much as they had anticipated at that time, either.

LEGAL DIFFICULTY IN AMENDING CIVIL AIR AGREEMENT

Senator Stone had left a question to be asked of Mr. Parker since he could not return to our hearing as he is involved on the Senate floor. Would there be any legal or technical difficulty simply in amending or modifying the civil air agreement with Taiwan, as you see it?

Mr. PARKER. I think there would not be. I believe that is the preferable way to proceed.

The CHAIRMAN. This next question is a followup to Senator Stone's previous question. Would not this approach be consistent with the Taiwan Relations Act?

Mr. PARKER. I certainly believe so.

The CHAIRMAN. Mr. Morell, would you care to comment on that question?

Mr. MORELL. I would agree completely.

The CHAIRMAN. Mr. Barnds of the committee staff has a question for you.

Mr. BARNDS. Thank you, Mr. Chairman.

Is Taiwan having any problems with its air services with other countries? Are these expanding and are these being done on an informal basis? Is our action in terminating this treaty going to have any impact on these?

Mr. PARKER. It is my impression that they have been able to continue operating relatively well.

As you know, at the time of Japan's severance of diplomatic relations, there was some difficulty in the aviation area. Japan Air Lines stopped flying to Taiwan and China Air Lines stopped flying to Japan.

Economic reasons, as much as anything else, seemed to bring about a restoration of service, although in a different form. Japan Air Lines lost \$60 million in 1 year. A good portion of it was lost due to the Taiwan business and the inability to fly through Taiwan's air space.

Other countries, though, have not followed the Japanese formula of setting up a separate subsidiary airline to fly to Taiwan and requiring China Air Lines, Taiwan's carrier, to use a separate airport, as the Japanese do.

Most recently, the Philippines has established air service with the PRC and aviation relationships between the Philippines and Taiwan seem to have gone on pretty much as before, although not without some interim difficulties. The Philippines attempted to impose a requirement on China Airlines that it change the name on its airplanes to refer to Taiwan rather than to China. But this eventually was dropped.

The CHAIRMAN. There have been some people to whom we have spoken from Taiwan who have indicated considerable happiness with the existing situation, compared to what other nations have done. Do you think there is a general feeling now of recovery from all of the events of the past year that is good for business, as opposed to what it was a year or so ago?

I have heard the arrangement referred to now as the "American formula," where there are defense arrangements and military sales, trade and other things continuing as normal. Is that the general attitude now on Taiwan?

Mr. MORELL. I think there is no question that business is booming there. All of the numbers indicate this. Trade is up and investment is up, as Mr. Christopher said this morning.

In discussions I have had with senior officials on Taiwan, many of them feel that this has been helped by the assurances of the Taiwan Relations Act. I think they are hopeful that some of the elements of that act can rub off on the European countries and perhaps on Japan as well.

Mr. PARKER. I think it always was rather difficult for some Western countries to see much of a parallel with what the Japanese had done. It struck them as a uniquely oriental solution to the problem. The American formula probably represents an even further outreach than perhaps most European countries would be asked to make.

Let me make one footnote to this. While the American formula has worked well, it certainly is not anything that the State Department ought to be congratulated upon. It is due really to the credit of the Congress in recognizing the deficiencies of what the State Department bargained for and the inadequacies of the bill that the administration proposed.

The CHAIRMAN. I would be the last one in the world to criticize you for that statement.

[General laughter.]

The CHAIRMAN. Gentleman, thank you very much for your presentations here today.

Dr. Li, please come up to the witness table. I have thoroughly read your advance testimony. Let me ask you to present it to us. I will have to leave but only briefly to cast another vote.

We appreciate your forbearance.

Please proceed.

[Dr. Li's biography follows:]

BIOGRAPHY OF VICTOR H. LI

Professor Li was born in China in 1941 and came to the United States six years later. Since 1974 he has been Lewis Talbot and Nadine Hearn Shelton Professor of International Legal Studies at Stanford University. From 1974-76 he was Director of the Center for East Asian Studies at Stanford.

He received a B.A. from Columbia College; J.D., Columbia Law School; LL.M., Harvard Law School and S.J.D., Harvard Law School. He is a member of the New York Bar. Prior to joining the Stanford faculty, he taught at Michigan Law School (1967-69) and Columbia Law School (1969-72).

His research interests center on political-legal work in the People's Republic of China, including control of deviancy, dispute resolution, regulation of the economy, and foreign trade practices. He also is a specialist on public international law, particularly problems involving United States-China relations.

His publications include *Law and Politics in China's Foreign Trade*, *Law Without Lawyers: A Comparative View of Law in China and the United States*, *De-recognizing Taiwan: The Legal Problems*, and *The Future of Taiwan*.

He has visited China several times since 1972, and is fluent in Mandarin and Cantonese.

STATEMENT OF DR. VICTOR H. LI, PROFESSOR OF INTERNATIONAL LEGAL STUDIES, STANFORD UNIVERSITY SCHOOL OF LAW, PALO ALTO, CALIF.

Dr. LI. I want to thank the subcommittee for the opportunity to appear at this hearing.

I will try to take a look at the broader issue of how to implement normalization with China, of which changes in the air transport agreement is but one part.

Normalization of Sino-U.S. relations, reinforced by the Taiwan Relations Act, established a stable equilibrium among the United States, China, and Taiwan. All three parties have a strong interest in preserving this equilibrium.

The preservation of this equilibrium should be the guiding principle in deciding how the general policy of normalization should be implemented in concrete matters, such as the amending or terminating of additional treaties and agreements.

The Taiwan Relations Act established an arrangement whereby all prior American relations with Taiwan continue as before, except that the Mutual Defense Treaty and some related military agreements were terminated and replaced by new security assurances. Moreover, the AIT and CCNAA were interposed between any government-to-government dealings. In this way, the United States achieved the laudable policy objective of normalizing relations with China while preserving the security and economic well being of Taiwan.

That Taiwan wants to preserve the present equilibrium goes without saying. Therefore, let me focus on the position of the PRC.

Despite some minor annoyances, I firmly believe that China is very satisfied with the overall direction of normalization. The United States continues to be an effective counterweight against the Soviet Union and also is an active participant in China's modernization effort through increased trade, investment, and technical and educational exchanges.

Resolution of the Taiwan issue occupies a lower place in China's agenda of priorities than modernization and defense against the Soviet Union. Indeed, I believe that China does not wish to disturb the status quo on Taiwan for the time being, and perhaps for quite a long time.

This point needs to be stressed, since it bears a critical relationship to the question of how the United States should concretely implement the policy of normalization.

China is vitally interested in establishing the principle of one China. Another major step was taken in that direction by the joint communique of December 15, 1978. At the same time, China realizes that, if pushed too hard, Taiwan could take some drastic step which would disturb the status quo, and that in turn may upset United States-China relations.

Let me develop this idea further, admitting at the outset that I am partly speculating. My intention is to provoke thought rather than predict the future.

As is well known, although the native Taiwanese comprise 80 to 85 percent of the population, most of the important government and party positions are held by mainlanders. For example, over 90 percent of the National Legislature members were elected to office from the mainland in 1947, 32 years ago.

In recent years, native Taiwanese, often supported by younger mainlanders, have been pressing for major political reform on that island. It is difficult to characterize these diverse persons by a single description. In general, they desire more control over their own destiny. Some may even favor an independent state of Taiwan. But they are sophisticated politicians who know that independence is opposed both

by the Nationalist Party, in part because its own legitimacy would be undercut, and by China, because such an action would violate the one-China principle.

One prominent suggestion being made is that Taiwan should cease asserting that it is the government of all of China and instead claim authority only over Taiwan and the neighboring islands. This adjustment would bring Taiwan's rhetorical position into closer accord with reality. In addition, Taiwan can strengthen its international position since other countries would be more willing to deal with Taiwan on this basis.

The suggestion has been resisted by the conservative elements within the Nationalist Party. While such an adjustment may help Taiwan internationally, it also will attack the basis of legitimacy of the central government which justifies limiting participation by native Taiwanese on the ground that the central government must represent many other provinces as well.

I am not arguing that some major political reform of the kind described above will in fact take place. There are other possible scenarios.

But, suppose the above did occur? If China felt that such an action by Taiwan constituted a move away from one-China principle or was a step toward independence, then I think it is highly possible that China would take some substantial action against Taiwan, possibly including the use of force.

Such a step may well bring China into conflict with the United States, a result desired by neither China nor the United States.

Consequently, I think China prefers leaving the status quo on Taiwan undisturbed for the time being rather than risk some largely unknown and uncontrollable political shift in Taiwan. There is evidence to support this proposition. China is taking a highly conciliatory stance toward Taiwan, saying that if Taiwan accepts the principle of reunification, it can retain its own economic and political system, as well as armed forces.

China is willing to accept some autonomous participation by Taiwan in the Olympics, so long as Taiwan does not claim to represent China. Chinese appeals to Taiwan are directed very much at the mainlanders, rather than at the local Taiwanese population.

I think China finds it easier to deal in the long run with the KMT [Nationalist Party] leaders who also espouse the one-China principle, than with native Taiwanese politicians who do not feel strong personal bonds with China.

Normalization has increased the pressures for major change in Taiwan. The KMT itself is making some proposals along the lines discussed above. In addition, there is an active, but delicate, political process developing whereby an important segment of Taiwanese opposition politicians seems to be joining forces with some members of the moderate wing of the KMT to form a broad-based political coalition to deal with the future of Taiwan.

I do not know where all this political activity is heading in Taiwan. In particular, I cannot say with assurance how efforts to change United States-Taiwan relations will affect Taiwan's internal political dynamic. Will further downgrading of relations, such as by terminating additional treaties and agreements, jeopardize the political and economic confidence of the people on Taiwan?

Will greater nervousness impel Taiwan toward conciliation with China in an effort to reduce the pressure? Or will it impel Taiwan toward independence in a double-or-nothing attempt to build a solid new international base?

These are some of the key questions as we try to decide what further steps to take in implementing the normalization of relations with China.

I respectfully submit that the U.S. Government does not know the answers to these questions either. Going further, I suspect it may not even believe that these are important questions. The United States seems concerned only with how a particular policy or action would impact directly on China. This attitude is a holdover from earlier times, when Taiwan was a passive party in United States-China relations who did essentially what we wanted it to do.

But the situation is rapidly changing. Taiwan's internal political dynamic is turning it into an independent party who can initiate action. Some of the actions it might initiate, such as a move toward independence, can lead to unhappy consequences for United States-China relations.

Let me summarize my basic premise: the United States has no interest in disturbing the status quo on Taiwan. For China, preserving the status quo, at least for the time being, is preferable to having to deal with uncertain and possibly undesirable change, particularly on an issue of less than highest priority. And in Taiwan itself, the various political forces are trying to work out a *modus vivendi* for dealing with their differences and their common problems.

Consequently, I think the United States should try to change the present equilibrium as little as possible unless some major developments alter United States-China relations or the situation on Taiwan. In operational terms for the handling of existing treaties and agreements, we should have a presumption in favor of making no changes unless a strong case can be made demonstrating the desirability of a new arrangement.

It would not be sufficient to argue that some corollary of the theory of normalization compels an additional step to be taken to carry out "the principle of normalization." The reasons are two-fold. First, at the time of normalization both sides said that cultural and commercial dealings with Taiwan can continue as before, and that only the Mutual Defense Treaty must be terminated. There is no abstract principle of normalization that requires the United States to go beyond the above arrangement. Second, I have tried to show that disturbing the present equilibrium is in no one's interest. Our relations with China may be damaged rather than enhanced by our continual chipping away at Taiwan in the name of implementing normalization.

An example of what might be a sufficient argument in favor of change is that the United States is undertaking a general effort to fundamentally revise all agreements of a particular category and the proposed alterations are so substantial that merely amending existing agreements is inadequate, then wholly new agreements might be signed.

From Secretary Christopher's testimony, the new air transport agreement being discussed with Taiwan does seem to fit this exception, although I am no expert in aviation law.

I think the problem with the handling of the air transport agreement lies elsewhere. First, there was a lack of consultation with Congress; second, there was some suggestion that the change is being made because of another rationale—that is, the 1946 air transport agreement was politically displeasing to China, it referred to routes between the China mainland and the United States, and such a reference directly contradicts U.S. recognition of the PRC as the sole, legitimate Government of China.

In pursuing this second rationale, we have to proceed carefully. To begin with, would China be satisfied if the original agreement were amended to eliminate reference to the mainland routes on the ground that the Taiwan authorities have no jurisdiction over the mainland, rather than merely “suspending” these routes as was done through an exchange of notes in 1950?

In addition, we should note that the Treaty of Friendship, Commerce, and Navigation signed in 1946 poses a similar problem of contradicting U.S. recognition of the PRC. Is termination of the air transport agreement one step toward termination of the Treaty of Friendship, Commerce, and Navigation? If not, some explicit assurance on this treaty should be given.

Where some change is necessary, it should be carried out in the least disruptive way. For treaties and agreements, the best approach is amending the original agreement through an exchange of letters between AIT and CCNAA, as was done recently for textiles and tariffs.

Finally, let me make a comment on style.

At the time of the passage of the Taiwan Relations Act, I was concerned that the United States as a nation, for better or worse, lacks the subtlety—or, if you will, is too straightforward—to handle the vagaries of the “Japanese formula.” This formula frequently requires that form prevail over substance and that some obvious contradictions should not be publicly pointed out.

For example, in the 1960's, China laid down the principle that Japanese corporations dealing with Taiwan could not trade with China. Subsequently, these corporations formed “dummy companies” to deal with one side while the parent dealt with the other. This practice was known to all concerned, but did not prevent China and Japan from developing a flourishing trade.

I wonder if the United States could have carried out this kind of notorious dummy trade. Some public figure or member of the media surely would have pointed out the extreme anomalies of the practice, thus embarrassing the PRC into denouncing it.

Perhaps the problems caused by differences in cultural style are insoluble. The United States is an open, legalistic, somewhat argumentative society, unwilling and unable to do things quietly. Our constitutional system also requires that the three branches of government act within a system of checks and balances. But we should note that the Japanese formula does require quietude and subtlety. In many instances, once an issue is raised in public, such as the continued legitimacy of certain treaties and agreements, China would feel some compulsion to insist that the agreements be terminated in accordance with “the principles of normalization” even where it might have preferred that the entire issue never had been raised.

In conclusion, we should look beyond the political rhetoric to satisfy the underlying, real interests of all concerned. I think we need a care-

ful reexamination of what these real interests are, especially the questions of what is China's attitude toward preserving or changing the status quo on Taiwan, what political developments are taking place in Taiwan, and what ought to be the American response if various changes occur on Taiwan.

Thank you very much.

[Dr. Li's prepared statement follows:]

PREPARED STATEMENT OF PROFESSOR VICTOR H. LI

Normalization of Sino-U.S. relations, reinforced by the Taiwan Relations Act, established a stable equilibrium among the United States, China, and Taiwan. All three parties have a strong interest in preserving this equilibrium. This objective should be the guiding principle in deciding how the general policy of normalization should be implemented in concrete matters.

UNITED STATES PERSPECTIVE

Normalization and the Taiwan Relations Act established an arrangement whereby the United States treats Taiwan as a "country" for purposes of domestic American law.¹ In this way, all laws and programs formerly applicable to the Republic of China may now be applied to Taiwan. In addition, the United States can have a full range of international dealings with Taiwan, including treaty relationships. For policy reasons, however, the United States chose to conduct its relations with Taiwan through "unofficial" channels, the American Institute in Taiwan (AIT) and the Coordinating Council for North American Affairs (CCNAA)—that is, to follow the "Japanese formula."

The Taiwan Relations Act was designed to deal only with domestic American law, and does not purport to define the status of Taiwan under international law.² The withdrawal of recognition by the United States affects U.S.-Taiwan relations, but does not necessarily change Taiwan's international status.

The end result is that all prior American relations with Taiwan continue as before, except that the Mutual Defense Treaty (and by implication some related military agreements) was terminated and replaced by new security assurances and that AIT and CCNAA were interposed between any government-to-government dealings. In this way, the United States achieved the laudable policy objective of normalizing relations with China, while preserving the security and economic well-being of Taiwan.

TAIWAN PERSPECTIVE

Taiwan undoubtedly preferred to retain official government-to-government relations with the United States after normalization, perhaps at less than ambassadorial level. But it has been quite apparent that Taiwan is fully able to live with the new arrangements. American trade with and investments in Taiwan have increased since normalization. Indeed, in a Pickwickian manner, some people in Taiwan have pointed to the "American formula"—that is, the Japanese formula plus maintenance of preexisting treaties and agreements—as a new hope for Taiwan's future. Through this method, Taiwan could reestablish solid relations with countries that earlier had withdrawn recognition.

PEOPLE'S REPUBLIC OF CHINA PERSPECTIVE

Despite some minor annoyances, I firmly believe that China is very satisfied with the overall direction of normalization. The United States continues to be an effective counterweight against the Soviet Union, and also is an active participant in China's modernization effort through increased trade, investment, and technical and educational exchanges.

Resolution of the Taiwan issue occupies a lower place on China's agenda of priorities than modernization and defense against the Soviet Union. Indeed, I believe that China does not wish to disturb the status quo on Taiwan for the time being, and perhaps for quite a long time.

This point needs to be stressed, since it bears a critical relationship to the question of how the United States should concretely implement the policy of

¹ Taiwan Relations Act § 4 (b) (1), 22 U.S.C. § 3303 (1979).

² S. Rept. No. 7, 96th Cong. 1st Sess., at 17.

normalization. China is vitally interested in establishing the principle of one-China; another major step in that direction was taken by the Joint Communiqué of December 15, 1978. At the same time, China realizes that if pushed too hard, Taiwan could take some drastic step which would disturb the status quo, and that in turn may upset U.S.-China relations.

Let me develop this idea further, admitting at the outset that I am partly speculating. My intention is to provoke thought rather than predict the future.

As is well known, although the native Taiwanese comprise 80-85 percent of the population, most of the important government and party positions are held by Mainlanders. For example, over 90 percent of the National Legislature members were elected to office from the Mainland in 1947; of course, they have not stood for reelection in the last 32 years since they could not very well return to their constituencies on the Mainland.

In recent years, native Taiwanese, often supported by younger Mainlanders, have been pressing for major political reform on that island.³ It is difficult to characterize these diverse persons by a single description. In general, they desire more control over their own destiny; some may even favor an independent state of Taiwan. But they are sophisticated politicians who know that independence is opposed both by the Nationalist Party (KMT), in part because its own legitimacy would be undercut, and by China, because such an action would violate the one-China principle. With the exception of the Taiwan Independence Movement, Taiwanese politicians have generally avoided the term independence, preferring that Taiwan merely be able to act in an independent manner without having to make any change in the juridical status of the island.

One prominent suggestion being made is that Taiwan should cease asserting that it is the government of all China, and instead claim authority only over Taiwan and the neighboring islands. This adjustment would bring Taiwan's rhetorical position into closer accord with reality. In addition, Taiwan can strengthen its international position since other countries would be more willing to deal with Taiwan on this basis.

The suggestion has been resisted by the conservative elements within the KMT. While such an adjustment may help Taiwan internationally, it also will attack the basis of legitimacy of the central government which justifies limiting participation by native Taiwanese on the ground that the central government must represent many other provinces as well.

I am not arguing that some major political reform of the kind described above will in fact take place. There are other possible scenarios. But suppose the above did occur. If China felt that such an action by Taiwan constituted a move away from the one-China principle or was a step toward independence, then I think it is highly possible that China will take some substantial action against Taiwan, possibly including the use of force.⁴ Such a step may well bring China into conflict with the United States, a result desired by neither China nor the United States.

Consequently, I think China prefers leaving the status quo on Taiwan undisturbed for the time being, rather than risk some largely unknown and uncontrollable political shift in Taiwan. There is evidence to support this proposition. China is taking a highly conciliatory stance toward Taiwan, saying that if Taiwan accepts the principle of reunification, it can retain its own economic and political system, as well as armed forces.⁵ Chinese appeals to Taiwan are directed very much at the Mainlanders rather than at the local Taiwanese population.⁶ I think China finds it easier to deal in the long run with the KMT leaders, who also espouse the one-China principle, than with native Taiwanese politicians who do not feel strong personal bonds with China.

Normalization has increased the pressures for major change in Taiwan. The KMT itself is making some proposals. In addition, there is an active but delicate political process developing whereby an important segment of Taiwanese opposition politicians seems to be joining forces with some members of the moderate wing of the KMT to form a broad-based political coalition to deal with the future of Taiwan.

³ See Victor H. Li, ed., *The Future of Taiwan: A Difference of Opinion* (White Plains, N.Y.: M. E. Sharpe, Inc., forthcoming), chaps. III, V.

⁴ Vice-Premier Deng Xiaoping told a Senate delegation that force might be used if Taiwan tried to declare independence. "Peking Says Taiwan Can Keep Autonomy Under Unification," *New York Times*, January 10, 1979.

⁵ Senate Committee on Foreign Relations, 96th Cong., 1st Sess., *Sino-American Relations: A New Turn* (Comm. Print 1979).

⁶ E.g., "Message to Compatriots in Taiwan," *Beijing Review*, No. 1 (January 5, 1979), 16-17.

I do not know where all this political activity is heading in Taiwan. In particular, I cannot say with assurance how efforts to change U.S.-Taiwan relations will affect Taiwan's internal political dynamic. Will further downgrading of relations, such as by terminating additional treaties and agreements, jeopardize the political and economic confidence of the people on Taiwan? Will greater nervousness impel Taiwan toward conciliation with China in an effort to reduce the pressure? Or will it impel Taiwan toward independence in a double-or-nothing attempt to build a solid new international base?

These are some of the key questions as we try to decide what further steps to take in implementing the normalization of relations with China. I respectfully submit that the United States government does not know the answers to these questions either. Going further, I suspect it does not even believe that these are important questions. The United States seems concerned only with how a particular policy or action would impact directly on China. This attitude is a holdover from earlier times when Taiwan was a passive party in U.S.-China relations who essentially did what we wanted it to do. But this situation is rapidly changing. Taiwan's internal political dynamic is turning it into an independent party who can initiate action. And some of the actions it might initiate, such as a move toward independence, can lead to unhappy consequences for U.S.-China relations.

THE HANDLING OF EXISTING TREATIES AND AGREEMENTS

Let me summarize my basic premise: The United States has no interest in disturbing the status quo on Taiwan. For China, preserving the status quo, at least for the time being, is preferable to having a deal with uncertain and possibly undesirable change, particularly on an issue of less than highest priority. And in Taiwan itself, the various political forces are trying to work out a *modus vivendi* for dealing with their differences and their common problems.

Consequently, I think the United States should try to change the present equilibrium as little as possible, unless some major developments alter U.S.-China relations or the situation on Taiwan. In operational terms for the handling of existing treaties and agreements, we should have a presumption in favor of making no changes unless a strong case can be made demonstrating the desirability of a new arrangement. It would not be sufficient to argue that some corollary of the theory of normalization compels an additional step to be taken to carry out "the principle of normalization." First, at the time of normalization, both sides said that cultural and commercial dealings with Taiwan can continue as before, and that only the Mutual Defense Treaty must be terminated. There is no abstract principle of normalization that requires the United States to go beyond the above arrangement. Second, I have tried to show that disturbing the present equilibrium is in no one's interest. Our relations with China may be damaged rather than enhanced by our continual chipping away at Taiwan in the name of implementing normalization.

An example of what might be a sufficient argument in favor of change—using the air transport agreement as an example—is that the United States is undertaking a general effort to revise all its air transport agreements, and the proposed alterations are so substantial that amending existing agreements is inadequate; consequently, wholly new agreements must be signed.

A second possible rationale for a change is that some prior arrangements are highly displeasing to China; for example, reference in the 1946 civil aviation agreement to routes between the China mainland and the United States⁷ directly contradicts U.S. recognition of the PRC as the sole legitimate government of China. But here we must proceed carefully. First, would China be satisfied if the original agreement were amended to eliminate reference to mainland routes on the ground that the Taiwan authorities have no jurisdiction over the mainland, rather than merely "suspending" these routes as was done through an exchange of notes in 1950?⁸ Second, we should note that the treaty of friendship, commerce, and navigation (FCN) signed in 1946 poses a similar problem of contradicting U.S. recognition of the PRC. Is termination of the civil aviation agreement one step toward termination of the FCN treaty? If not, some assurance on the FCN treaty should be given.

Where some change is necessary, it should be carried out in the least disruptive way. For treaties and agreements, the best approach is amending the original agreement through an exchange of letters between AIT and CCNAA, as was done recently for textiles and tariffs.

⁷ TIAS 1609.

⁸ TIAS 2184.

THE AMERICAN STYLE

At the time of the passage of the Taiwan Relations Act, I was concerned that the United States as a nation, for better or worse, lacks the subtlety—or, if you will, is too straightforward—to handle the vagaries of the “Japanese formula.” This approach frequently requires that form prevail over substance and that some obvious contradictions should not be publicly raised. For example, in the 1960s China laid down the principle that Japanese corporations dealing with Taiwan could not trade with China. Subsequently, these corporations formed “dummy companies” to deal with one side while the parent dealt with the other.⁹ This practice was known to all concerned, but did not prevent China and Japan from developing a flourishing trade. I wonder if the United States could have carried out this kind of notorious dummy trade. Some public figure or member of the media would have pointed out the extreme anomalies of the practice, thus embarrassing the PRC into denouncing it.

The United States is an open, legalistic, and somewhat argumentative society, unwilling and unable to do things quietly. Our constitutional system also requires that the three branches of government act within a system of checks and balances. Perhaps in Japan a court would dismiss the Goldwater vs. Carter case on the ground that it is a political question; the Diet would not hold open hearings on relations with Taiwan; and the Japanese administration would cooperate closely with the Diet in formulating Taiwan policy. At the same time, the media and the public might not be bothered that such dealings are handled quietly, nor feel constrained to point out some obvious contradictions.

Perhaps this problem of differences in cultural style is insoluble. But we should note that the Japanese formula does require quietude and subtlety. In many instances, once an issue is raised in public, such as the continued legitimacy of certain treaties and agreements, China would feel some compulsion to insist that the agreements be terminated in accordance with “the principles of normalization” even where it might have preferred that the entire issue had never arisen.

In conclusion, normalization was achieved in part because the United States discerned that behind China’s statements about the principle of one-China was a willingness to normalize while still allowing Taiwan to have a separate existence, at least ad interim. We ought to follow the same approach in implementing normalization. We should look past the political rhetoric to satisfy the underlying real interests of all concerned. I think we need a careful reexamination of what these real interests are, especially the questions of what is China’s attitude toward preserving or changing the status quo on Taiwan? What political developments are taking place in Taiwan? And what ought to be the American response if various major changes occur in Taiwan?

The CHAIRMAN. Thank you very much, Dr. Li.

I read your statement and must say that I think it is an excellent rundown of the situation in which we find ourselves.

You look a little deeper into the matter of form versus substance than we have looked so far today.

NORMALIZATION INCREASED PRESSURES FOR MAJOR CHANGE

You say in your statement that normalization has increased the pressures for major change in Taiwan and the KMT itself is making some proposals. Would you flesh that out a little bit? Would you indicate some of the proposals that are being made?

Dr. LI. There is a whole range of proposals, some of which come from the KMT and some from others. One prominent one, for example, is that there should be a reelection of the National Legislature where the percentage of legislature members to be elected would increase from the present figure of less than 10 percent to, say, 25, 50, or 75 percent. This would accomplish the dual purposes of increasing the representative voting power of the population on Taiwan, while not

⁹ Victor H. Li, ed., *Law and Politics in China's Foreign Trade* (Seattle: University of Washington Press, 1977), pp. 28–69.

completely wiping out KMT control in the process, since a number of the seats would not be up for election.

The CHAIRMAN. Do you see them eventually giving up their long-held claim to sovereignty over the mainland if this change in the make-up of the legislature occurs?

Dr. LI. I think that is exactly what is being argued about right now. The people urging substantial change in the legislature, particularly an election of more than 50 percent of the seats, are saying that if Taiwan is going to survive, it had better establish a new international basis for itself. Many of the people resisting change are in the central government who, if the central government no longer represents all of China, would lose their basis of legitimacy.

I do not think the various groups have yet worked out any common understandings. It is very hard to see what the ultimate conclusion will be. I think all one can say is there is an enormous amount of activity going on.

"INDEPENDENT TAIWAN MOVEMENT"

The CHAIRMAN. There was an "Independent Taiwan Movement" going on for a while. Is that active at the present time?

Dr. LI. I think it has been much less active since the late 1960's. The gradual normalization of United States-China relations, going back to President Nixon's first visit to China, put a considerable damper on that movement. It is still around, but is not as prominent as before.

The CHAIRMAN. In your statement you mentioned the possibility of conciliation with the mainland. Do you see any movement in that direction?

Dr. LI. The mainland has made a number of offers concerning trade, travel, exchange of mail and visits. The official Taiwan governmental position is that there will be no contacts of any kind whatsoever. On the other hand, there are a number of people in Taiwan saying why not have trade and travel. It will enable separated family members to see each other. In addition, mainland journalists going to Taiwan would have a chance to see how good a job Taiwan has done and could bring that message back to the mainland.

Some people are arguing that since the formal, rhetorical position of the Taiwan Government is that it wants to engage in competition with the PRC to show who has a better system, Taiwan should go ahead and compete through trade and travel. Let people visit each other and make some judgment, rather than keeping a barrier.

CONSEQUENCES OF INDEPENDENCE MOVEMENT ON UNITED STATES

The CHAIRMAN. If, as you also state, there may be a move toward independence and this leads to unhappy consequences for United States-Chinese relations, how would you see that occurring?

Dr. LI. Vice Premier Deng has said that there would be two circumstances under which force could be used in settling the Taiwan problem. One of them is Taiwan becoming independent. I think if Taiwan moves toward independence, the United States will be faced with an enormously difficult moral and political position on whether we would support an exercise of self-determination leading to independence. If we do decide to support independence and the PRC carries out some retaliatory actions, we then will be brought into confrontation with the PRC.

The CHAIRMAN. You might be right. I think the likelihood of there being sufficient force in place for quite a number of years for the mainland to take adequate military action against Taiwan is very remote.

Dr. LI. I agree completely with that, Senator.

The CHAIRMAN. They do not now have the military force to do that. They have a large ground army, but so far as transportation, ships, airplanes, and equipment to take Taiwan is concerned, it just is not there.

Dr. LI. That is absolutely true, Senator. But you can come at this from a different angle. The PRC cannot militarily conquer Taiwan, but it can do many things to harass Taiwan that would greatly shake the kind of confidence both of the people in Taiwan and of foreign traders and investors that people have talked about today as being very important. That is, a blockade, a buzzing of the airport, or any number of other things could make investors feel that Taiwan is not where you put your money.

The CHAIRMAN. If this independence movement really got moving, it always has been difficult for me to see how we could be blamed for whatever happened there. We would not be in a position of instigating this and furthering that objective. But if it occurred, I don't see how we could prevent it.

Dr. LI. I don't think we would be blamed.

The CHAIRMAN. I don't see how we could be blamed by the PRC if there were a declaration of independence which we literally had nothing to do with. It just may be the situation that the Taiwanese decide that is the way they want to go.

Dr. LI. My guess is if we were not blamed for Taiwan going independent, but we recognize and support the new Taiwan, we still would be brought into a clash with the PRC.

The CHAIRMAN. Yes; it would. It would be a very difficult situation.

Dr. LI. One wonders what would happen in terms of American political reaction if some of these developments occurred during our Presidential season.

The CHAIRMAN. You also state that we should have a presumption in favor of making no change unless a strong case can be made demonstrating the desirability of a new arrangement.

Do you think that this air agreement we have had and the cancellation we are going through now constitute a change that needed to be made?

Dr. LI. Let me first qualify myself by saying that I don't know very much about aviation law. But, from the description of Secretary Christopher, I think it does fall into the category where a complete change should be made. I think the way the State Department should have gone about changing the agreement was to use the rationale that we are undertaking an overall change in all our aviation agreements in which we are treating Taiwan just like we are treating Thailand, rather than to suggest that changes were necessary because of the mention of mainland routes in the 1946 treaty.

The CHAIRMAN. You state the matter of form prevailing over substance in the East. This is very interesting and I think it is extremely important in the Far East. Too often we in the West do not appreciate the importance of that in our dealings with East Asian nations.

Dr. LI. I just do not know what we can do about that, Mr. Chairman.

The CHAIRMAN. Well, you give a good example of how Japan solved the problem somewhat.

In your conclusion, one of the things you stated was that we should look past the political rhetoric to satisfy the underlying real interests of all concerned. Are we doing that?

Dr. LI. That is a hard question to answer, Senator. I don't think we are doing enough of that. For example, I do not think we are giving consideration to how actions that we take may affect Taiwan, which then may disturb the status quo on Taiwan, which then will put the PRC into the unhappy position of having to deal with a new status quo.

Instead, I think we are using in a superficial way the PRC's claim to be all of China, including Taiwan, as the operating principle for implementing normalization.

Let me try to make myself more clear on that, Senator.

I think China's real interest for the time being is to not disturb the status quo on Taiwan. Thus when we take an action, we should see whether or not it will disturb the status quo on Taiwan in an undesirable direction. If it does, then it also is against China's interests.

The CHAIRMAN. I think it has been rather surprising that we have had the new arrangement for not quite a year now and perhaps this treaty situation is the first time we have had a major problem. Meanwhile, trade has expanded on Taiwan and everything has gone along pretty well. While there was a ripple or two at the time of normalization, it has not really been that much of a detriment to the well-being of the people on Taiwan, which is rather surprising to some.

When we talk about a need for careful reexamination, that, in effect, is what we are doing with our hearing here today. At this first ripple, the first sour note since normalization occurred, we are looking at the situation. As you very properly point out, we need to continue to reexamine the situation.

I indicated today in my opening statement that we plan to review the situation with a whole series of hearings on the economy, the military, and all other things with regard to Taiwan and how the whole relationship using the Institute is working out. We plan to do that very late this year or early next year, perhaps early in the spring, whenever we can work it into the committee's schedule.

CONTACT BETWEEN PEOPLE OF PRC AND TAIWAN

How much contact is there, do you feel, between the people of the PRC and Taiwan directly, if any, or via third countries? What are the implications of this? If it is an increasing contact, what implications do you see from it?

Dr. LI. I think in a relative sense contact is increasing, but in an absolute sense it does not come to very much.

The CHAIRMAN. Is there any direct contact or is it all through third countries?

Dr. LI. In Taiwan, for example, one finds medicinal herbs that only can come from the PRC which have been relabeled. This probably falls under the third country category.

The CHAIRMAN. Is it straight across the strait or via Hong Kong?

Dr. LI. Via Hong Kong.

In the PRC, there was a television show about the city of Taipei, as I recall. That is a kind of direct contact. There are third country travelers, such as Chinese Americans and other overseas Chinese, who

go to both countries. They obviously would be telling each side what the other looks like, or what someone's uncle is doing on the other side. I think there is a certain amount of exchange of mail, again, all indirectly at this point.

The CHAIRMAN. Is that also through third countries?

Dr. LI. Yes; through third countries.

I gather one accidental phone call got through directly.

The CHAIRMAN. Really? From where to where?

Dr. LI. I think it was from the PRC to Taiwan.

The CHAIRMAN. Would moves toward a more democratic political system on Taiwan spur or inhibit Taiwanese flexibility in dealing with the PRC?

Dr. LI. I don't know the answer to that, Senator, although I can make a fairly good case each way. The point is that this is the kind of question we ought to examine because the answer is critically important. On one side of the argument, if more Taiwanese get into governmental positions of authority, there will be less feelings of ties to the mainland and, therefore, a less strong sense of a unified one-China. The opposite side of the coin is that the Nationalist Party leaders are just stuck on the rhetorical position and will not budge very far; consequently, a new group of people might come in with considerably more flexibility.

One simply does not know which way it will go. This goes back to my earlier point that we really have not paid much attention to Taiwan over the years on these kinds of political issues. We have paid a great deal of attention to economic issues, which is right to do. But now Taiwan is taking a course of its own and we ought to try to figure out what that course is.

DIFFERENCES BETWEEN "AGREEMENT" AND "ARRANGEMENT"

The CHAIRMAN. You are an international legal scholar. What differences do you see between an "agreement" and an "arrangement?"

Dr. LI. Very little. I think it probably would keep life simpler if we called all of these things "agreements." I think the section of the Taiwan Relations Act that you read on oversight agreements or arrangements had as its intention to make the more important contracts between AIT and CCNAA to be treated the same way as executive agreements. As I recall, the wording of that section is taken from the Scott Act, which governs congressional oversight of executive agreements.

The CHAIRMAN. Dr. Li, thank you very much for your appearance here today. We appreciate your excellent testimony.

I am sorry we were so bound up with votes on the floor this afternoon and this hearing had to go on for so long. I am sure that is what kept more members from attending this afternoon. It is difficult to hold timely hearings when something comes up that is important and we have to schedule an afternoon hearing for it because floor votes and other action are much heavier in the afternoon. It makes continuity of a hearing difficult and also cuts down on the attendance.

So, we appreciate your bearing with us this afternoon. Thank you very much.

This hearing is adjourned.

[Whereupon, at 4:48 p.m., the subcommittee adjourned, subject to call of the Chair.]

