

A REEXAMINATION OF U.S.-CHINA RELATIONS

HEARINGS
BEFORE THE
SUBCOMMITTEE ON EAST ASIAN
AND PACIFIC AFFAIRS
OF THE
COMMITTEE ON FOREIGN RELATIONS
UNITED STATES SENATE
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U.S.-CHINA POLICY: A CRITICAL REEXAMINATION

TUESDAY, MARCH 23, 1999

U.S. SENATE,
SUBCOMMITTEE ON EAST ASIAN
AND PACIFIC AFFAIRS,
COMMITTEE ON FOREIGN RELATIONS,
Washington, DC.

The committee met, pursuant to notice, at 12:12 p.m., in room SD-419, Dirksen Senate Office Building, Hon. Craig Thomas (chairman of the subcommittee) presiding.

Present: Senator Thomas.

Senator THOMAS. Again, this has been kind of a full day. They just completed a hearing here and there will be another, I believe, this afternoon. Well, there is another.

So welcome to all of you and thank you very much for coming. Today, the subcommittee meets for the first time in what I hope is a series of meetings over the next couple of months designed to thoughtfully and critically examine United States policy toward the People's Republic of China. The remaining hearings will involve people from the private sector.

Let me start by saying—stating a rather basic philosophy that I bring with me to this issue: If you want different results, you cannot keep doing the same thing.

I am concerned that as far as we go with China, we complain about a lack of results. And we continue to take basically the same approach.

There have been a number of encouraging developments in China in the past year. China has begun to reform its economy, is moving the PLA out of the private sector and released a small number of political prisoners, signed the Convention of Human Rights, greatly increased the number of democratic elections taking place at the village level.

Beijing has, for the most part, avoided interfering in Hong Kong affairs and has resumed something of a dialog with Taiwan.

Despite these improvements, I cannot ignore the fact that for every step China has taken forward, it appears also to have taken one or two back. A bilateral relationship that 10 months ago looked as if improvement was being shown, I believe now we have turned a little bit down a rocky road.

For example, there have been damaging leaks, of course, to the Chinese of sensitive U.S. nuclear technology, which has enabled them to advance their own nuclear program, or, at least allegedly so.

The PRC has continued the buildup of missiles on the coastal provinces facing Taiwan, and has said including Taiwan in a U.S. missile defense would be the “last straw” in U.S./PRC relations.

Beijing apparently still refuses to deal with the Dalai Lama to discuss Tibet, despite a series of concessions on His Holiness’s part.

There has been a disturbing increase in the last 6 months in the crackdown of freedom of expression, and arrests and convictions. In addition, the government has shut down fledgling pro-democracy organizations and sought to curb Internet use and access.

Despite U.S. requests, the Chinese are still not doing all they could, or in their own best interest should, to defuse the potential powder keg in North Korea. I discussed this point this morning with Ambassador Kartman.

And despite agreements and promises, large sectors of the Chinese economy remain closed to U.S. imports. The result has been our biggest bilateral trade deficit ever.

The administration has had a policy of engagement with China now for a number of years. And I have, since I came to the Senate, generally supported the concept as the best way to effectuate change in China.

But as a supporter of the concept, I now have to look at the facts, review its application and ask what the results have been, which areas have shown improvement.

Such a review shows me that what engagement has gotten us lately is a military buildup that seriously threatens Taiwan, a veto of the U.N. proposed peacekeeping operations in the Balkans, an upswing in the harsh suppression of internationally recognized human and political rights, continuing refusal to address the question of Tibet, a continuing effort allegedly to purchase or steal sensitive computer technology.

At times, it seems to many members that the White House has been more interested in the concept of engagement than in what results, if any, the application of that concept is achieving. The most glaring and disturbing illustration of that tendency may involve the allegation of the leaks lately.

I believe it is time to take a step back, on both sides of the aisle, and give our China policy a long, hard, critical look.

We need to take the concept of engagement and decide what needs to be done so that this policy will produce the results that we want, that we seek.

I am not advocating isolating China or shutting off our contacts or the dialog. I do not believe that we can bully or badger the Chinese into accepting our view of the world as the only one that is correct.

I agree that we need to communicate frankly with Beijing on a whole variety of fronts and that because of its size, its economy and its importance, we cannot and should not ignore them.

We need to take a long look at our policy, determine if it is working, if the results outweigh the effort we put into it. We need to look at what we should expect in return.

So today’s hearing is first, I hope, in a series to address this topic. And we are going to hold it with the business community and human rights groups and others.

Before I begin, I would like to thank Secretary Roth for appearing on such short notice. I know he is fully scheduled this week.

We had so little notice, I have agreed in consultation with Senator Kerry to waive the requirement that he submit a prepared statement for the record.

I would also like to note particularly as my colleagues come in, that keeping with the wishes of the majority leader, this discussion is not focused on the Los Alamos issue.

That is to be confined to the full committee. So we are going to keep our comments in terms of the overall approach to policy for China.

Mr. Secretary, welcome. Thank you. This is going on at the same time the policy meetings are in the Senate, but nevertheless we wanted to get to it.

I confess frankly I am planning to go to China next week, and so it was important for me to hear from you and to talk about these things before we do go.

So welcome, sir, and go right ahead. And then we can have a little dialog.

STATEMENT OF HON. STANLEY O. ROTH, ASSISTANT SECRETARY OF STATE FOR EAST ASIAN AND PACIFIC AFFAIRS, DEPARTMENT OF STATE

Secretary ROTH. Thank you very much, Mr. Chairman. I particularly thank you for the opportunity to focus on the big picture of China policy, rather than any one of the number of specific issues that one could focus on. I think that unless one does keep one's eye on the big picture, what we're trying to accomplish, one risks getting lost in the details.

I thought I would focus my remarks around four questions, and they very much track both your opening statement today and your earlier speech on the Senate floor.

The first issue I want to address is: What are the stakes in U.S.-China relations. The second is: What are we trying to achieve? The third is: How are we trying to achieve it? And the fourth is: Is it working?

I think that very much correlates with the questions you raised. So let me start with the stakes.

I am almost a little embarrassed to deal with that, given your knowledge of the subject matter, but for the purposes of the public record, I think the point should be made that the stakes are enormous.

U.S.-China relations will be a key bilateral relationship in the next century, with great implications for the peace and prosperity not only of the Asia/Pacific region, but of the entire world.

Simply put, we do not have the luxury of not dealing with China, a fact which you recognized in your opening statement. And interestingly, the *Economist*, not known for its friendship for China, recently made exactly the same point in an editorial.

China's sheer size, the fact that it is a permanent member of the Security Council, the fact that it is a member of the still relatively exclusive nuclear club, the fact that it is a massive and growing economy, the fact that it is an increasing diplomatic presence and the fact that it has increasing military strength all suggest that,

like it or not, we are going to have to deal with China. It is not a question of engaging or not engaging.

Now, let me turn to the more important point: What are we trying to achieve in this context?

Our goal is very straightforward. We are trying to facilitate China's integration into regional and global institutions in order to help China emerge as "a normal country," a regular player in the international system.

Let me make it clear. China has to make the choice. You know the historical model for China, China as the middle kingdom. This was a China which did not play by the rules, but rather a China which tried to make them, which saw itself as the center of the world.

We are working on trying to help China make a different choice, to become a responsible international player, one which belongs to all the major regional and global institutions and which behaves according to those rules, rather than trying to make them.

In the regional arena, you are quite familiar with our efforts to get China involved in APEC on the economic side and in ARF, the ASEAN Regional Forum, on the security side.

In the global arena, we focus on how China behaves at the United Nations, including in its role as a permanent member of the Security Council. We are trying to get China into the regimes of which it is not a member now, whether it is MTCR in the non-proliferation front or the World Trade Organization on the economic front.

We have had a lot of success specifically on the non-proliferation side in getting China to join many regimes, but there is a lot of work left.

We are trying to influence the choices that China has to make as its economic, military, diplomatic and political power increases into the next century. How is it going to behave on the regional and global stage? We think we can influence that choice.

Now, how are we trying to influence this choice? The first point that needs to be made—and again you made it in your opening statement—is that engagement cannot be an end in itself.

The goal of policy is simply not to have high-level meetings for their own sake. There has to be results, and we have to be able to influence Chinese behavior over time.

We in the administration see that engagement is a means to an end, and one that has been widely misunderstood. I am referring to that now controversial phrase in the joint statement that was issued when President Jiang came to the United States in 1997, the phrase "moving toward a constructive, strategic partnership."

That means not that we are treaty allies now, not that China is replacing other allies in the region, not that we are already partners, as we would like to be on a whole host of issues. Rather, we have a goal, of moving toward the objective of "constructive, strategic partnership," the sooner the better.

Now, we are trying to set up a strategic framework for a relationship that identifies and expands the number of areas where we have common interests and the number of areas where we could work together, while at the same time we work to narrow and hopefully ultimately resolve the differences.

That is the purpose. There has been a lot of misunderstanding that somehow this phrase about "strategic partnership" is a snapshot of the current situation, which is obviously objectively not correct.

Now, the fundamental question, which you asked is: Is it working? In one sense, I am almost afraid to ask the question, given the current environment up on the Hill and in the public at large.

The problems are obvious, and you alluded to many of them: the backsliding on human rights that we have seen since the summit, all the problems that have come out related to the Cox report and the issues of espionage, the extraordinary trade deficit and the difficulties we are experiencing on that front.

To that list we should add the recent escalation of debate concerning Taiwan and TMD, which has risen to the top of the bilateral list of issues between us. All these issues are obviously out there and need to be addressed.

Before I deal with them, Mr. Chairman, the point I want to make is that this is far from the whole picture. Although you have given a list of some of the positive steps that have taken place, I want to give my own list, to make it clear that the problems should not dwarf the accomplishments.

The accomplishments are significant. First, on North Korea, not only is China working with us well on the four-party talks at Geneva, trying to reach a peace agreement, but we believe it also has common interests with us in not wanting to see a nuclear North Korea, not wanting to see a confrontation on the Korean Peninsula and not wanting to see concerns about North Korean missiles result in the deployment of theater missile systems throughout the Asia/Pacific region. That gives us a lot to work with.

A lot of attention has been given to one unfortunate statement attributed to a Chinese diplomat that criticized the United States for trying to get access to the suspect facility. But, that statement has not been repeated. Despite that statement, we do not have evidence that China was trying to block the agreement that we reached recently on Kumchang-Ni. The hope is that China will continue to work with us because of the shared interests that I have identified. I hope that you will push very hard on this topic next week in your own trip to China.

There are many more areas of common interest as well. You have heard me talk about some of them before.

We have seen an astonishing change in the Persian Gulf. The decision not to sell any more anti-ship cruise missiles, which threaten the freedom of navigation in the gulf, free flow of oil was a very important decision. It suggests that over time one can change China's perceptions of its own interest.

China is now an oil importer. It will be a much larger oil importer in the future. They clearly came to see that we had a point in our strategic dialog when we said they should not sell these anti-ship cruise missiles, and they have agreed not to do it.

In South Asia, the world could not be more different. If you go back 20, or even 10 years ago, China was perceived correctly as a very large part of the problem, and now it is working with us as part of the solution.

The fact that China was chairman of the Perm Five and worked with us so well after the nuclear testing rounds that were undertaken by India and Pakistan recently suggests that we are now trying to work together rather than at cross-purposes to eliminate the spread of nuclear weapons in South Asia.

More generally on the non-proliferation front, we have seen massive improvement in Chinese behavior. We have seen them join a number of international regimes, whether it is the Non-Proliferation Treaty, the Comprehensive Test Ban, or the Chemical Weapons Convention. We have seen commitments on not assisting unsafeguarded nuclear reactors. I have already mentioned the agreement on cruise missiles. They have now agreed to actively study joining the Missile Technology Control Regime [MTCR].

For all the problems which exist, that is an impressive record of progress.

On the economic side, a major development took place just a few days ago which got relatively little attention. That was the ratification of the concept of private property at the Communist Party meeting. This is an extraordinary development, if you think about it, the notion of private property in China. It suggests that our economic engagement with them is making a dent and that, in fact, China is moving down an economic path that we should rather like.

On the environmental side, we are seeing a major change in Chinese perceptions. The environment is no longer viewed as a trap—the United States trying to keep China poor—but rather as a genuine problem for China and the region. It is one where we hope to make progress in the dialog, and the Vice President will be engaging with Premiere Zhu.

Even in one of the most difficult areas—democracy and human rights, where the problems are, of course, very real and disturbing—we have seen some progress in terms of the political debate within China, the opening up of the system, the fact that there is now wide discourse on the rule of law, the fact that we have seen some development such as village elections. Without in any way overstating these developments or minimizing the problems, which remain, these are still remarkable differences if you compare them to the China of 10 or 20 years ago.

So I think there is a track record against one wishes to measure engagement.

Now, let me go to, “How do we proceed from here,” as I think you raised a fair enough point: “If you know there are problems, what are you going to do about them?”

But I think as I go down the list, Mr. Chairman, we have to ask: In each area, would our ability to affect the outcome we want be better if we moved away from engagement and toward confrontation, or would we simply end up worse off?

Let me start off with human rights. I ask the question rhetorically: Will we make more progress if we abandon engagement? Will confrontation get China to ratify the covenants to release dissidents who engage in a dialog with the Dalai Lama?

I think that the history of the past 20 years suggests not. The track record, whether we like it or not, is that during periods of poor U.S.–China relations, China has no incentive to move and

make progress on human rights issues; and that the contrary is true, that in periods when the relationship is strong, when we are engaging in high-level diplomacy, that there is some chance that China will make progress if we stay the course.

That does not mean this is satisfying. It does not mean the progress is fast enough. It does not mean that progress goes in a straight line in one direction; rather it is a roller-coaster going up and down. But, I think over the medium and long-term, we do see a fairly positive track record.

In the meantime, I think we have to continue to speak our minds and do what we are doing. In Secretary Albright's toast at the 20th anniversary of U.S.-China normalization at the embassy, she made very clear what the position of the administration was on human rights.

You have seen our human rights submission this year in the annual report, which did not pull any punches. You have seen the Secretary's statements on a recent trip to China. And we are at the final moments of, you know, determining how we are going to handle the Human Rights Commission in Geneva, where, of course, we are going to speak our mind on the human rights situation as well.

So all of this is to suggest that I think that with engagement, we have a greater chance of future progress on human rights than if we move in the opposite direction.

With respect to the Cox report and some of the espionage issues, I think the common sense answer to espionage is better security and better counter-intelligence. Again, if we look at history, the threat of espionage will exist regardless of whether we continue our engagement policy with China or not.

We did not have an engagement policy for most of the period of our relationship with the former Soviet Union during the cold war, but we still had a very real espionage problem.

The truth of the matter is that we have to take the espionage issue seriously and come up with the proper steps to deal with it. That is exactly what is under intense study right now on top of the formidable measures, which the administration has already taken and which Secretary Richardson has described.

On the trade front, I would suggest that engagement may be providing some of the answers. We are in a key phase of our negotiations with China right now on the WTO. If we reach an agreement, that, of course, will do a lot to level the playing field and to provide major benefits to American exporters. I would also point out that if we can reach a WTO agreement, China has to make the concessions, not the United States, as I think Jeff Garden ably pointed out in his op-ed piece today. I hope you get a chance to take a look at it.

If we do not reach an agreement, then we will have to look at other bilateral instruments for advancing our interests on the trade front, because obviously a trade deficit at over \$60 billion is too high and not, over time, sustainable. The administration is committed to protecting our American economic interests.

Finally, on the whole question of Taiwan and TMD, let me make a series of points. First, I think that the administration has been very straightforward in its track record on Taiwan.

We demonstrated the depth of our commitment to a peaceful resolution of cross strait issues, with the deployment of the two carrier groups in 1996.

China has to know where we stand on this. And we have reiterated that in every high-level meeting. We have continued to push for high-level cross strait dialog. In that sense, there was a major positive development last year when the so-called Wang-Koo talks took place. There will be another round this year in Taipei, not, unfortunately, as we had hoped, this spring. The indications are now this fall. But that has the prospect for progress. So we are seeing an unusual situation, an unusual moment of opportunity.

There is a direct relationship between the cross strait relations and the missile issue. It seems to me quite obvious that each side wants something from the other.

Taiwan does not wish to be threatened by Chinese missiles. China does not wish to see Taiwan obtain theater missile defenses. The obvious answer is for the two sides to address each other's concerns. This would certainly be one possible type of issue that could be addressed in cross strait dialog.

As you know, we are not a party to that dialog. We are not a mediator. This is between them. But, nevertheless, this just seems as a matter of common sense once again to be something that they should be talking about, since it is in their mutual interest.

In terms of U.S. policy, we have made it very clear that we are far from a decision on TMD, other than a decision to go ahead and deploy the systems necessary to protect our own forces.

But until we have systems on line that work, until we know what they cost, until we are able to do a comprehensive review of the big picture, including the security implications of going ahead with this sale, we are not going to make any decisions on theater missile defense. We have said that openly to both parties on either side of the strait.

This theater missile situation should not be confused with the decision last week on national missile defense. That is a whole other set of issues, where I think there has now been a stated policy through the two congressional resolutions and the administration reaction to it.

All I am trying to say is: despite the fact that a congressional report, you know, was tasked, which had us come up with proposals on deployment of theater missile defense for the Asia/Pacific region, this should not be interpreted by anyone in the region as an indication that a decision is imminent. It is not.

The final more profound point, Mr. Chairman—and this is something I hope you will raise in your trip to China next week—is that what China does matters. The question of theater missile defense is not solely or even primarily about U.S. policy. It is about the perception of threat and what countries or governments feel they need to do about these threats.

If Japan feels threatened by North Korean long-range missiles, it has every right to seek to come up with defenses to that threat.

Therefore, if China does not want to see Japan acquire theater missile defenses, the only possible basis it can have for trying to persuade either Japan or the United States not to proceed down

that direction is to help address the threat of North Korean missiles, which is something we hope that China will do.

Similarly the same situation applies with respect to Taiwan. Obviously, if China continues to deploy missiles in the provinces directly across from Taiwan, the leaders of Taiwan will necessarily be pushed in the direction of seeking to come up with defenses.

So once again the obvious point that we made to Chinese leaders during Secretary Albright's trip to China was: If you do not want to see Taiwan go down this path of pursuing TMD, you should be talking to Taiwan about the threat and trying to alleviate the threat. You cannot simply make demands that others not do things.

We have a rather, complex picture with respect to TMD both because of the uncertainties about the system's technology and cost implications, but also whether the two parties in across the strait will be able to deal with it effectively between themselves.

I hope you will have a thorough dialog on those points next week in Beijing.

Why do I not stop at this point and open myself up to your questions?

Senator THOMAS. OK. Thank you very much, Mr. Secretary.

Let me—why do I not—I tried to make it clear in my opening remarks that I do not quarrel with the idea of engagement, but I do not think, as you look at results, you cannot just say it is engagement or no engagement. There can be some various degrees of engagement with other things attached, it seems to me.

When you deal with most anyone on a friendly basis, and which we are dealing with China on a friendly basis, when you do something, you sort of expect something in return. I do not think that is unusual. And I do not think it should be misunderstood either, for that matter.

So do I understand you to kind of imply that it is either engagement or non-engagement? Are those the only two alternatives?

Secretary ROTH. Not at all. I thank you for giving me an opportunity to clarify.

First, I thought it was important to get on the record the fact that there had been results from engagement because there are many of your colleagues not present today who would not agree with your assessment that we should continue engagement, but instead would suggest that we move to containment or something else.

And so I thought it was important simply to get on the record the notion that engagement has accomplishments and there will be a cost if we move away from it. That was the purpose of that response.

I think inherent in engagement is the fact that it is a continuum, that it is not one policy, that it has lots of options along the way.

To give you one example: despite the fact that we have been engaging with China, we have still maintained a series of economic sanctions. Engagement does not mean appeasement, and engagement does not mean that we give China everything it wants.

We have not lifted our sanctions on military sales. We have not lifted our sanctions on controls on high-tech. We have not lifted

some of the sanctions on some of our economic programs, for which China is not eligible, such as OPIC.

The point is that engagement is not a gift of everything that China wants. Similarly, you know, we were committed to engagement in 1996. But nevertheless that did not stop us from deploying the two carriers as I referred to earlier.

Engagement is not a blank check. I would certainly agree with you about that.

Senator THOMAS. You mentioned the military or technological transfers of things that might be military. Who oversees that? Is that a Commerce Department role? Is it a military role? Is it a State Department role?

Secretary ROTH. Yes. To some extent, it is all of the above, meaning it depends on what you are talking about, right. The State Department has jurisdiction over the munitions list globally but, of course, since we have a policy of not selling arms to China, we do not face too many tough decisions in that regard.

You have seen with satellites where the primary jurisdiction has recently been shifted from, the Commerce Department to the State Department. But, again it is an inter-agency process, and all the players get involved.

On commercial items, primary jurisdiction is with the Commerce Department, so it really depends on what we are talking about.

Senator THOMAS. Is that shift one designed to give a little more inspection and thought to what is transferred in terms of satellites and so on?

Secretary ROTH. Well, I think you know that we want to be very sure in terms of the satellites that, we are taking into account all of the security considerations as well as the commercial.

Given some of the episodes, which are currently under investigation, the decision was that we would transfer this authority back to the State Department as the lead agency. But I emphasize the inter-agency aspects of the decisionmaking process remain.

Senator THOMAS. Yes. You mentioned the progress. And I do not disagree with that. You also mentioned over the last 10 or 20 years. How would you assess the progress in the last year?

Now, I outlined four or five or six things that certainly are not what we would like to have happened. So has the progress in the last year been less good than in previous years?

Secretary ROTH. Well, I certainly was not trying to cook the books with the answers by going back to accomplishments from a decade ago and suggesting that that is sufficient in and of itself.

I think the picture is somewhat mixed. I tried to suggest some decisions, which are recent. For example, this decision to recognize personal property that I talked about is a big deal.

I tried to reference the fact that they have signed both of the international covenants (on Civil and Political Rights and on Economic, Social and Cultural Rights), although not yet ratified either. So it is a mixed picture: Positive that they have signed; negative that they have not ratified yet, but something we are still pushing on.

We got an important agreement at the last summit on end-use controls for some of our exports.

I think, again, we have been working pretty well with China on North Korea over the past few months. That is something that is recent. The cooperation on South Asia after the nuclear explosions, was recent.

So it is not simply going back to changes that have taken places over the last 10 or 20 years.

At the same time, I was trying to be extremely straightforward that we recognize the areas where we have not made progress.

We have referred openly to the backsliding on human rights, where we have been very disappointed by the crackdown, the arrests of the dissidents, refusal to allow the organization of people with opposing views.

We have made no secret of our disappointment at the fact that a dialog with the Dalai Lama has not occurred despite the indications that President Jiang Zemin made during President Clinton's state visit, that they had channels for such a dialog.

Yes, there has been backsliding. And we are quite open about that.

Senator THOMAS. So our reaction to something like backsliding on human rights is disappointment. That is our position, that we are disappointed—

Secretary ROTH. No, we—

Senator THOMAS [continuing]. That we shake our finger and say, "We are disappointed," and that is it.

Secretary ROTH. No. Our reaction is to try to get them back on the path toward progress.

Senator THOMAS. And how do we do that?

Secretary ROTH. Well, I think it was largely President Clinton's dialog with Jiang Zemin, for example, that got the original statement about the dialog with the Dalai Lama. I understand that President Clinton fully expects to raise this issue once again with Premier Zhu in the next couple of weeks. And he will raise it again with President Jiang in September when they meet at APEC, and we are going to try to turn them around on that.

So it is not a matter that you simply accept the decisions. At the same time, we are also pounding away at the Chinese on the notion that what they do matters.

For example, the United States is not without leverage with respect to China. China badly wants the lifting of some of the sanctions that I have described.

We make it very clear to the Chinese that the overall atmosphere they create in the human rights situation is going to influence our ability to lift these sanctions.

Senator THOMAS. I guess that is what puzzles me a little bit, Mr. Secretary. You say they badly want it. Now, if you are—at least in my concept of badly wanting something, if you badly wanted to increase your relationship and have a closer relationship, why would you play around this way with the Dalai Lama, for example? Why would you make a big deal out of putting missiles on the strait?

Why would you do some of the human rights things, which really are not, I guess, at least in my view, are not a threat to their stability?

Why would you do that if you know that is going to be an irritant to the people you are trying to work with? And you say, "Well, they are trying to get somewhere."

I do not understand that.

Secretary ROTH. I am not going to put myself in the position of in any way apologizing or justifying Chinese behavior. I am on the same side as you. I do not think they should have done these things.

But if you ask me to try to explain it, I would have to say that they are in the same position as many other countries, of having competing priorities in their own policy.

They have their foreign policy priorities, including what they want in the relationship with the United States, and they have their domestic priorities in terms of how they feel they are managing policy in China.

And I think as you have heard that this is a difficult year for China in terms of their own internal political situation. They seem to be on the defensive. It is the 10th anniversary of Tienanmen. It is the 50th anniversary of the PRC. They are worried about possible demonstrations around these anniversaries.

We have seen setbacks to their economy. Growth is slowing. Unemployment is rising. They have bitten off a very formidable economic agenda. And they are starting to pay the price for trying to privatize state/economic enterprises, getting the military out of politics. They are now generating consequences, including lower growth, more unemployed. We have seen the outbreak of some terrorist incidents, bombings in different parts of China.

I think one would say, on balance, that 1999 is not going to be a very good year for China internally.

Some of the steps that they have taken, I think, are driven by their domestic political imperatives. Now, again, let me make it absolutely clear. That is not, from a U.S. perspective, justification for the steps they have taken. We do not believe that justifies a crack-down. We do not think they have made the right decisions.

We think the way to deal with their problems is to move in the other direction, to follow up some of the economic reforms with political reforms, by moving toward greater openness and pluralism and democracy. So we are not saying they are on the right path. We are not saying, "Give them a bye during this difficult political period until things get better."

What I am really trying to do is answer your question as to why we think they have done some of these things that we wish they had not.

Senator THOMAS. Well, I recognize what you are saying in terms of there are some difficult things that are happening.

They are trying to make a change in the economy, which I suppose will result in some unemployment, move the military out of the private sector and—and some of those things.

But some of the things would be easily done. For instance, to release the non-violent prisoners from Tienanmen Square. Why would not that be an expectation that you could press?

Secretary ROTH. We should press. We do all the time, and I hope you will. Nothing says we are stopping on that. They should release these prisoners.

Senator THOMAS. It is 10 years.

Secretary ROTH. Agreed. We raise it at the highest levels. Secretary Albright raised it on her last trip.

Senator THOMAS. Yes. That troubles me a little. We always say, "We are going to have strong language at the highest levels."

Well, that does not seem to me to be a policy, to have strong words at the highest levels. I hear that so often, and I—you know, I guess we—it is true we need to say, here is what our policy is, and here is where we are.

But if you do not have some sort of a position to follow through on strong words at the highest levels, so what? Do not they say, "So what?"

Secretary ROTH. Mr. Chairman, I share many of the frustrations that you do, but I think one of the things in dealing with China that becomes very apparent is that even if they say, "No," the first time you raise something and the second time and the tenth time, that frequently over time you get the objective that you are looking for.

Senator THOMAS. Yes.

Secretary ROTH. And so to me, there is nothing less satisfying than sitting in a meeting raising a series of issues and basically getting stonewalled on them.

But at the same time the question is: What impact is it having over time on Chinese policy? And I think the answer is: Over time, we have been able to affect many Chinese policies, and we hope by continuing to raise these issues that we will continue to make more progress.

Now, I wish there were a better, more satisfying answer that we could get them to do what we want on every issue now, but I do not know that answer.

Senator THOMAS. OK. I do not either, but if I did, I would share it with you. But I—

Secretary ROTH. Thank you, Mr. Chairman.

Senator THOMAS. But I guess I go back to—in the back of your mind, you have to say if there has been a lack of success in some of the things you want to do, you then say to yourself, what could we do that would be more effective? What could we have done that would be more effective that we could do in the future?

WTO—and that is a good thing. I hope we are able to do that, but under the right conditions. I hope we do not find ourselves giving away conditions in order to have some kind of celebrated signing.

But even without WTO, why—why should we have a \$60 billion deficit, at the same time we are restricted substantially from selling things in China? Is not that a kind of a tit-for-tat arrangement?

Secretary ROTH. First of all, let me reassure you that there is no strategy of getting a deal for the sake of a deal.

There is no desperate search to get a WTO agreement so that there will be a centerpiece for the visit, even if it is not commercially viable.

There will only be a deal if it meets our needs, if it is one which provides considerably improved, vastly improved market access for American exporters.

This will not be a political issue. I think it is quite obvious that if we did go that path, that the Congress would have enormous difficulties in accepting it, in providing the approval for permanent MFN or NTR that has to follow in its wake. So I think I can reassure you on that point.

In terms of dealing with the growing China deficit, the question is: One, what is causing the deficit? But, two how do you deal with it?

I suspect that your position is a lot like mine, that you have heard some of the academic arguments and even if there is some truth in them, they are not overall good enough, meaning I think there are some persuasive cases out there by people like Laura Tyson, former head of the Council of Economic Advisors and National Economic Council.

A part of the increase in China's surplus with us or our deficit has been because we have seen the shifting of exports from other countries in Asia—Korea, Malaysia, Singapore, even Taiwan—with higher labor costs to China.

So what you have seen is a reduction of our deficits with many of the other countries, even as our deficit with China has increased. And to some extent that is true.

But, at the same time, that is not a good enough answer. We have to do something to get these numbers down; and the best way of doing that is to improve our market access. That is why we are trying to get this WTO agreement.

Senator THOMAS. Well, I am sure you are right about the shift in Asia. Nevertheless, regardless of the shift, the idea still is that: Why should we put up with substantial trade barriers, both in terms of tariff and non-tariff barriers and, at the same time, leave our barriers down?

Secretary ROTH. Yes.

Senator THOMAS. And that—I mean you come with me to Wyoming and you talk to the folks there who are wanting to sell soda ash, for example, and find that China is not only having a barrier to soda ash, but sells it in Asia for 35 percent below cost, to dump it on the market. That is hard to explain.

Secretary ROTH. I think, Mr. Chairman, that we agree that it is not sustainable to have this size deficit.

The question is which way one approaches the problem, whether we can get agreements that open up markets. We have had agreements in areas like textiles and IPR, where we have made considerable progress with China over time.

Obviously, the clear preference for the administration is to be in compliance with our WTO obligations and try to keep our markets open.

Our entire global strategy, not just related to Asia, has been to try to open markets and increase global trade, not diminish it.

I think the question you are raising is: What if it does not work? What if you cannot get the access? That is a threshold we will have to cross after we see whether or not we get the WTO agreement.

Senator THOMAS. You mentioned Korea. I just met this morning with our Ambassador there. And do you think that China has been a player, an equal player in terms of our dealing with Korea? Do

they share with us their work? Do they share with us what they have done in Korea? Do we—do we have an exchange?

Secretary ROTH. I think the answer is partially yes, but that is not good enough. We have made progress from where we were a couple of years ago when every time we tried to talk to China about North Korea, they would simply say, “Oh, they are a tough people. Do not worry about North Korea. They will shrink their belts. There is no crisis. There is no food problem.”

China would say, “North Korea is too weak. They do not have nuclear weapons. How could you expect such a poor country to be a threat?”

Now, we talk to China in much more realistic terms discussing the actual situation in the country.

We know that China has expressed its concerns about not wanting to see a nuclear North Korea. We know that they have called for economic reform in North Korea, so there are some indications that China’s policy is becoming very much closer to our own.

The point is: It is still not good enough. I am not here to tell you that China is cooperating with us fully. The argument that we are using with China is that, Look, if you want to move toward a constructive strategic partnership, you want to demonstrate to the American people and your own people that this is doable, we should be working actively, publicly, cooperatively on this issue. You should be telling us what you are saying to the North Koreans, both in civilian and military channels about missiles or access to suspect sites or any other facilities.

While we are appreciative of the progress we have made to date and think it represents progress, there is a ways to go.

Senator THOMAS. Yes. There really is. One of the things, I think, is providing apparently all of the—nearly all of the aviation gas that keeps North Korea with some sort of a defense mechanism. Does not that come from China?

Secretary ROTH. China does supply North Korea a considerable amount of fuel. I did not know specifically about aviation fuel. I am happy to take a look at that and give you an answer for the record.

[The following answer was provided for the record.]

PRC military cooperation with North Korea has been limited in recent years. Although the PRC supplies more than half of the DPRK’s aviation fuel, this quantity is sufficient only to maintain minimal training levels. Indeed, training sorties by the NKAF have declined 70 percent in the last decade.

Secretary ROTH. It is very clear that the overall levels of Chinese assistance have not been sufficient to keep the North Korean military operating at previous levels.

Senator THOMAS. Yes.

Secretary ROTH. We have seen a major reduction in training. We have seen shortfalls in fuel. We have seen a reduction in flying hours from where they were a few years ago. We have seen their inability to maintain a lot of equipment.

So I do not think we should leave you with the impression that China is helping North Korea maintain a robust military establishment, there is not any evidence to suggest that.

Senator THOMAS. Would you take another look at that, please?

Secretary ROTH. Sure. I will get you an answer for the record.

[The following answer was provided for the record.]

The PRC does not provide North Korea with significant offensive weapons systems. The two countries continue to have regular military-to-military visits, but in recent years there do not appear to have been any exchanges of officers for training.

Senator THOMAS. There is—you mention Taiwan, of course, which is always one of the real issues. We have made it clear through the years, as I understand it, through the various agreements we have had that we have supported a one-China policy.

We also have a Taiwan legislation that puts us on the side of helping defend Taiwan against any aggression. I am not sure that the President made that clear in his last visit.

Was not there some confusion over what our situation was with Taiwan after the President was there?

Secretary ROTH. I believe that the President could not have been more clear in what he said. This furor, claiming the President's statement of the so-called "three noes" was anything new, simply is not substantiated by the facts. What the President said was a distillation of statements that had been made previously by a series of administrations going back 20 years.

But there was absolutely no change in our overall policy, including the basic parameters, which you have stated, which is our adherence to a one-China policy as well as our adherence to our obligations under the Taiwan Relations Act, which is the law of the land. We work with both of them simultaneously.

There was no change of policy during the President's trip.

Senator THOMAS. No, I realize there was no change. But I think there was some confusion about it. That—that is my view, which I will continue to hold.

Secretary ROTH. And which we are trying to resolve by making categorical statements that there was no change in policy. That was not the intent.

Senator THOMAS. Yes. I understand.

What do you think is China's position with regard to our negotiations with Japan on their security arrangements?

Secretary ROTH. China's position is clear and, in my judgment, unsustainable. China has been opposed to the guidelines, which are designed to improve how the United States and Japan operate with respect to contingencies.

China has taken the position, which we do not agree with, that this is somehow aimed at China rather than being situational, meaning enabling us to deal with any contingencies that might arise in the region.

And China has also come out strongly against our decision to jointly put money into research on TMD. Once again, I have addressed that previously. We believe that Japan has a right to try to defend itself against North Korean missiles.

We keep telling China that it has to stop viewing our security relationship with Japan as a threat to China and rather see it for what it is, which is one of the primary vehicles for the preservation of peace and stability in the Asian/Pacific region.

Senator THOMAS. What is the current situation with China and the Spratly Islands?

Secretary ROTH. We just learned today that the negotiations or talks have concluded between the Philippines and China in terms

of the South China Sea and seeing whether they could come up with confidence-building measures.

We do not have any specific read on those talks yet. So I will give you a more detailed answer for the record. They literally just ended hours ago.

[The following answer was provided for the record.]

The Philippines and China held Assistant Secretary-level experts' talks on confidence-building measures in the South China Sea in Manila, March 22–23, 1999.

While the talks did not achieve any breakthroughs, the sides did commit to further discussions, to settle their dispute through generally accepted principles of international law including the U.N. Convention on the Law of the Sea, and to refrain from the use or threat of force. They also agreed to improve their dialogue on practical issues such as fisheries, scientific research and safety of life at sea.

Both sides felt that the talks themselves constituted a confidence-building measure.

That said, the sides did not reach agreement on the disposition of Chinese structures on Mischief Reef, which the Chinese have said will be for civilian purposes but are not at present ready for joint use.

The Spratlys were discussed at the fifth ASEAN-China Senior Officials' Consultation in Kunming, and there was a formal call by Vietnam to develop a "Code of Conduct" on the Spratlys through ASEAN.

Our policy remains to urge the parties to seek a peaceful solution consistent with international law, including UNCLOS. We have and will continue to express our concerns about unilateral actions which may threaten peace and stability in the region.

Our other fundamental interest, freedom of navigation, has thus far been upheld by all claimants to the Spratly Islands.

Secretary ROTH. But, more important is the overall trend. To start from the beginning, I think it is very clear that while the United States does not take a position on the specific details of the territorial disputes, we very strongly support the principle of freedom of navigation in these waters.

We regularly send the Seventh Fleet through areas of the South China Sea, including near the Spratlys, to make that point absolutely clear to everybody.

And at this stage, we do not believe there is a threat to freedom of navigation by anything that any of the claimants in the region have done with respect to fortification.

And for the record, I think it is useful to point out that China is not the only claimant to the Spratly Islands. There are six claimants that have fortifications on various islands and reefs.

Having said all of that, we are concerned about several aspects of the recent Chinese steps. First of all, the decision to expand or to build larger facilities on Mischief Reef appears to us to go at least against the spirit of the agreement that was reached between China and the Philippines in 1995 when this issue of Mischief Reef first arose.

At that time, China made a public commitment to the peaceful resolution of the disputed issues and agreed to ratify the Law of the Sea, further cementing its commitment to peaceful resolution.

Yet, it has constructed a facility, which if not ominous to our own interest, nevertheless is hard to explain merely as a fishing shelter. It does not seem to make any sense.

We think it is important that this trend not continue, that China—or any of the other claimants, I should add—not build additional outposts, that they seek to find some mechanism for starting to resolve these territorial claims in a non-military fashion.

We expect this issue to figure prominently in an upcoming meeting between China and ASEAN that I think will be held in April. And we intend to raise this issue, as do many other countries, at the ASEAN regional forum in July.

I think it is very important for China to understand that its activity has been noticed, that this activity is viewed as an unhelpful step, that this is jeopardizing its relationship with ASEAN and calling into question its credibility in terms of the commitments it gave a few years back in 1995.

So I guess I am trying to send the nuanced message, Mr. Chairman, not that this is a situation that requires an immediate dramatic military response. In terms of freedom of navigation our issues are not threatened in the short term.

But, at the same time, this is not an event that we can simply overlook and it cannot be part of a long-term trend. China needs to address our concerns and the concerns primarily of the other claimants.

Senator THOMAS. In light of the economic difficulties that China has and, I suppose, will continue to have as is true with most of Asia, what are they—what are their efforts in—in this building the military as a military unit? For instance, blue water Navy, are they still promoting that idea and investing in that?

Secretary ROTH. I think the answer first has to be placed in the larger context of Chinese military modernization where I think the straightforward answer is: We are seeing China modernize its capabilities across the board in every sector of its military. And part of that includes its Navy.

The longer term strategy is to increase their ability to operate farther away from the coast, to move away from, in other words, coastal defense to a blue-water capability.

I think that they are in the very early stages of this. For example, we have seen a number of incorrect reports for many years now about China acquiring aircraft carriers, which has not happened.

Nevertheless they are procuring larger ships. They are developing greater capabilities and that capacity is out there.

Senator THOMAS. OK. What—how would you sort of summarize the agenda for the Premier's meeting in April?

Secretary ROTH. I think the agenda is going to have to be a broad-based one, despite the fact that Premier Zhu primarily has an economic portfolio.

We believe it would be inappropriate for him to come here and only to talk about economic issues, as important as those issues are. And so it is our intention to discuss the entire range of issues in the relationship.

That includes security issues, includes what we have been calling strategic dialog—talking about a lot of the foreign policy situations such as North Korea and South Asia.

It includes obviously talking about human rights. It includes talking about non-proliferation. We have stressed the point to the Chinese, including during Secretary Albright's visit, that they should come prepared to discuss these issues.

We would like to see accomplishments in some of these areas as well, whether it be in a non-proliferation front or elsewhere. Of course, the decision will be China's.

Senator THOMAS. The situation with Hong Kong seems to be reasonably quiet and apparently reasonably successful so far.

Do you think Jiang Zemin is determined to get some kind of an arrangement with Taiwan during his regime?

Secretary ROTH. Well, I am not going to put myself in the position of speaking for Jiang Zemin. I think he clearly has gotten a major boost in his concept from the successful reversion of Hong Kong and now the fact that Macau is supposed to take place by the end of this year. That will leave Taiwan as the unresolved issue.

We have not seen any timetable being issued by China. We think that would be a great mistake.

The administration believes that Deng Xiaoping had great wisdom when he made his remark, "Who cares if it takes 100 years to resolve this?"

We believe that China and Taiwan should focus their efforts on a peaceful resolution, possibly over stages, and they should use the four parties from the cross strait talks to try to accomplish this.

Senator THOMAS. Well, Mr. Secretary, I thank you very much. I think this is an extremely important area as I know you do. I appreciate the efforts you have made.

We have talked about what maybe we should expect from China. What do you think China expects from us?

Secretary ROTH. Well, I think China attaches a very high priority to the phrase that I referred to earlier in the 1997 statement, "moving toward a constructive strategic partnership."

China increasingly views itself as a major player on the world stage, not just the regional stage, and is looking to be treated with respect.

I think China wants to have its view taken into account on a number of regional and global developments. There are also things that China expects that are difficult for us, because China has not given enough attention to its own behavior, meaning, for example: China wants the repeal of all existing sanctions; China would like an expansion of high-tech sales; China would like a more robust military-to-military relationship; China would like us to decrease arm sales to Taiwan.

These are all steps that cannot be considered in a vacuum and that do not come as "freebies" with engagement, but rather these are steps which China's own behavior will have a great deal of influence.

And so they come with their set of expectations. We come with ours. We are going to have to try to match the two and see what accomplishments and agreements we can reach.

Senator THOMAS. Well, it is not an easy one, and I understand each of us has our own culture and has our own background and history, of course, and particularly that is true with China, because they do have a very long history.

On the other hand, there are some things that are of vital importance to—to us and to them in terms of values. It would seem to me that as we see the world become more open through Internet,

through television, through all those things, why, people will be moving toward some of those kinds of changes.

That is one of the problems with North Korea. I think they have almost isolated their people from the rest of the world.

So I do believe that it is going to be healthy for you and the administration and this Congress to review where we are with China, its very important relationship with us, certainly, and to see if there are things that could be done differently to produce some different results.

And I appreciate much your willingness to talk about it, not only this morning, but as we go—as we go about our business. So we will be continuing to pursue this concept and if we come up with some great ideas, I am sure we will be happy to share them with you.

So I thank you very much, my friend.

And I would adjourn the committee.

Secretary ROTH. Thank you. I wish you a successful trip.

Senator THOMAS. Thank you.

RESPONSES OF HON. STANLEY O. ROTH TO ADDITIONAL QUESTIONS SUBMITTED FOR THE RECORD

Question 1. I understand that China is to take first delivery of Russian destroyers equipped with the supersonic sunburn missile by mid-year. This missile flies at more than Mach 2 and was specifically designed to overcome our AEGIS defense system.

What are we doing to discourage this transfer? What are we doing to prepare our forces and Taiwan's forces for this threat? Does this situation perhaps dictate that we rethink our refusal to sell submarines to Taiwan as a means to counter these destroyers?

Answer. Russian and U.S. arms transfers are a subject of regular bilateral discussion with Russia. We are aware of the contracts that China has signed to purchase Russian destroyers. We have made clear to the Russians our view that promoting regional stability should be an important consideration in arms transfer policy.

No international treaty or understanding proscribes transfers to China of such arms, nor does U.S. law penalize conventional arms transfers by third countries to the PRC. Russia is a member of existing international regimes to control conventional arms transfers (e.g., the COCOM-successor Wassenaar arrangement, which monitors destabilizing arms accumulations). We expect that Russia will abide by its commitments.

The Administration remains firmly committed to fulfilling the security and arms transfers provisions of the Taiwan Relations Act (TRA). We will continue to assist Taiwan in meeting its legitimate defense needs in accordance with the TRA and the 1982 Joint Communiqué with the PRC.

Consistent with our obligations under the TRA, we regularly consult with Taiwan on its defense requirements.

SOUTH CHINA SEA

Question. Do we believe that the structures China is building on Mischief Reef are military in nature, or are they just fishing structures, as the Chinese claim? What are we doing to dissuade the Chinese from continuing their aggressive unilateral actions on Mischief Reef and the Spratly Islands in general? Are we prepared to assist the Philippine military upgrade its capabilities as a response to this situation?

Answer:

- We believe the reinforced concrete “castle-style” structures constructed by the PRC on Mischief Reef have dual-use capability.
- The United States has repeatedly spoken out, both publicly and through diplomatic channels, against unilateral actions that increase tensions in the region and has called for all claimants to resolve their differences in a peaceful manner, consistent with international law. We have strongly denounced the use of force or the threat to use force to resolve the conflicting claims.

- We regularly remind claimants of their past statements on the South China Sea, including the December 1997 joint statement by China and ASEAN, which have indicated a willingness to resolve territorial disputes through peaceful means and in accordance with universally recognized international law, including the 1982 UN Convention on the Law of the Sea. We have urged all claimants to use all appropriate diplomatic channels to resolve the dispute. In this regard, we welcomed the recent talks between the Philippines and China in Manila as well as the discussion of the issue at the ASEAN-China Senior Officials Meeting in Kunming, China. We hope these have launched a process which will result in constructive dialogue and peaceful resolution.
- While the United States takes no position on the legal merits of competing claims to sovereignty in the area, we have made clear that maintaining peace and stability in the region and freedom of navigation are fundamental interests of ours. Unhindered navigation by all ships and aircraft in the South China Sea is essential for the peace and prosperity of the entire Asia Pacific region, including the United States. Construction activities by various claimants have raised tensions in the region and are not helpful to achieving a peaceful resolution of the competing claims; however, such activities to date have not hindered freedom of navigation. Indeed, the U.S. Navy sails regularly through the South China Sea, including in the vicinity of Mischief Reef.
- As we have repeatedly stated, the basis of our defense cooperation relationship with the Philippines is not linked to the current situation in the Spratlys/South China Sea. Rather, given the fact that the Philippines is one of our five treaty allies in the Asia Pacific region, we naturally maintain close military ties.
- Ratification by the Philippines of the proposed Visiting Forces Agreement now before the Philippines Senate will strengthen our defense relationship by enabling us to resume ship visits to Philippine ports, to hold joint military training exercises, and to undertake other forms of military-to-military cooperation in order to enhance our overall security relationship.

[Whereupon, at 1:06 p.m., the subcommittee adjourned, to reconvene at 2 p.m., July 1, 1999.]

HONG KONG TWO YEARS AFTER REVERSION: STAYING THE COURSE, OR CHANGING COURSE?

THURSDAY, JULY 1, 1999

U.S. SENATE,
SUBCOMMITTEE ON EAST ASIAN
AND PACIFIC AFFAIRS,
COMMITTEE ON FOREIGN RELATIONS,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:03 p.m., in room SD-419, Dirksen Senate Office Building, Hon. Craig Thomas (chairman of the subcommittee) presiding.

Present: Senator Thomas.

Senator THOMAS. Good afternoon. We will call this subcommittee to order. We appreciate very much your being here.

Today marks the second anniversary of the reversion of Hong Kong to Chinese control. Two years ago, there were plenty of pundits who predicted that after the reversion, the PRC would encroach upon or abrogate Hong Kong's political and economic autonomy. The fact is, though, that today is the subcommittee's first hearing since the reversion.

First, it signals that up until this point, it has basically been business as usual in Hong Kong. Granted, certainly Hong Kong has had some financial difficulties. Those difficulties are not necessarily attributable to any interference from Beijing, but are more an unfortunate economic condition in East Asia. Second, the hearing signals that something has changed in Hong Kong, and that that change has caught the attention of the committee.

There have been concerns, but there has been apparently little change in Hong Kong. There have been some notable exceptions. On May 18, the Hong Kong Government announced its intention to reinterpret,¹ as has been done by the National People's Congress in Beijing, the decision of the Court of Final Appeal. That decision is seen by some as undermining the Court of Final Appeal and the rule of law in Hong Kong.

Second, the Asian economic crisis has not left Hong Kong unscathed. Third, as a result of the accidental bombing of the Chinese Embassy, China has indefinitely suspended Hong Kong ports of call to U.S. Navy vessels. Finally, with the revelations of Chinese espionage at Los Alamos, there have been growing concerns that the

¹ English translation of the Interpretation by the Standing Committee of the National People's Congress follows the prepared statement of Senator Thomas.

PRC may be using Hong Kong as a conduit for acquiring U.S. technology.

So the purpose of today's hearing, the first one we have had, is to examine what changes have taken place since the reversion, and the Court of Final Appeal decision in particular.

[The prepared statement of Senator Thomas follows:]

PREPARED STATEMENT OF SENATOR CRAIG THOMAS

[Reprinted from the June/July issue of the Center for Strategic and International Studies' *Hong Kong Update*]

HONG KONG TWO YEARS AFTER REVERSION: IS STAYING THE COURSE BECOMING CHANGING COURSE?

In the days before the reversion of Hong Kong to Chinese control, one of the British negotiators on the Sino-British Joint Liaison Group used to wear a tie with four Chinese characters on it:

基本不變

meaning "basically no change." That expression embodied their ultimate goal: that there be basically no change in Hong Kong as a result of its transformation from a British colony into a Special Administrative Region of the People's Republic of China.

Central to that continuity was securing the rule of law, and the keystone to the rule of law was the establishment of the Court of Final Appeal. The rule of law played a pivotal role in making Hong Kong the vibrant business community it is today. There is perhaps no symbol more potent, more representative, of Hong Kong's continuing independence and vitality under "one country, two systems" than the Court as final arbiter of the law in Hong Kong.

Despite some dire predictions from certain quarters, in the two years since reversion Hong Kong has been business as usual. That is, business as usual until January 29, 1999, when a small crack appeared in the dike. On that date, the Court handed down a decision which interpreted Articles 22(4) and 24(2)(3) of the Basic Law so as to—in effect—expand the universe of those individuals with a right of abode in Hong Kong.

The decision was received with something less than enthusiasm by the Hong Kong and Beijing governments, which suddenly found themselves faced with the prospect of a flood of new immigrants. As a result, the Hong Kong government took the unusual step of first asking the Court for a "clarification" of its decision, and then taking the unprecedented step of asking the Standing Committee of the National People's Congress to, in effect, reinterpret the applicable provisions of the Basic Law. It is that decision which I believe is the first blow to "one country two systems," and a threat to the sanctity of the rule of law in Hong Kong.

As I have said publicly since the decision, it is not my place or my desire to interfere in what is essentially an internal matter of Hong Kong, or to offer my interpretation of the Basic Law. I am, however, in a position to comment on the perceptions outside Hong Kong of what the Hong Kong government is doing, and the effects those perceptions may have.

Let me emphasize at the outset that I do not attribute any sinister or nefarious motives to the government in general, or Chief Executive C.H. Tung in particular. There is no denying that the Hong Kong government faced a Hobson's choice; if the government let stand the decision of the Court, it would—by its own figures—be faced with a potential influx of 1.67 million new residents, an increase of almost twenty-five percent in an already densely populated metropolitan area; and if it asked the Standing Committee of the National People's Congress for a reinterpretation of the Basic Law, it was essentially inviting that body to overrule and nullify the court's decision. And as a legislator, I can certainly appreciate the situation whereby a court ruling places a huge burden on government.

But sometimes *appearances* can be as damaging as realities. For example, in the American legal system a judge or attorney can get herself into ethical hot-water simply for doing something that could appear improper, even if the act itself is not actually improper. In this case, the appearance to those of us outside Hong Kong is that the Hong Kong government did not want an expanded right of abode before the Court decision, expressed its opposition to the decision when it was handed down, explored ways to get around it by asking for a "clarification" in February, and

finally decided to go to the National People's Congress to get it to "overrule" the decision. The perception is that the government has set a precedent that when the Court hands down a decision with which it disagrees, or the implementation of which will be difficult, the government will simply go "over the head" of the Court to Beijing. Statements by members of the Hong Kong government that "the Government is seeking an interpretation of the Basic Law, not an appeal against the [Court] judgments—two completely different things" are—under the circumstances—simply a distinction without a difference.

Such appearances undermine foreign confidence in the finality of the decisions of the Court, and, by extension, confidence in the rule of law. They also undermine confidence in the application of the maxim "Hong Kong people ruling Hong Kong." And therein lies the problem for Hong Kong vis-a-vis the outside world.

Hong Kong's pre-1997 success as a center of international trade and finance was based in large part on the fact that, because of the colony's firmly entrenched dedication to the rule of law, foreign companies felt comfortable investing there. A great deal, if not a majority, of the business community's jitters preceding the 1997 handover were centered on its concerns as to whether the rule of law, and thus a favorable investment climate, would survive reversion intact. Reversion came and went with no perceptible change, until now.

Certainly this decision to turn to the National People's Congress on the right of abode issue is not the death knell for the rule of law in Hong Kong—far from it. But it makes people outside Hong Kong ponder in the back of their minds whether this might not just be the first crack in the dike. It makes them wonder if in 10 years' time they'll look back and be able to say, "See, there's where it all started." That kind of second-guessing, however minuscule at this point in time is bound to translate for any prudent businessman into some hesitancy in pursuing his investment or business strategy. And that translates into problems for Hong Kong down the road.

I readily admit that it is within the authority of the Hong Kong government to ask the National People's Congress to interpret provisions of the Basic Law. But given what is at stake under the facts of this particular case, I wish that it would have demurred. I, like many other observers of Hong Kong, will now hold my breath and hope that resorting to the National People's Congress remains the unique exception, and does not become the rule. That is the "other shoe" which I would hate to ever hear drop.

(This is an English translation of the original instrument in Chinese and is published for information.)

THE INTERPRETATION BY THE STANDING COMMITTEE OF THE NATIONAL PEOPLE'S CONGRESS OF ARTICLES 22(4) AND 24(2)(3) OF THE BASIC LAW OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA

(Adopted by the Standing Committee of the Ninth National People's Congress at its Tenth Session on 26 June 1999)

The Standing Committee of the Ninth National People's Congress examined at the Tenth session the "Motion Regarding the Request for an Interpretation of Articles 22(4) and 24(2)(3) of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China" submitted by the State Council. The motion of the State Council was submitted upon the report furnished by the Chief Executive of the Hong Kong Special Administrative Region under the relevant provisions of Articles 43 and 48(2) of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China. The issue raised in the Motion concerns the interpretation of the relevant provisions of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China by the Court of Final Appeal of the Hong Kong Special Administrative Region in its judgement dated 29 January 1999. Those relevant provisions concern affairs which are the responsibility of the Central People's Government and concern the relationship between the Central Authorities and the Hong Kong Special Administrative Region. Before making its judgement, the Court of Final Appeal had not sought an interpretation of the Standing Committee of the National People's Congress in compliance with the requirement of Article 15K(3) of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China. Moreover, the interpretation of the Court of Final Appeal is not consistent with the legislative intent. Therefore, having consulted the Committee for the Basic Law of the Hong Kong Special Administrative Region under the Standing Committee of the National People's Congress, the Standing Committee of the National People's Congress has decided to make, under

the provisions of Article 67(4) of the Constitution of the People's Republic of China and Article 158(1) of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, an interpretation of the provisions of Articles 22(4) and 24(2)(3) of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China as follows:

1. The provisions of Article 22(4) of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China regarding "For entry into the Hong Kong Special Administrative Region, people from other parts of China must apply for approval" mean as follows: People from all provinces, autonomous regions, or municipalities directly under the Central Government, including those persons of Chinese nationality born outside Hong Kong of Hong Kong permanent residents, who wish to enter the Hong Kong Special Administrative Region for whatever reason, must apply to the relevant authorities of their residential districts for approval in accordance with the relevant national laws and administrative regulations, and must hold valid documents issued by the relevant authorities before they can enter the Hong Kong Special Administrative Region. It is unlawful for people from all provinces, autonomous regions, or municipalities directly under the Central Government, including persons of Chinese nationality born outside Hong Kong of Hong Kong permanent residents, to enter the Hong Kong Special Administrative Region without complying with the appropriate approval procedure prescribed by the relevant national laws and administrative regulations.

2. It is stipulated in the first three categories of Article 24(2) of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China that the "permanent residents of the Hong Kong Special Administrative Region shall be:

(1) Chinese citizens born in Hong Kong before or after the establishment of the Hong Kong Special Administrative Region;

(2) Chinese citizens who have ordinarily resided in Hong Kong for a continuous period of not less than seven years before or after the establishment of the Hong Kong Special Administrative Region;

(3) Persons of Chinese nationality born outside Hong Kong of those residents listed in categories (1) and (2)."

The provisions of category (3) regarding the "persons of Chinese nationality born outside Hong Kong of those residents listed in categories (1) and (2) means both parents of such persons, whether born before or after the establishment of the Hong Kong Special Administrative Region, or either of such parents must have fulfilled the condition prescribed by category (1) or (2) of Article 24(2) of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China at the time of their birth." The legislative intent as stated by this interpretation, together with the legislative intent of all other categories of Article 24(2) of the basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, have been reflected in the "Opinions on the Implementation of Article 24(2) of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China" adopted at the Fourth Plenary Meeting of the Preparation Committee for the Hong Kong Special Administrative Region of the National People's Congress on 10 August 1996.

As from the promulgation of this Interpretation, the courts of the Hong Kong Special Administrative Region, when referring to the relevant provisions of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China, shall adhere to this Interpretation. This Interpretation does not affect the right of abode in the Hong Kong Special Administrative Region which has been acquired under the judgement of the Court of Final Appeal on the relevant cases dated 29 January 1999 by the parties concerned in the relevant legal proceedings. Other than that, the question whether any other person fulfills the conditions prescribed by Article 24(2)(3) of the Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China shall be determined by reference to this Interpretation.

Senator THOMAS. Mr. Secretary, we are pleased to have you here, sir. We look forward to your comments. If you will process.

STATEMENT OF HON. STANLEY O. ROTH, ASSISTANT SECRETARY FOR EAST ASIAN AND PACIFIC AFFAIRS, DEPARTMENT OF STATE

Mr. ROTH. Thank you very much, Mr. Chairman. And it is a pleasure to be back.

And I want to commend you on the initiative in doing this hearing on the second anniversary, as you point out. I think it is very important for the people of Hong Kong to understand that the U.S. Government, both the administration and the Congress, still care, that we still follow developments closely, that this is a matter of intense interest, and that it is not now just a matter of history, 2 years later. And so I think the signal you have sent by calling this hearing is a very good one.

I have submitted much lengthier testimony than usual, Mr. Chairman, and that is for the reason you pointed out—that this is the first hearing that you have held on this issue since the reversion—so I thought it would be useful to get a lot of thoughts into the record. But I will give a much abbreviated oral statement so that you can get to your questions and to another panel of witnesses.

I think that in thinking about the reversion, the interesting thing is that until the last few weeks, essentially we could say that it went exactly the opposite of what we were worried about. Meaning, at the time of the reversion, I think all of us were focused on the political agenda—would Hong Kong stay Hong Kong? We all remember the pictures of the PLA Garrison marching in, and the question: What kind of role would they have?

We watched the construction of a significant office building for the Foreign Ministry, and the Chinese Government took one of its senior diplomats from London and may put its Ambassador in Hong Kong, and we wondered if he was going to be a *de facto* pro consul. We wondered about freedom of the press, freedom of assembly, and whether, as you said, Hong Kong would be Hong Kong.

I think what we did not count on was the Asian economic crisis. And in fact, for much of the 2-year period, the economic issues have far dominated the agenda in Hong Kong compared to the rest. So I thought what I would do with my remarks is start on the economic side, but then come back to the political side, and, finally, to the two specific issues that you have flagged.

On the economic side, I think one has to note the unfortunate luck of the new regime in Hong Kong, taking over virtually simultaneously with the onset of the Asian financial crisis. And so the government had the challenge not only of making a transition away from the old form of government under the Colonial administration, but also managing the most severe economic crisis in several decades.

In my statement, I give some of the statistics on just how sharp the decline was, particularly with respect to property values, but also on some of the other indicators, including, not unimportantly, unemployment, which went up to I think a historic high of over 6 percent. And so what I did not capture in my statement, but I think I would like to do now, is a sense of the malaise, even, that I found when I visited Hong Kong on several occasions in 1997 and 1998, that there was a sense that things really were profoundly in

trouble in terms of the economy, the mood was sour, and that people were focused on the situation, and that, as a result, we found that issues which might not have gotten as much attention otherwise had become huge issues.

For example, you remember probably the enormous controversy in Hong Kong over the avian flu, the question of how the government handled what is called here the “sick chicken issue.” And then there was another set of controversy over the problems that attended the opening of the international airport in 1998. And still a third large controversy, this one more substantive perhaps, attending to the intervention of the Hong Kong Government in the market to secure the currency against speculation from the outside.

But I think all of these issues would have been issues, but they became larger issue because of the context in which they occurred, which was the overall recession within Hong Kong itself, and the general sense of unhappiness. I think now, as we approach the 2-year mark today, there is a lot better news on the economic situation. This is not to say that Hong Kong is fully recovered, but the statistics are pretty dramatic.

The stock market index has nearly doubled in value since last August, and property values are up 15 percent over a year ago, August. The Hong Kong Government is predicting a very slight, but nevertheless positive, rate of economic growth for this year of a half a percent, which compares favorably to a decline in 1998—a most unusual situation in Hong Kong which is famous for economic growth—and the OECD is predicting 4 percent economic growth in 2000, which is a fairly robust level, if achieved. And tourism is starting to pick up once again, which is important both economically and substantively.

So I think that what we are saying is that the worst of the economic crisis appears to be over. And I think that is going to have considerable influence on the overall mood in Hong Kong and the attitude toward the government.

So, with that economic background in mind, let me turn to the political situation. And I think you captured it correctly in your opening statement, that in terms of many of the worst predictions or fears about what might happen, they simply have not materialized. The PLA Garrison has been all but invisible within Hong Kong. The last time I checked, they had not even changed the name of the barracks from Prince of Wales, which seems quite remarkable to have Chinese PLA forces in the Prince of Wales Barracks.

The Hong Kong authorities have clearly been in charge on major issues. No one had the sense that China was running Hong Kong from the Foreign Ministry building, that C.H. Tung was the Chief Executive in fact and not just in title. That, in many ways, concerns about freedom of the press did not materialize. This is not to say that there have not been some concerns about self-censorship. But, on the other hand, here we are in Hong Kong, as part of China, and Wang Dan is still writing a bimonthly column, and there is fierce criticism of the government in the press. So that certainly one would say this is a far more open press than one sees in the rest of China.

There has also been freedom of assembly. This is the only place in China where there was a demonstration this year on the 10th anniversary of Tiananmen. That is not a minor point in terms of keeping Hong Kong as Hong Kong, something you do not see in the rest of China. And I have given more examples of these type of things that demonstrate that Hong Kong has not by any means reverted to some type of much more controlled regime in terms of press, assembly, association. And so I think, overall, again, if you go back and look at some of the fears that had been advanced 2 years ago at the reversion, these have not thankfully materialized.

Nevertheless, there have been some significant problems. And I do not think that they should in any way be slighted. And I think you mentioned the most important of those at the current time, which is the issue of the right of abode and its relationship to the independence of the judiciary.

As you know, Mr. Chairman, I am not a lawyer and I am not going to expound on the court decision itself and whether it was right or wrong. And, in any case, I do not think an American Government official should be second-guessing a court decision that is derived at in a free judicial system. I think the most important point to focus on is what happened after the decision. And one of the consequences we live with here at home as well is that when the court makes a ruling, then the government has to decide how to adjust to it and live with it.

And in this case, the Hong Kong authorities faced a very severe challenge, because they felt that the court ruling opened up a potentially destabilizing situation, where Hong Kong could be inundated over a period of time with an enormous number of returning children, and that this could affect the prosperity of Hong Kong and their way of life.

Faced with this situation, fearful of what the consequences of the court decision might be, the Hong Kong authorities had a really rather unattractive menu of alternatives on how to address this situation. In other words, once the court case happened, there was no easy way out. And as a result, the government had to look at the different legal mechanisms, of which there were several, which I describe briefly in my testimony. But the point is they chose a mechanism that was legal, is legal, under the current procedures spelled out under the Basic Law and the agreements reached, which is to get an interpretive ruling from the National People's Congress in the mainland.

I think that we have to distinguish between a set of circumstances where you have the Government of Hong Kong, with a considerable degree of support—not by any means a consensus, but a considerable degree of support—from the people of Hong Kong, supporting this decision from a decision where this might have been done by the Chinese Government without a request from the Government of Hong Kong, which would have been I think far more disturbing in terms of preservation of the rule of law.

Nevertheless, in terms of the bottom line, Mr. Chairman, I think the only thing we can say is that we are going to have to watch and see how the situation develops. It is way premature to conclude that the rule of law is gone from Hong Kong, that this single precedent has vitiated the entire court system, and guaranteed

that in the future the Government of China will intervene through this mechanism. I think we are going to have to watch and see what happens.

We have made our concerns known publicly and privately, that this is not a situation that we would like to see addressed. I discussed this with Anson Chan on her recent visit here, as did many other people in Washington. And you have heard her public and private assurances that they hope that this is a one-off situation, to use the British phrase, that they will not have to go on any issue for an interpretation to the NPC any time soon.

If that turns out to be the case, then obviously we will not have a major attack on the rule of law, and that this case will recede in terms of its political significance. At the same time, until the future has spoken for itself, I think we have to be very clear that we are watching, that we are concerned, that if this were to become a normal way of doing business, a regular way of doing business, that we think it would have implications, negative implications, for the rule of law in Hong Kong. So this is still a work in progress and up to the government to manage it well. And we hope they will do so. They have given us a commitment that they are aware of the implications.

Let me turn to the issue of export controls. And here, I must say that I think it is very important that we start with the facts rather than speculation. Meaning that obviously as an enormous port with enormous international commerce, there is room for concern about the flow of technology and technology transfer. That is true in any major city, including our own port cities.

But, having said that, the evidence that we have to date suggests that Hong Kong is one of the best in the world in terms of managing its export control regime, and we simply do not have significant evidence that there is a problem. For that reason, the administration has been quite concerned that simply because of fear that there might be a problem or that a problem could develop in the future, that legislation has been introduced and passed in one house that—in the Senate—that we feel makes a very unfortunate—that sets an unfortunate precedent of treating Hong Kong the same as the rest of China, rather than trying to maintain the “one country, two systems” difference that we have worked so hard to preserve, that even in the absence of evidence that there is a problem, that a decision was made to take this step, which seems, under the circumstances, an overreaction.

I must say that I think the Government of Hong Kong was completely forthcoming during Anson Chan’s recent trip here, that she focused specifically on the only real indication of concern that she was given when she made the rounds on the Hill and talked to people about concerns, which was the issue of PLA trucks, and the question of whether the controls on the inspections of these truck was adequate or whether technology might slip across the border in them.

And she said, first, that categorically, that if anyone had any evidence of this, of anything being transshipped, give it, and the government would followup. Which I think, coming from the Hong Kong authorities, is credible. But, two, that her government would try to tighten the procedures on these trucks, just to try to make

doubly sure that there was not a problem. And they are in the process of trying to work that out right now, although I do not believe that the new procedures are finalized yet, in terms of implementation.

But what I am saying is, one, let us make sure we have a problem before we go down the path of lessening the divide between "one country, two systems," and we do not want to slide into treating Hong Kong as part of China routinely; two, I want to point out that we have the authority at any point within the administration, if we see that there is a problem, to impose such controls. So this is not a lost moment, that if the Congress does not act now, that there will not be an ability to deal with this problem. We think there will be an ability to deal with this problem.

So I would hope that this legislation does not advance any further than it has already gone.

Finally, Mr. Chairman, let me just touch upon an issue which got discussed in my last hearing with you in the context of China, which was the decision by the PRC authorities to suspend port calls for American military ships to Hong Kong. As I indicated at that time, we thought that was a regrettable decision. We thought that there was no justification for it on the merits, and that it was punitive to Hong Kong, particularly economically and, again, not something that was necessary in the spirit of "one country, two systems." That this is not "one country, two systems." That this is not, I want to emphasize from the perspective of today's Hong Kong decision, a decision by the Government of Hong Kong, and they should not in any way be blamed or held accountable or responsible for this action by the authorities.

As you know, China does have responsibility for foreign policy and defense for Hong Kong, and so they exercised their jurisdiction in this case in a way we did not like and in a way we hope will soon cease. But it is not something that the local government in Hong Kong decided to do, and so it should not be considered as part of their track record. And, needless to say, we hope this issue will be corrected as soon as possible so that these port calls can be resumed.

Why do not I stop here and open it up to your questions.

[The prepared statement of Mr. Roth follows:]

PREPARED STATEMENT OF HON. STANLEY O. ROTH

U.S. POLICY ON HONG KONG

Mr. Chairman, thank you for the opportunity to speak before your subcommittee this afternoon on the subject of United States policy toward Hong Kong. Since I first appeared before the SFRC as the Administration's nominee to be Assistant Secretary for East Asian and Pacific Affairs almost two years ago, I have appreciated the intensive and constructive oversight over U.S. policy in the region, which your committee has provided. I have been honored to testify at a number of hearings which you have chaired on events in China and U.S. policy toward that important nation. Yet, this is the first time we have met to discuss U.S. policy toward Hong Kong. I believe there is an important reason for that omission.

Exactly two years ago, on July 1, 1997, China peacefully resumed the exercise of sovereignty over Hong Kong. That peaceful transfer was the product of years of preparation by the leaders of both Great Britain and China and by the people of Hong Kong. It was a transfer fraught with difficulties and uncertainties and one central question: Would Hong Kong be able to retain the openness and the rule of law that had made it one of the most vibrant cities in the World?

The questions we asked, the concerns we felt were primarily political: Would Hong Kong actually retain the autonomy it had been promised? Would Beijing allow the people of Hong Kong to continue to enjoy the human rights they had exercised under British rule? Over the course of the past two years, we have watched political developments in Hong Kong closely. Most have been positive, although as I will note later in my remarks, there are a few worrisome clouds on the horizon. Hong Kong has largely remained autonomous, open and observant of the rule of law—far more so than any had anticipated.

Surprisingly, the difficulties, which Hong Kong has encountered since the handover, have been not political, but economic. The financial crisis erupted just as Hong Kong came under Chinese sovereignty, and Hong Kong suffered its first negative growth in over 25 years. That has posed serious problems for the Government of Hong Kong and challenged the confidence of the people of Hong Kong in both their government and their future. While Hong Kong has begun to recover economically, the difficulties remaining before it are real.

Given these challenges I would like to reverse my accustomed sequence and consider economic developments first, then turn to the political. Nonetheless, this two-year anniversary offers a welcome opportunity to assess how Hong Kong has done, where it is heading, and what this means for U.S. policy.

ECONOMIC DEVELOPMENTS

Hong Kong continues to be one of the world's most open and dynamic economies—the seventh largest trading entity and the fifth largest banking center. As one of the four tiger economies of East Asia—together with South Korea, Taiwan and Singapore—Hong Kong has been a regional hub for large numbers of U.S. companies and the jumping off point for many seeking to do business in the People's Republic of China. Over 1,100 U.S. companies employ 250,000 Hong Kong workers (10 percent of the workforce).

Impact of the Asian Financial Crisis

Despite these strengths, Hong Kong, like the rest of Asia, suffered during the regional financial crisis. Property values dropped in 1998 by as much as 65 percent from their 1997 peak. GDP declined 5.1 percent in 1998 and will likely remain flat in 1999. Unemployment, now 6.3 percent, has grown to the highest levels in thirty years.

These negative developments were largely not of Hong Kong's making and had nothing to do with its reversion to Chinese sovereignty, but they did pose the first real challenge to the new government of the Hong Kong Special Administrative Region (SAR). Whether fairly or not, the new chief executive and Hong Kong's renowned civil service were subjected to intense scrutiny by the Hong Kong people who were sent reeling by these economic shocks.

For example, in late 1997 an "avian flu" was discovered among chickens being sold in the markets of Hong Kong. The Government stepped in to destroy all chickens in Hong Kong markets to block the infection spreading. Shop keepers and their customers felt frustrated, and the Government was criticized. In July of 1998, the new government opened the new international airport at Chek Lap Kok. In both cases, the government was sharply criticized for problems, which might have gotten less attention at other times.

In August 1998, the Government provoked quite a different sort of furor when it spent about US \$15 billion to intervene in currency, stock and futures markets in order to defend the economy against what it perceived as "manipulators." The Financial Secretary and others explained at some length why this step did not mark a reversal of Hong Kong's commitment to a free market, but many investors appeared shaken. They wondered if the new SAR Government would do things differently, making Hong Kong a less attractive financial hub than it had been. While these questions have continued among some analysts, Hong Kong authorities continue to express their adherence to free market policies, and Hong Kong continues to be a very attractive location for U.S. manufacturers and investors.

In view of these challenges the SAR Government has encountered over the past two years, it is worth noting that Hong Kong's economy and confidence in the economy have begun to rebound. The SAR Government has undertaken an effective series of modest budget accommodations. It froze government land sales (its largest source of revenue) from June 1998 through March 1999 to stabilize land prices, which have recovered 15 percent from their 1998 lows. The government is also considering strategic changes in economic policy to make the SAR more competitive.

Last year's business confidence survey by the Hong Kong American Chamber of Commerce already indicated that its members were confident in the SAR's recovery.

54 percent considered the 1999 outlook as “satisfactory” or “good,” rising to 87 percent and 98 percent for 2000 and 2001.

POLITICAL DEVELOPMENTS

Now let me turn to political developments. When Hong Kong became a Special Administrative Region (SAR) of China on July 1, 1997, its people were promised by the Joint Declaration and the Basic Law that the social and economic system, the lifestyle and rights and freedoms they had enjoyed as a colony of Great Britain would remain unchanged for fifty years. Hong Kong was promised a high degree of autonomy in all matters except foreign and defense affairs. Political developments since reversion have fulfilled that promise.

Autonomy

Over the past two years Hong Kong has been governed by Hong Kong. The Chief Executive Tung Chee Hwa has worked closely with the civil service and Chief Secretary Anson Chan. In all of the management and economic issues which I discussed above, the decisions were made by the SAR Government without reference to Beijing.

PLA Hong Kong Garrison

The PLA garrison stationed in Hong Kong has been the primary symbol of China’s sovereignty over Hong Kong. With the exception of concerns over their possible role in transshipments of sensitive technologies, which I will discuss below, the garrison has been non-controversial. The garrison troops maintain a very low profile. They are mandated only to provide national defense and may act in other roles only at the request of the SAR Chief Executive. Thus far, they have kept strictly to that limited role, have had minimal interaction with Hong Kong’s uniformed services and have not engaged in business activities.

Human Rights

One of the most closely watched barometers of Hong Kong’s autonomy has been its continued respect for fundamental freedoms, including free association, freedom of press, and freedom of the speech.

Free Association

At the time when Great Britain and the PRC were still negotiating the hand-over, this concern was thrown into sharp relief by the suppression of the Tiananmen protests on June 4, 1989. This tragedy immediately sparked massive demonstrations in Hong Kong. Every year since, before and after the reversion, the people of Hong Kong have held protests and candlelight vigils to commemorate Tiananmen. This year, Hong Kong saw a 4,000 person march and a candle light vigil by 70,000 orderly and reflective demonstrators, all of which happened peacefully and without police obstruction.

Freedom of the Press

Both print and broadcast media in Hong Kong remain free and feisty and report without taboos. Reporters and commentators have criticized the SAR government for problems in the opening of Hong Kong’s new airport and its handling of an outbreak of avian flu. Commentary on affairs in the PRC is equally vigorous. One newspaper, “Apple Daily,” regularly published a column by Wang Dan, a leader of the Tiananmen student protests now living in the U.S.

Freedom of Expression

Others in politics and society have also demonstrated their freedom to express different points of view. For example, Independent Labor Union organizer and Tiananmen activist Han Dongfang broadcasts his Radio Free Asia program from Hong Kong. In April, the Frontier and the Hong Kong Alliance in Support of Democratic Movements in China organized a petition drive to protest the arrest in China of Democratic Party and human rights activists. Last month, lawyers and human rights activists protested the Hong Kong Government’s decision to seek NPC interpretation of the Basic Law, a decision I will discuss in a moment.

TWO NEW CONCERNS

On all of these political issues where we had had concerns on July 1, 1997 the record has been quite positive. Since then two unexpected issues have arose and raised significant concerns, judicial autonomy and the export of sensitive technologies, and I know they have concerned you personally, Mr. Chairman.

Judicial Autonomy Under the Basic Law

Hong Kong has continued to have a high-quality, independent judiciary, selected by a non-partisan commission. The highest court, the Court of Final Appeal, also includes distinguished jurists from other Common law jurisdictions.

At the same time, there have been several judicial rulings, both in Hong Kong and China, that have raised troubling questions about judicial autonomy. In perhaps the most controversial case, the SAR Government requested the National People's Congress to review a ruling by the Hong Kong Court of Final Appeal, which, the government claimed, could allow over 1.6 million Chinese to flood into Hong Kong. Just this Monday, the Standing Committee of the NPC issued an interpretation of the relevant Basic Law provisions on the Right of Abode. This had the effect of reversing in part the Court of Final Appeal ruling regarding which children of Hong Kong residents had residency rights in Hong Kong.

That is the short summary of the case, but the issue is more complex than that. Concern over unlimited mainland migration into Hong Kong troubled the colonial government of Hong Kong for many years. Along the border arose an intimidating fence line to discourage illegal migrants. Hong Kong residents feared that new migrants could threaten their jobs and make the over-crowded city almost unlivable. It was against this background that the Basic Law sought to establish limits on the rights on Hong Kong residents to bring their families to Hong Kong from China.

When a group of Hong Kong residents filed a test case to clarify exactly who was entitled to the right of abode, the court ruled that the Basic Law had not limited the right as closely as the drafters had intended, leading to the government estimate that over one million additional family members from China would be allowed to enter from China.

This was a result troubling to both the government and most Hong Kong residents. There were no easy remedies. The Government could request the National People's Congress in Beijing to amend the Basic Law, it could seek an interpretation of the Basic Law, again from the NPC, or it could request the court to reconsider its ruling. Each approach was legal, each approach had its particular difficulties. The Government chose to seek an interpretation.

Although the Basic Law does include a process for seeking such an interpretation, this action sets what we hope will not leave a troubling precedent. Frequent resort to interpretations by the National People's Congress could render the SAR Government immune from any judicial decision it wished to reverse and spell the end of both the powers of judicial review and Hong Kong's autonomy from Beijing. On the other hand, this could simply be, as the SAR Government insists, an extraordinary case.

Export Controls

The 1992 Hong Kong Policy Act mandated that the U.S. treat Hong Kong as a separate entity from the PRC for purposes of controlling exports of sensitive technologies "as long as the United States is satisfied that such technologies are protected from improper use or export." To carry out this mandate, the Administration has kept the status of Hong Kong's trade control system under close and continuing review. There have been extensive bilateral discussions, exchanges of information and verification visits by interagency teams and Commerce Department investigators. We have been satisfied, that the Hong Kong Government since the handover has been diligent in implementing its system and open to cooperation with the U.S. and other countries that wish to retain control over sensitive technology exports.

We completed our most recent inspection of Hong Kong's export control enforcement in March and April of this year. It confirmed once more that Hong Kong continues to have an effective trade control regime. There is no confirmed evidence that Chinese officials have interfered in Hong Kong export control decisions.

In 1998, Chief Executive C.H. Tung received a petition from an influential mainland company to return a Chinese armored personnel carrier Hong Kong Customs had seized in 1997. On its own initiative, Hong Kong Customs had seized the vehicle in transit from Thailand, where it had been featured in an exhibition, back to China, because the shipper had not obtained the required license. The petition was rejected. The Hong Kong Government fined the shipper and confiscated the armored personnel carrier. This was the kind of response which our export control officials have come to expect of the Hong Kong authorities.

Recently, concerns over Chinese espionage and the integrity of U.S. export controls has led in turn to new questions about whether militarily sensitive technology might have been transshipped to China through Hong Kong. The Cox Committee's report asserted that the PRC commonly imports sensitive technologies through Hong Kong and hypothesized that such transshipments might occur either through PRC controlled companies or via PLA vehicles crossing the land border between

Hong Kong and China without inspection. The Cox Committee's conclusions on the subject were sharply at variance with our own assessments.

Nonetheless, we followed up on the concerns raised by the Cox Committee, and we discussed with Hong Kong officials the possible use of PLA trucks for the transit of sensitive technologies. We have made clear to the Hong Kong authorities that the ball is in their court. They need to ensure that all PLA trucks transiting the Hong Kong PRC land border are subject to inspections and update us on their efforts.

Following on the heels of the Cox report, a number of Members of Congress have proposed to legislate a stiffer export control regime for Hong Kong. I believe such proposals are inappropriate for several reasons. As I noted above, cooperation between Hong Kong and U.S. officials in enforcing export controls on sensitive technologies has been excellent. If there are problems, the Administration already possesses the legal tools to address those problems, even to impose harsher export control requirements on Hong Kong. Finally, the United States has a policy interest in supporting Hong Kong's status separate and distinct from China. We should not, as some Members of Congress have proposed, treat Hong Kong like China when there is no evidence indicating we need to do so.

U.S. MILITARY STOP OVERS

Before concluding this review of Hong Kong and U.S.-Hong Kong relations, let me turn briefly to the recent decisions by the PRC to deny U.S. military planes and ships access to Hong Kong. These denials have occurred as a response by Beijing to the tragic accidental bombing of the PRC embassy in Belgrade. They reflect a central fact of Hong Kong's status, one which we have understood from the day the Basic Law was promulgated: Beijing retains control of defense and foreign affairs matters in the Hong Kong SAR.

I hope and, perhaps optimistically, expect that the U.S. and China will soon get past the current impasse, which led Beijing to deny our military ships and aircraft access to Hong Kong. I see no reason to conclude that these denials reflect a change in Beijing's approach to the autonomy of Hong Kong in matters other than defense and foreign policy.

CONCLUSION

Since I have not testified in front of this committee before on Hong Kong, I have taken this opportunity to present in some detail my assessment of its current situation and of U.S. interests there. As I have made clear, the challenges facing Hong Kong and our interests there are different from what I would have predicted two years ago.

Hong Kong continues to be a vibrant city, economically, socially and politically, and the United States has very significant interests in doing what we can to ensure that it remains so. We do that by treating Hong Kong separately from China in law and policy as long as it continues to exercise a high degree of autonomy. The Hong Kong Policy Act of 1992 gives us the flexible tools necessary to work with an autonomous Hong Kong under Chinese sovereignty. We also support Hong Kong's unique status through the continued presence of U.S. companies and citizens in Hong Kong. Our challenge is to stay the course and to encourage the PRC to do likewise.

Senator THOMAS. OK, thank you. Thank you very much, Mr. Secretary.

Let us just start with your last issue. What is your prospect of this changing? Despite the fact that the PRC makes the call, Hong Kong must have some influence on who comes into that port, at least in urging change. What do you see happening in the future?

Mr. ROTH. I think, unfortunately, that this issue is caught up in the much larger issue of the overall U.S./China relationship. As you know, there are many areas of discourse and diplomatic activity with China, which have not returned to usual since the accidental bombing of the embassy. And we have been trying very hard to get all of these channels reopened, including the negotiations on WTO, the human rights dialog, the overall normal relationship, where all the contacts have been suspended, and specifically this Hong Kong piece.

Needless to say, the ball is in the Chinese court. We feel we have done everything we can to respond to the tragic accident. We have apologized, as I went through in great detail the last time, the sequence, conducted our own investigation, sent a Presidential emissary to present the findings of that investigation. We are pursuing the issue of compensation for either the families of those three individuals whose lives were lost or those who were injured, and are trying to do the decent thing on that grounds, and are pursuing internally the question of internal culpability, if there is any, within the organizations that were responsible for the accident itself.

So we feel that, as a package, the administration really has done everything that could be done in the face of this accident, and now we really think that, having presented all this to China, that it is up to the Government of China to acknowledge that we have done the best we could under these tragic circumstances and to start resuming business as usual.

They have not, to date, chosen to do so. And I am not in a position to speak for them as to when they will. I can simply use this platform today to restate the willingness on the part of the administration to reengage across the board with them as soon as possible, because we think it will be mutually beneficial.

Senator THOMAS. Do you think this is symbolic of whether or not we are in an engagement situation, this port of call thing?

Mr. ROTH. Well, I think, unfortunately, that has gotten linked up into the overall engagement, even though I would have tried to make an argument that Hong Kong should have been kept separate.

Senator THOMAS. You talked, then, before that about this technology movement. And you indicated that, of course, Hong Kong has for a number of years been involved in an arrangement, when it was a British Territory. That no longer exists, of course, even though they have continued. Would it not be hard to imagine that if the PRC—I mean, after all, there is a movement, a great deal of movement of commerce, is not there, between Hong Kong and the mainland?

Mr. ROTH. Of course.

Senator THOMAS. How could you feel comfortable that items that were moved to Hong Kong but we did not intend to move to the mainland would not move?

Mr. ROTH. I think that the main source of comfort is that you have the same people and the same procedures that everyone gave such high grades to under the British still doing the very same system, you know, manning the border, manning the export control regime system. And so, the extent we had confidence about it before, I think there is every reason to think we should now.

The only difference that we have been able to find—you know, the only difference cited to us so far—has been this case of the example of the PLA trucks. That is the only different situation. And in that case, besides from the fact that this is, in and of itself, a fairly small loophole—meaning that a very small portion of China's trade goes through that mechanism, or commerce goes through that way, but, beyond that, that procedures are—you know, the government is trying to strengthen the procedures to just make

sure that nothing improper is going on in terms of inspection regimes for those trucks.

So, this is still a work in progress. I will have to report back to you the next time as to whether this has been finalized between Hong Kong and the PLA to work out these procedures. But I think it is an example of the Hong Kong authorities trying to be responsive to a concern, even though they have not been presented with any evidence yet that there is an actual problem. I think that is a good attitude.

Senator THOMAS. Well, you indicated, and properly, that the PRC has maintained the jurisdiction over foreign affairs and the military and defense and so on. If they argued that these goods were military or defense, why would not they exercise some authority under that criteria?

Mr. ROTH. Well, I think the issue is whether there is an export control regime, right—is there some mechanism in which—you know, the export control regime—is Hong Kong's regime being violated? And I think it is for those reasons that Hong Kong is asking to inspect the cargoes.

And it is not clear to me that we are going to have a confrontation over this. I think it may be possible for the Hong Kong authorities to work this out with the PLA. Thus far, they have had a rather good relationship with the PLA, not an antagonistic one.

Senator THOMAS. What is your impression, then, of the pre-licensing and the post-shipment check notion?

Mr. ROTH. Well, I think, again, for me, the issue comes of how we treat Hong Kong versus how we treat China. That we have worked very hard in the administration to try to greatly expand the question of checks, export controls, you know, with China itself. That was one of the main issues that the President tried to accomplish at the summit last year, was to get these checks, because we felt that that would be important to give us greater confidence on facilitating additional exports from the United States.

But we have felt that Hong Kong was a very different kettle of fish, as it were, from China—one, at the level of principle, as I tried to explain, the “one country, two systems” that we are trying to distinguish between China and Hong Kong, and not automatically apply every procedure that applied to China to Hong Kong. And the Congress in fact took a leading role in the legislation, trying to make it clear that the Congress wanted to keep as much as possible in place with Hong Kong that had been in place prior to reversion.

But, second, on the specifics of the issue, we felt that Hong Kong had a good record on this, and so we did not need the same procedures for Hong Kong that we needed with China. We felt that their same controls that worked before reversion would work afterwards. And so until we see evidence to the contrary, we think one still has to have some confidence in their system and, meanwhile, try to close the one loophole that has been cited.

Senator THOMAS. I suppose one of the difficulties in terms of perception is with the espionage thing, when illegal—what we considered to be illegal or improper materials move out of the United States directly, then it is pretty suspicious they might also move out of Hong Kong. Is that not so?

Mr. ROTH. At one level, of course. At another level, if you look at the problem in the United States, I mean we are talking about a very different problem in terms of the espionage. And it was not things smuggled out across borders, in that sense, right, it was the computer problem, more in the controls at the laboratories. So I just would not want to extrapolate too far from what happened at Los Alamos and maybe other laboratories here.

Senator THOMAS. Well, it was not all computers.

Mr. ROTH. No.

Senator THOMAS. It was also equipment for launching satellites and things of that nature, as well.

You mentioned the economy. What has been the impact, in your view, with respect to outside investment in Hong Kong?

Mr. ROTH. I regret to say that I did not bring the investment figures up with me. But let me get that for you rather than make it up.

Senator THOMAS. I suspect there has been some reluctance, is there not, to continue investment as it was?

Mr. ROTH. Well, I think one would have to look at precedents.

Senator THOMAS. Disneyland I guess.

Mr. ROTH. I think one has to distinguish two different issues. One is, is there reluctance to invest because of the reversion—meaning the changed control—versus has investment fallen off because of the very severe recession which happened almost simultaneously, and trying to distinguish. But let me get you a solid answer on that.

Senator THOMAS. No, I agree with that. I think there are two different reasons. However, the impact, the result of those two different events, could become intermingled at some point, in terms of the economy.

Mr. ROTH. Right.

Senator THOMAS. It is my understanding that there is less, or even little, manufacturing there going on, that that has moved pretty much up to the south coast, into Shanghai, where it is much less expensive.

Mr. ROTH. Sure. But that had taken place long before the reversion. That is not a unique phenomenon. This is something going on for a long period of time, and probably a decade. But I think you will find that the Hong Kongers are seized with the issue of how do they regain some of their competitiveness and retain their economic vitality. Because Hong Kong has become an expensive place to do business. And particularly if you are not doing manufacturing but doing services, then your cost of living is high. If your property is astronomical, if rents are high, if labor costs are high, in this kind of global market, people can and do go elsewhere.

So Hong Kong has been giving an awful lot of attention to what does it need to do to become a—to regain and stay competitive, particularly in high tech and in information services. And they have not gotten all the answers yet, but they are working on it.

Senator THOMAS. Well, I think this is the point. And as you point out, there may be two separate and even apart reasons, but, nevertheless, the question is now, to some, where is the better place to do business? And I guess I am asking, how has that impacted Hong Kong?

Mr. ROTH. All I can tell you right now is I have not been deluged from complaints when I go to Hong Kong—which I try to do fairly often—that somehow the business environment has changed for the worse. Businessmen, including expatriate businessmen, are not complaining to me that the rules have changed, that the rule of law has disintegrated, that it has become a corrupt place, that it is no longer Hong Kong, and that in any way it has become unattractive. Their concerns have been more labor costs, property costs, availability of facilities and that, not the issues of the change in the system, per se.

But let me go back and try to give you a detailed answer.

Senator THOMAS. I guess it is interesting. There has been obviously competition for some time as to where the gateway to trade will be in Asia, whether it will be Shanghai, whether it will be Singapore, whether it will be Hong Kong. And I guess one of the questions we ask ourselves, because of the changes that have taken place, what impact, for instance, the pegging to the dollar has, and some of those kinds of things, what it has in this competition and where in fact one would expect the economy to go now.

Mr. ROTH. Yes, I think that they do have the problem of the fact that they have to compete both with the vast lower-cost labor market across the border, but also the increased sophistication of parts of the Chinese economy, and I think particularly in Shanghai. That has become an increasingly attractive, modern, cosmopolitan city, capable of attracting business and a rather significant investment in the past. And of course other competitors outside, of which you mentioned Singapore, which is putting a lot of work on its own improvements in information technology and trying to become ready for the next century in terms of services.

So I think they do face some competition. But I think a lot of those parameters, if not most, are going to be on the economic side. And one has to look at whether their total impact of their policies in a variety of fields, not just the exchange rate, is going to make Hong Kong competitive or not.

Senator THOMAS. Let us go back to the judicial question. Do you think that the Hong Kong Government's request for an interpretation from the People's Congress jeopardizes their judicial autonomy or strengthens it or has no impact? What is your impression of that?

Mr. ROTH. I think the most I can say at this point is it is too early to tell. I think it is not appropriate at this point simply to assert that there is no problem, because we do not know if there are going to be more cases in the future, if there are going to be a lot of cases in the future. We do not know if there are going to be cases in the future where the Hong Kong Government will not request such an interpretation but it will be forthcoming anyway, which would be a much more dire scenario.

At the same time, we do know what the government has said. Which is that it hopes that this is a one-time exception and that it is going to work hard to try to keep it that way, because it understands the consequences. So I think it is premature to sound the death knell for the rule of law based on this one precedent. But I think we cannot simply say we are not concerned and that we are

not watching this, you know, that everything is going to be fine. It matters what Hong Kong does.

Senator THOMAS. This Abode case was one in a series of cases that have been controversial in Hong Kong. Then I guess maybe you have answered it. Do you think there will be a pattern, then, of reversion, of going beyond what now is called the Court of Final Appeal but apparently is not?

Mr. ROTH. Without pretending I have a better crystal ball than I do, I can only cite at this point what the government says. Which is, clearly, they understand the implications of doing what they have done, which was done with great reluctance. And they state their intention not to go this route not only not frequently, but they expressed their hope that this could be a one-time event. But the proof of the pudding is in the eating. And so we are going to have to watch while the pudding gets eaten.

Senator THOMAS. Would you think that the economic—what—is their 6 percent unemployment?

Mr. ROTH. I think that is about right.

Senator THOMAS. Which is substantially higher than they are accustomed to. Would you think that would have any impact on the valuation of the Hong Kong dollar now?

Mr. ROTH. I think that Hong Kong faces a particularly difficult situation because of the interaction between the politics of the issue and the economics of the issue. That the peg has taken on enormous significance as an indicator that nothing has changed in Hong Kong, but they are going to continue the same policies, that the economy is strong, the currency is strong and that people do not need to be concerned.

Therefore, a change in that peg, regardless of the economic motivation, has an impact, because some people are going to interpret it as well, they could not hold it now that it is reverted, and see, they are just not as good as the old guys. And that puts the government in a very difficult position, because it has to deal with the political implications both on its own people and on foreign investors, as well as with the economic implications.

Thus far, the government—when I discussed this with Anson Chan a couple of weeks ago, she made it absolutely clear that their determination is to hold the peg, because they believe that the impact of changing it would be quite extreme. And so, despite the fact that this causes them some economic difficulties, they appear determined to keep it this way.

Senator THOMAS. What is your impression of the—not stability—the strength, the effectiveness, of the Tung administration with respect to the legislature?

Mr. ROTH. I do not want to be in the position of giving out a report card, per se, and grading them. I think that they have had a more turbulent path than expected, partially because of external events—as I mentioned, particularly the financial crisis, which was the first time in several decades that they had an economic situation this bad, which made their job all the more difficult. I think that within that context, the fact that the economy is making some very significant improvements is, in and of itself, a good sign. It suggests that the government has had some effectiveness in this area, which is crucial.

At the same time, I do not think one could say that they have managed every issue as well as they could have. And in fact, you will hear the Hong Kong leadership that itself, in terms of the airport, in terms of some of the issues that they wish they had done a better job of it. So I think you cannot say that it has been perfect, but I think you can certainly say that it has been credible.

Senator THOMAS. Is the—I guess the democratic wing of the Martin Lee opposition, is it still as active as it was a couple of years ago?

Mr. ROTH. Quite active, as we would hope it would be. That you continue to see Mr. Lee speak out. His remarks continue to get covered in the Hong Kong press as well as in the international press. He has not diminished his criticism a wit on various things. He has pronounced on the rule of law, right of abode issue very recently. He has spoken out on the second anniversary, to express some of his concerns. So I think that you see a quite vigorous opposition effort there.

Senator THOMAS. Well, Mr. Secretary, I tend to agree with you. I think, given the difficulties, the economic difficulties, that have come on top of what you would expect the difficulties a change would be, they have done a pretty good job, and hopefully will continue to do well. And some of the difficulties that have resulted in the reduction of property values and so on may be helpful over a time, when they are able to get some more satisfied in terms of competition and so on.

Thank you very much for being here. We want to stay in touch with you on it—not only this, but hopefully opening up our communications a little more with Beijing.

Mr. ROTH. You bet. Thank you very much, Mr. Chairman.

Senator THOMAS. Thank you. I appreciate it.

On our next panel, we have the Right Honorable Margaret Ng, Representative for the Legal Functional Constituency, Legislative Council, Hong Kong Special Administrative Region, People's Republic of China. That is a pretty long title.

Mr. Stephen Yates, senior analyst, Heritage Foundation, and Jerome Cohen, senior fellow for the Asian Studies, Council on Foreign Relations.

Let me explain at this point that it says that Ms. Ng is a foreign national as well as a member of the Legislative Council with a particular point of view regarding the CFA question. As a matter of equity, the committee extended to the government an offer, allowing a government official to appear as a witness, but they did not do that. So we tried to be as balanced as we can.

Why do not we begin with you, Ms. Ng, please.

Welcome.

STATEMENT OF MARGARET NG, NEGOTIATOR, REPRESENTATIVE FOR THE LEGAL FUNCTIONAL CONSTITUENCY, LEGISLATIVE COUNCIL, HONG KONG SPECIAL ADMINISTRATIVE REGION, PEOPLE'S REPUBLIC OF CHINA

Ms. NG. Thank you, Mr. Chairman. Thank you very much for inviting me. I would like also to thank your committee for showing an interest in Hong Kong at this point in time.

Senator THOMAS. Pull the microphone closer so everyone can hear you, please.

Ms. NG. May I repeat my thanks for being invited here, for the committee's interest, as well as for your own interest, Mr. Chairman, and your taking the trouble to express your concern about the recent events about the ruling of the Court of Final Appeal in Hong Kong.

I have to stress my own involvement. I am here primarily because of my intimate knowledge of the cases and of my connection with the Legal Functional Constituency. I am a lawyer myself, and I have represented these children claiming right of abode in Hong Kong in many of these cases which went through the courts in Hong Kong.

Mr. Chairman, I would like to state that the U.S. Hong Kong policy, namely that of being especially concerned about Hong Kong keeping its separate systems, is very important to Hong Kong. My own point of view is that the United States should make sure that that message is heard, that if the United States at any time should become concerned that a separate system may not be maintained, that concern should be voiced, rather than to wait till the time comes when you consider that we are no longer able to maintain our separate system.

Mr. Chairman, in the presentation in the paper I have prepared for this subcommittee, I have mentioned that the concern for the rule of law had been from the start as far as the legal profession, and particularly myself, is concerned. I have listed the events which led to that concern in the testimony, which you have, and if I may refer to some of the appendices that went into greater details of what the events consisted of. But I suspect that you are more interested in the recent event concerning the Court of Final Appeal.

And I would like to say this, that it is to me not a matter of repetition, not a matter of how often it happens, but a matter of evaluating what it is that has happened; what concerns are raised by the National People's Congress Standing Committee reinterpreting provisions of the Basic Law which were interpreted by the Court of Final Appeal. I have, in my paper, begun by referring to the rule of law as depending not only on the existence of an independent judiciary, an independent and fearless legal profession, but also, above all, on a government which abides by law.

And I say the importance of this element can readily be seen. It is of little use to have an independent judiciary handing down judgments against a government if a government regularly ignores them. So the attitude of the government in being prepared to be bound by law, particularly of the judgment of the court, is very significant to the continuation of the rule of law.

Here in the present instance, what the legal profession feels very concerned about is that the government, having lost its case before the Court of Final Appeal, then took the same arguments to the Standing Committee, and invited the Standing Committee to come to an interpretation of the same provisions of the Basic Law which are opposed to the Court of Final Appeal's interpretation. That has an impact on the finality of the adjudication of the Court of Final Appeal.

Also, the manner in which the intervention was sought was very unfortunate. Because here is a system which is not provided expressly by the Basic Law, which, as you understand, is a mini-constitution of the Hong Kong SAR; namely, by way of an executive referral to the Standing Committee. If that happens, then there is a political channel through which the position of a Court of Final Appeal can be, in effect, overruled. And that is a matter of some concern to us.

Also, in this event, what happened was that the Government of the SAR could go directly to the State Council to invite the Standing Committee to make the reinterpretation. This is not an open process. This is a process in which the government had direct access to the people making the decisions, and views other than that of the government were heard only through the brief prepared by the government.

We are also particularly troubled by the fact that the government had interpreted the Basic Law in a very sweeping manner, and considered its action to be legal and constitutional on a very flimsy legal ground. Of course, Mr. Chairman, you are not concerned with who has interpreted the law more correctly. However, I would say that where there are two possible interpretations—one more general and appears to give the government more power, the other more specific, more meticulous, which appears to limit the power of the government—then it is some indication of the government's attitude if it chooses the more general interpretation.

The interpretation of the Standing Committee, and also the process through which this is obtained, would also have an impact on all the judges and in judging, for example, uncertainty of legal reasoning. The Court of Final Appeal had arrived at its conclusion having listened to reasoned arguments. After considering full argument and the evidence put before it, the Court had come to a conclusion. If that conclusion is declared to be wrong, then there must be some question as to whether the legal reasoning leading to that conclusion was also wrong.

In the reinterpretation resolved by the Standing Committee, it is expressly declared that the Court of Final Appeal had not acted in accordance with the Basic Law and had come to the wrong interpretation of the provisions of the Basic Law because it had not given effect to the true legislative intent. That would have some impact on the morale and the confidence of judging.

Documents which were not considered to be admissible as evidence; namely, opinions resolved in 1996, were considered as showing the true legislative intent of the Basic Law which was promulgated in 1990. Now, if such documents were admissible, that must mean that, in future, the court's reasoning would be affected. That would also have an impact on what submissions are permissible before the court.

Mr. Chairman, we are also concerned that good judges are not protected against bad laws. If you have a system whereby bad laws can be introduced, then good judges cannot protect us from it. The authority of the court in the public perception is also affected.

Mr. Chairman, you are aware that in the Basic Law the Standing Committee's interpretation on an article of the Basic Law will be binding on the courts. If the courts are then seen to be applying

the reinterpretation, then the authority of the court, in the eyes of the public, would become damaged. So this would be a dilemma for the court.

As for the immediate aftermath; the implication of the reinterpretation will be worked out in the courts. The arguments will be open and public and argued by independent counsel.

In the long term, what we would like to see is that the spirit of the rule of law, not only in Hong Kong but also in the mainland of China itself, would be strengthened and there would be more professional ties between Hong Kong's lawyers and other lawyers in other Common Law jurisdictions.

I would therefore invite the subcommittee and others of your colleagues to visit Hong Kong and give it your own overall assessment, meet the people and government officials, so that you can decide for yourself what the situation is. I would also say that our legal system is still there. Commercial dispute is still intact. But the rule of law is a seamless garment. And if the government has expressed itself to be unwilling to follow the court's decision in one case, then its attitude toward other cases would also be doubted.

Mr. Chairman, I think I should stop at this point and answer your questions.

[The prepared statement of Ms. Ng follows:]

PREPARED STATEMENT OF MARGARET NG

THE RULE OF LAW IN HONG KONG SINCE 1 JULY 1997

The rule of law depends on the existence of an independent judiciary, an independent and fearless legal profession and, above all, on a government which abides by law. The importance of this last element can readily be seen. It is of little use to have an independent judiciary handing down judgments against the government if the government regularly ignores them. Indeed, if that is the case, people will soon find it a waste of time to sue the government.

The rule of law in Hong Kong has been a cause of concern since the handover precisely in that regard. Although the legal system has survived intact, and the independence of the judiciary and of the legal profession have remained unchanged, the SAR government's commitment to the rule of law has become distinctly open to question.

The cause for concern has been there from the start (see my paper "Post-Handover Rule of Law—A New Interpretation" 1998 attached). In the second year of the SAR, two issues aroused particularly strong public feelings. The first was raised by serious crimes committed in Hong Kong but tried in the mainland where the suspects were apprehended. It was accepted that there might be practical difficulties in having the cases tried in Hong Kong, but the SAR government's over-readiness to concede jurisdiction showed a lack of commitment to defending Hong Kong's autonomy. Under the Hong Kong system, the rights of an accused person are protected. Conceding jurisdiction means withdrawing the protection of Hong Kong's law and legal system.

The second issue concerned the decision of the Secretary for Justice not to prosecute the chairman of a major publishing group while three of her subordinates were prosecuted, even though she was named their co-conspirator. The Secretary disclosed that part of her reason for not prosecuting the Chairman of the group was "public interest", because the group was facing financial difficulties and prosecuting its Chairman would, in her view, cause the group to collapse and many people to lose their jobs. Such considerations went directly against the principle of equality before the law. For details please see my speech (attached) moving "no confidence" against the Secretary for Justice in the Legislative Council on 11 March.

The most serious cause for concern arose from what has been called the "crisis of the Court of Final Appeal." Maintaining a separate legal system in Hong Kong and the preservation of the common law system is crucial to confidence in the continuation of the rule of law in Hong Kong. This was agreed between China and Britain and enshrined in the Sino-British Joint Declaration and the Basic Law. To en-

sure this separation Hong Kong was given the power of final adjudication vested in the Court of Final Appeal (“CFA”) in Hong Kong.

The crisis arose out of two landmark judgments of the CFA on 29 January 1999. These judgments declared unconstitutional discriminatory and restrictive legislations preventing mainland-born children of Hong Kong parents enjoying the right of abode under the Basic Law from coming to Hong Kong. Although widely acclaimed in Hong Kong and internationally as an affirmation of Hong Kong’s high degree of autonomy and protection for human rights under the Basic Law, the judgments soon came under harsh attack in Beijing. Four months later, upon the request of the SAR Government which said the judgments gave an additional 1.67 million people the right of abode, thus creating an intolerable burden for Hong Kong, the Standing Committee in Beijing by resolution on 26 June declared the Court’s ruling wrong and not in accordance with the Basic Law. The Standing Committee substituted its own interpretation of the relevant Basic Law provisions. The interpretation given is the same as requested by the SAR Government. Article 158 of the Basic Law provides that the interpretation of the Standing Committee is binding on the Hong Kong Courts. A more detailed account of the development of the events may be found in my Special Newsletter of that date to the legal profession (attached).

The Standing Committee’s resolution is a serious blow to the rule of law in Hong Kong. First and foremost, this is a clear case of political intervention into the judicial process. The prediction of 1.67 million arrivals were scaremongering tactics even where the Government rightly considers the consequence of the Court’s ruling to impose too heavy a social burden than Hong Kong can shoulder, the proper solution would have been to amend the Basic Law for which due process has been provided in the Basic Law. The Government claims that under Chinese law, reinterpretation by the Standing Committee is just as lawful. This is strongly disputed by lawyers and legal scholars in Hong Kong and in the mainland. However, even if both means were allowed by law, the process least likely to damage Hong Kong’s rule of law should have been chosen. No such sensitivity was shown. In fact, the more summary and less transparent means is chosen to achieve, in effect, an amendment while bypassing all the safeguards of the legislative process. This is incompatible with true regard for the rule of law.

Of equal importance to the rule of law is that the law must not be allowed to be distorted to serve the government’s purpose. The Basic Law does not authorize the SAR Government to ask the Standing Committee for an interpretation of the Basic Law. Under the common law, the power of interpreting the law lies with the court. Article 158 gives the SAR courts the power to interpret “on their own” provisions of the Basic Law within the SAR’s autonomy, while stipulating that the CFA should refer provisions outside the SAR’s autonomy to the Standing Committee for interpretation if the interpretation of such a provision is necessary in adjudicating a case. The Government asserts it has the power to invite the Standing Committee to overrule the CFA by reinterpretation under Article 43 and 48. These Articles merely impose the duty on the Chief Executive to implement the Basic Law. To claim that the CFA’s interpretation of an article has made it difficult for him to implement it, and he is entitled to seek reinterpretation is clearly stretching Articles 43 and 48 beyond their meaning. This also bypasses Articles 158 and 159 which protect Hong Kong’s autonomy: the CFA decides on whether an interpretation should be sought, and the Legislative Council decides on whether an amendment should be proposed.

The legislation which contained provisions struck down by the CFA for being unconstitutional was a discriminatory law creating disabling restrictions so that people who qualify for the right of abode are prevented from asserting them. Illegitimate children are discriminated against legitimate children; a father’s illegitimate children are discriminated against a mother’s illegitimate children. Devices for the “verification” of status are set up the effect of which is that children of Hong Kong residents from anywhere in the world, including Macau and Taiwan, can come to Hong Kong and exercise their right of abode as they wish, but children born in the mainland are subject to arbitrary decisions of the Chinese Security Bureau for issuing exit permits. Only children born after their parents have qualified are recognized to have the right of abode while their elder siblings born before that event are denied the right. Respect for the family unit protected by international human rights conventions are incorporated into the Basic Law is not given effect. When these restrictions were struck down by the CFA, the Government maintained the court had not taken into account the “true legislative intent” and requested the Standing Committee to reinterpret the Basic Law in accordance with the “true legislative intent”. With the exception of the discrimination against illegitimate children—which had

been done away with long ago in China—the Standing Committee interpreted the relevant provisions to uphold the Government’s position.

The reinterpretation was sought as a device to drastically reduce the number of people eligible for permanent resident status with the right of abode. The Government was not content just to curtail by an amendment of the Basic Law the number of people who may acquire the right in the future, but sought a reinterpretation on “true legislative intent” which, it hopes, will take away vested rights retrospectively. The Government sees it simply as an immigration problem straining social and economic resources, and forgets that the people it keeps out are not immigrants but children of Hong Kong residents on whom the Basic Law has conferred the right of abode. Such disregard for rights is incompatible with the respect for the rule of law.

The introduction of the concept of “true legislative intent” will weaken the rule of law by making the law arbitrary. One of the provisions interpreted by the Standing Committee, Article 22(4), states:

“For entry into the Hong Kong Special Administrative Region, people from other parts of China must apply for approval. Among them, the number of persons who enter the Region for the purpose of settlement shall be determined by the competent authorities of the Central People’s Government after consulting the Government of the Region.”

It was agreed evidence that this provision was an implementation of a provision of the Joint Declaration that the practice then prevailing on regulating the entry of people from the mainland into Hong Kong. It was further agreed evidence that people with the right of abode in Hong Kong were not subject to such regulation. Persons “who entered the Region for the purpose of settlement” referred to mainland Chinese who had no right of abode in Hong Kong but who were (still are) allowed to stay and, upon completing a 7 year ordinary residency, obtain permanent resident status with the right of abode. No evidence, in spite of thorough search on both sides, had been found or produced that this provision was ever intended to regulate the children of Hong Kong permanent residents born in the mainland who acquire the right of abode upon the Basic Law coming into effect on 1 July 1997. Yet the Government wanted to rely on this provision to provide the legal basis for them to impose immigration control on someone who has the right of abode. The CFA rejected this distortion. The Standing Committee overruled the CFA and upheld the Government’s position on the basis of “true legislative intent.”

This concept of “true legislative intent” which is not determined by any objective evidence not only makes the law uncertain, but makes the law mean what the Standing Committee, a political body in Beijing, says it means. Interpretation by reference to “true legislative intent” is fast becoming prevalent. A former drafter of the Basic Law has pointed to another decision of the Hong Kong court—on the right of abode of adopted children—for not reflecting the “true legislative intent.”

The Government’s ultimate position is that whether one likes it or not, its request and the Standing Committee’s acceptance of that request for an interpretation of the provisions of the Basic Law, be the provision within or outside Hong Kong’s autonomy, and at any stage, whether before, during or after a Hong Kong court hearing, is lawful and constitutional because Article 158(1) of the Basic Law and Article 67(4) of the PRC Constitution provide for it. The Government’s construction of these provisions to this effect is strongly disputed by learned legal opinion in Hong Kong and in the mainland. Leaving aside legal arguments, the important question is: If this is indeed the true situation—if the Basic Law and PRC Constitution sanction such a process, what effect would this have on the rule of law in Hong Kong? The answer must be that the common law system will be fundamentally changed, and the rule of law seriously undermined since both are vulnerable to the intervention of the Standing Committee whenever it sees fit to do so.

It is not good enough for the SAR Government to assert repeatedly that only in very rare and exceptional circumstances would it ask the Standing Committee to step in. The question is not how rare or exceptional. The significance is that it can do so whenever it likes, and if it should choose so to do, no power in the SAR can stop it. This has made the rule of law more precarious in future. It has also provided an open channel for the Standing Committee’s intervention.

The SAR Government’s proposal to seek reinterpretation was strongly opposed by members of the legal community in Hong Kong and abroad. The Hong Kong Bar Association issued numerous statements and appeals to the public. Although the Law Society Council took the position that interpretation and amendment are “both lawful,” and the matter is a political choice to be left to the Government, many of its members disagree. 630 lawyers from both branches of the profession co-signed an appeal to the Government against reinterpretation. Over 360 signed a 4-page let-

ter rejecting the arguments of the Secretary for Justice. A group of some 300 solicitors published an open petition to the Standing Committee in the local newspapers not to accept the SAR Government's request. The International Bar Association based in New York published a statement on 28 May against reinterpretation. The Lawyers Committee for Human Rights wrote on 29 May to ask Chief Executive C.H. Tung to reconsider. So did the Chairman of the English Bar. All to no avail.

The Government's conduct in the controversy over reinterpretation raises other serious concerns. In increasingly strident language, the Secretary for Justice berates those who oppose the Government's move as "arrogant," narrow-minded, prejudiced, and resisting mainland practice because it is alien to the common law which they were trained in. They were admonished to study and welcome the mainland system. One cannot but begin to wonder, (a) Is the government telling us that Hong Kong's system is no longer the common law, but a hybrid of the common law and Chinese law, or the common law as restricted by the Basic Law interpreted according to Chinese law principles? (b) Is the freedom of speech going to be the next victim, and those who dare oppose the Government's position, however rational and rationally expressed, going to be targeted as enemy of the SAR?

It should be pointed out that in other areas there has been positive progress, such as reaching understanding with the mainland on the mutual enforcement of arbitral awards. Faith in commercial litigation continuing to be left largely undisturbed is still relatively strong. There, the independent judiciary, assisted by the independent legal profession, will continue to operate as before, with government winning at times and losing at others without resorting to political intervention to reverse the results. However, rumblings have begun to be heard about the Government changing the rules of the game without prior consultation or notice. The more the Government shows itself to be inclined to pay scant respect to the rule of law in certain matters, the less people will have confidence that the same attitude will not apply to all matters.

To see the rule of law in China is the ardent desire of numerous patriotic Chinese people, and in particular, members of the legal profession in Hong Kong and in the mainland. By virtue of the fact that Hong Kong is now part of China, there is at least one part of China where the rule of law prevails. For the long term interest of Hong Kong and of the rest of China, the continuation of the rule of law in Hong Kong must be defended with total commitment.

COMMITTEE NOTE.—The attachments mentioned in Ms. Ng's statement have been retained in the committee's files.]

Senator THOMAS. Thank you very much. I appreciate your concise statement, and applaud your way of doing it. Thank you.

Mr. Yates.

**STATEMENT OF STEPHEN J. YATES, SENIOR POLICY ANALYST,
THE HERITAGE FOUNDATION, WASHINGTON, DC**

Mr. YATES. Thank you very much, Mr. Chairman. I am happy to have this opportunity to come before your subcommittee today to talk about Hong Kong 2 years after its handover to Chinese sovereignty.

Because I have submitted a statement to the record, I will just skim over some of the remarks I have prepared and hopefully leave more room for questions and answers.

Senator THOMAS. All of your statements will be included in the record.

Mr. YATES. Thank you.

At the heart of your committee's interest appears to be a legal question. I am not a lawyer. I will give an opinion and leave it to the professionals to hash that out. But I would like, at the outset, to talk a little bit about some of the issues that I thought were important as we entered into the transition process, as a way of providing context to how Hong Kong appears to us today. Because I think that there is a very different perception of Hong Kong today than there was when we went into the hand-over. A lot of it was

covered in your exchange with Secretary Roth about the changes that were beyond Hong Kong's control, events that occurred outside of Hong Kong but have had a profound impact on its reality today.

In an analysis I wrote in 1996, I tried to come up with a framework that emphasized causes for concern and reasons for optimism. Among the causes for concerns I had going into the hand-over process was Hong Kong's dependence on trade. I thought that because two to three times Hong Kong's GDP, or the value of its GDP, is generated in trade.

And Hong Kong would be particularly vulnerable if there was a downturn in China's economy, if there was some kind of interference by regulation or other means that would inhibit China's economic growth or trade between the United States and China. And I thought that that might put Hong Kong in a particularly precarious situation.

As events have transpired, I think Hong Kong's vulnerability to trade has come from a completely different source, but the concern still remains. I would not recommend that they create boundaries or inhibit trade and investment, but I think it is just a fact of life that Hong Kong's social system and economic system will be at the mercy of forces beyond its control.

I had concerns about limitations on freedoms and democracy. The plan of the PRC Government to have the democratically elected Legislative Council replaced with an appointed body, at least for a time, was of great concern. It seemed to be a very bad step to take as the SAR Government was formed.

I was happy to witness, less than a year later, more than 50 percent of the Hong Kong electorate, in torrential rain, go to elect the first Legislative Council of the Special Administrative Region. It was inspiring to see that people in Hong Kong remain interested, concerned and active in making sure that their government is responsive to their local interests. I am hopeful that that kind of an interest will continue in the future and that future concerns about basic freedoms will be addressed through democratic procedures within Hong Kong.

There was a concern about the spread of corruption and the weakening of the Hong Kong system of rule of law. At the heart of today's discussion will be issues of rule of law. I do not think there has been a great deal of evidence or discussion about an unusual spread of corruption within Hong Kong. And I think that the Independent Commission Against Corruption has been one of the models in Asia of how to effectively try to monitor and root out corruption.

It cannot be perfect—no system will be—but I think that it is admirable that it has succeeded to this point without any kind of political interference that I can see. There have been exceptions. There have been a few cases. And I am sure other people will bring them up.

There was also, finally, a concern about the presence of the People's Liberation Army in Hong Kong. We did not know what the presence of the PLA in Hong Kong would be like. We knew basically where their garrison would be, but we did not know whether these people would be seen on the street in uniform, how intrusive would this presence be, would there be any kind of interference be-

tween the PLA and Hong Kong's police. And so I think, along these lines, things have gone better than expected, although there is concern today because of the presence of the PLA, as was referenced in concerns about PLA trucks possibly carrying technology across the border into China.

Reasons for optimism prior to the hand-over had more to do with China's economic dependence on Hong Kong. It was kind of the goose that lays golden eggs. Today, even with Hong Kong in recession, it is still a mighty fine place to live compared with a lot of China. And Hong Kong still generates a great deal of wealth, and it is an important source of economic development for China. And so I think that that kind of reasoning still holds, to a degree.

There were reasons to believe that the PRC would be very cautious about interfering in Hong Kong because it needed the example of Hong Kong's "one country, two systems" experiment to succeed if they had any hopes of trying to have a similar kind of experiment work with reunification with Taiwan.

And then there was also the great familiarity that people in Hong Kong had with the mainland prior to the hand-over. In many ways, the social and cultural integration had begun far before the political or formal integration did. And I thought that was one reason for optimism.

Many events have taken place since the hand-over. We have talked a bit about democracy. We had the election of the first Legislative Council in the SAR, the first Legislature with even part of its membership within the PRC elected by a direct popular means.

There was a financial crisis and the market intervention that has also been discussed.

The judicial independence was challenged, in the case of the right of abode issue. And we have had discussion somewhat about export controls that have been suggested as one of the responses to the Select Committee Chairman Chris Cox's report.

There have been human rights covenants signed by China. That was something that we had hoped China would do in order to bolster support for provisions under Hong Kong's Bill of Rights Ordinance. But, at the same time, dissidents have begun to be denied entry to Hong Kong. When certain high-profile exiled dissidents wanted to come to Hong Kong for meetings to talk about prospects for future democracy on the mainland and also talk about Tiananmen Square, they were not allowed to enter. I do not have evidence that Beijing said anything one way or the other on this, but it smacks a bit of Beijing-like intolerance.

And, finally, the halting of port calls I think is an important strategic signal sent to us, but also sent to Hong Kong, that says when Hong Kong becomes a pawn in an international chess game between the United States and China, the interests of the people of Hong Kong are going to be discounted, and that there is going to be, I think, a low premium placed on their well-being as these strategic signals are sent. I think it is unfortunate that this has occurred. Many have expressed to me that they think this will be a temporary measure of China exercising its sovereign prerogative. But no one can guarantee that this will get back on course.

There are still other causes for concern that I will leave in my statement. I think that, just to address briefly the right of abode

issue, again, I would give all the caveats—I am not a lawyer, I do not pretend to have understood all the ins and outs of this issue, but some of it seems to be common sense. It seems as though the ruling made by the Court of Final Appeal seemed to be an expansive view of the provisions under the Basic Law—some would say erroneous.

And if so, then it would be grounds for the kind of interpretation that has been asked for. Others may address what kind of sequence should have been followed. If there was a concern about the correctness of the court's initial interpretation, what legal procedure should have been followed?

My concern is, no matter what the legal merits are, it appears that a final adjudication was appealed. And on a common sense level, there is something wrong with that. And I think it is very important for Hong Kong to come up with a proper legal mechanism to be able to deal with these kind of challenges in the future.

I think we are fortunate that this was a controversy based on an issue that really there is not a large degree of disagreement in Hong Kong. Many people in Hong Kong were concerned about the immigration repercussions of this broad definition of right of abode. And so I think because many people were concerned about a large number of new immigrants, the substance has not been challenged as much as the process. I think the process is politically very, very important. The precedent is important. If this is a one-time experiment, I assume that the consequences are manageable. But it is a cause for concern at the outset.

On export controls, I would simply state that I think that it is very important that we not consider Hong Kong to be just another part of China, as long as the government remains cooperative and we have no evidence of lack of cooperation on these controls. Obviously, if, as Secretary Roth said and as many others would say, as soon as there is evidence otherwise, the recommendations that Mr. Cox has made and that the Senate has considered are very appropriate.

Thank you very much for this opportunity. I think this hearing and the frequent visits by Members to Hong Kong demonstrate how important Hong Kong remains in the eyes of U.S. policymakers, and we hope for a better future.

[The prepared statement of Mr. Yates follows:]

PREPARED STATEMENT OF STEPHEN J. YATES¹

HONG KONG UNDER CHINESE RULE

Mr. Chairman and distinguished members of the Subcommittee, thank you for inviting me to address you on this second anniversary of Hong Kong's handover from British to Chinese sovereignty. Today's hearing is one of the many ways the United States Congress demonstrates to Hong Kong, China, and the world that developments in Hong Kong remain vital to U.S. interests in Asia and of great importance to U.S. policymakers.

Mr. Chairman, before making a few observations about developments affecting Hong Kong's economic leadership and development towards democracy that have occurred since the establishment of Chinese sovereignty two years ago (especially recent controversies affecting U.S. interests), I would first like to return to an analyt-

¹Members of the Heritage Foundation staff testify as individuals discussing their own independent research. The views expressed are their own, and do not reflect an institutional position for the Heritage Foundation or its board of trustees.

ical framework that I found useful in placing U.S. interests and concerns about Hong Kong in perspective prior to the handover. This framework of weighing reasons for optimism against causes for concern is found in a Heritage Foundation backgrounder titled "The U.S. Interest in Hong Kong," written in December 1996. I bring this analysis to your attention not because I am the author, but because I think its review makes clear how different our perception of Hong Kong is today when compared to the period just prior to the transfer of sovereignty. It is humbling to realize how limited is our ability to forecast events of great consequence, but this review also brings to mind the old cliché, "the more things change, the more they remain the same."

PRE-HANDOVER CAUSES FOR CONCERN

Hong Kong's Dependence on Trade. Hong Kong's dependence on foreign trade is a cause for concern because a loss of autonomy could diminish its global competitiveness and put at risk the jobs of millions of workers. The total value of Hong Kong's trade typically amounts to 2 to 3 times its GDP. Such heavy reliance on trade makes Hong Kong vulnerable to government interference, either by undermining competitiveness through burdensome regulation or politicizing its economic institutions.

Limitations on Freedoms and Democracy. Limitations on freedoms and democracy in Hong Kong are of concern to not only political activists, but businessmen as well. Imposed political limitations unintentionally may diminish economic growth and market efficiency. Beijing's intention to replace the Legislative Council and limit the application of two international covenants on human rights raises serious questions about its tolerance for freedom and democracy within its "one country, two systems" model. Similarly China's harassment of Hong Kong reporter Xi Yang, together with the widespread fear of self-censorship in the Hong Kong press, has caused concern about the viability of freedom of the press after 1997. A free press is not only vital to democracy; the free and efficient flow of information is also vital to free markets.

Corruption and the Rule of Law. With the establishment of Chinese sovereignty over Hong Kong, many have feared that the corruption that has plagued business in China will find its way into Hong Kong. One of Hong Kong's main attractions has been the clean, modern business and legal environment it provides for foreigners to conduct business with China. Notwithstanding the real success of the Independent Commission Against Corruption (ICAC) in fighting corruption in Hong Kong since 1975, the import of Chinese-style corruption greatly would diminish the attractiveness of Hong Kong as a regional operations center for international business.

The People's Liberation Army. The role of the People's Liberation Army in Hong Kong after 1997 is critical to the success or failure of the transition. An assertive military presence will undermine confidence in Hong Kong's future autonomy. China's military—the PLA—will replace the British Garrison currently stationed in Hong Kong as part of the transition process. The mission of the PLA in Hong Kong is to provide for the territory's defense, and interference in the local affairs of the Region is forbidden. But Article 14 of the Basic Law states that the SAR government can ask Beijing "for assistance from the [PLA] garrison in the maintenance of public order." With Tiananmen still fresh in their minds, some Hong Kong residents want protection from, not the protection of, the PLA. And if the Chief Executive of the SAR is appointed by Beijing, the people of Hong Kong will wonder how cautious he will be about requesting such "assistance."

PRE-HANDOVER REASONS FOR OPTIMISM

China's Economic Dependence on Hong Kong. Hong Kong's high level of investment in China, not to mention China's high level of investment in Hong Kong, may be Hong Kong's best security guarantee. Hong Kong plays a vital role in facilitating trade and investment with China. Moreover China's economic development depends on foreign investment and trade. Because China's access to foreign trade and investment depends on the continued rule of law and free flow of capital, goods, and information in Hong Kong, Beijing may not be inclined to do anything to destabilize or undermine international confidence in Hong Kong. Doing otherwise could deal a fatal blow to its own development.

Communist Party Legitimacy. China's Communist Party's need for a successful transition in Hong Kong to bolster its own legitimacy is another reason for optimism about Hong Kong's future autonomy. The Communist Party has made reunification of the motherland a key pillar of its legitimacy. Increasing the living standards of the Chinese people is the second pillar. A turbulent assimilation of Hong Kong into Chinese sovereignty would threaten to destroy both pillars and thereby undermine

the legitimacy of Communist Party rule in China. A destabilized Hong Kong would obstruct the vital flow of foreign investment and trade that supports Beijing's current economic reform and modernization. The failure to sustain economic growth and development along with the failure to fulfill the mission of national reunification thoroughly would undercut both pillars of Communist Party legitimacy.

The Taiwan Factor. The dramatic effect an infringement on Hong Kong's promised autonomy would have on the independence movement in Taiwan is another reason for optimism. The importance of Taiwan in Beijing's Hong Kong calculations cannot be overstated. China's "one country, two systems" model was crafted with reunification with Taiwan in mind, and Hong Kong is the critical first test of this model. Although a successful transition in Hong Kong is no guarantee that the "one country, two systems" approach will work with Taiwan, a failed transition would eliminate virtually any possibility of peaceful reunification with Taiwan. Nothing would mobilize domestic and international support for Taiwan's independence—an outcome Beijing wants desperately to avoid—more than a botched transition in Hong Kong.

Familiarity with the Mainland. Hong Kong's familiarity with mainland China is another reason to be optimistic about the success of the transition. Hong Kong's transfer to mainland sovereignty is no blind date. To residents of Hong Kong, China is a known quantity. In fact, Hong Kong's prosperity today is a testament to its knowledge of and ability to work within the Chinese system. The wealthy in Hong Kong achieved that status because of their connections inside China and in the West. They have profited from helping join foreign capital with opportunity in China. For this small but very influential group, the transfer of Hong Kong's sovereignty is a matter of politics catching up with economic reality.

Progress of the Joint Liaison Group. Significant progress has been made to adapt Hong Kong's independent legal and judicial systems to post-1997 requirements. Since 1984, the Sino-British Joint Liaison Group has done a tremendous amount of work to pave the way toward a smooth transition. Major achievements of the Joint Liaison group include the Sino-British agreement on the construction of the new airport, the establishment of the Court of Final Appeal in Hong Kong on July 1, 1997, Hong Kong's continued participation in 30 international organizations, and the continued application of some 200 multilateral treaties to Hong Kong after 1997.

THE ROLE OF THE UNITED STATES HEADING INTO THE TRANSITION

Even though a successful transition that maintains Hong Kong's high level of autonomy clearly serves China's own best interests, the United States must remain vigilant in its efforts to protect U.S. interests at risk in the transition. The United States must protect the many U.S. citizens and businesses in Hong Kong as well as minimize the risk to market access and regional peace and stability generated by uncertainty over Hong Kong's future. U.S. interests will be served best by a realization of the level of autonomy promised Hong Kong in the Joint Declaration. To protect U.S. interests and help preserve the freedom, stability, and prosperity of Hong Kong, the United States should:

Beware of the impact U.S. policy toward China has on Hong Kong. Protection of U.S. interests in Hong Kong depends very much on the China policy of the U.S. government. Politically generated trade friction between the United States and China, such as is created by threats to revoke China's most favored nation trading status, puts U.S. interests in Hong Kong in jeopardy and destabilizes Hong Kong.

Articulate U.S. interests in Hong Kong to leaders in China. A clear understanding of how the United States intends to protect the security of the 35,000 U.S. citizens and 1,000 U.S. firms in Hong Kong, as well as its multibillion-dollar investment and trade interests, will help China's leaders avoid miscalculation when responding to U.S. actions in Hong Kong.

Maintain a strong U.S. presence in Hong Kong. U.S. officials, businessmen, students, and tourists are a vital source of information, and their presence demonstrates to the people of Hong Kong that the United States is observing the transition process carefully.

Strongly urge Beijing to allow the current democratically elected Legislative Council to serve out its term. If Beijing insists on replacing the current legislature, the United States should urge Beijing to shorten the term of the provisional legislature by preparing now for elections to take place as soon after July 1 as possible.

Support Hong Kong's continued participation in international organizations. As the world's freest economy, Hong Kong should play a key role in inter-

national organizations in leading the world toward a more free and open trading system.

Urge Beijing to sign international human rights covenants. Such a move by China would assuage the fears that led Hong Kong's residents to demand a Bill of Rights Ordinance [over Beijing's strong objection] in the first place.

Closely cooperate with Hong Kong Special Administrative Region government to fight drug trafficking, money laundering, alien smuggling, and commercial piracy. For this cooperation to work, it is important that the United States not allow differences with Beijing to alienate or put at risk the new SAR government.

KEY DEVELOPMENTS SINCE JULY 1, 1997

Much has happened since the launch of Deng Xiaoping's "one country, two systems" experiment on July 1, 1997:

Development towards Democracy. On July 1, 1997, Hong Kong's democratically elected legislature was replaced with an appointed provisional legislative council. On May 24, 1998, Hong Kong voters turned out in record numbers (53 percent) and in a torrential downpour to elect the new Special Administrative Region's first Legislative Council—the first legislature in the history of the People's Republic of China to be chosen (albeit partially) by direct popular election.

Financial Crisis and Market Intervention. On July 2, 1997, the Bank of Thailand allowed the baht to float, introducing a new word into the Asian vocabulary—recession. The impact of economic turmoil in Thailand, Indonesia, and Korea was felt throughout Asia and beyond. As panicked investors fled and hungry speculators attacked, Hong Kong was bound to be hit. In 1998 Hong Kong's economy contracted by 5.1 percent, the Hang Seng Index fell to lows near 6000 (down from pre-handover highs near 16000), and property values and tourism revenue plummeted. On August 14, 1998, the Hong Kong government broke with tradition by purchasing an estimated \$15 billion in stocks in an effort to ward off hedge fund speculators betting against the government's ability to maintain its currency peg to the U.S. dollar. Recently the government announced its intention to gradually dispose of its investments, but is concerned that an abrupt withdrawal might send another shock through Hong Kong's jittery market.

Judicial Independence Challenged. On January 29, 1999, Hong Kong's Court of Final Appeal (CFA) rendered a very controversial decision having to do with the rights of certain children born on the mainland to claim "right of abode" (a form of permanent residency) in Hong Kong. The CFA adopted a very expansive interpretation of the relevant provisions in the Basic Law, granting the right of abode to all children of legal Hong Kong residents, even children born on the mainland out of wedlock and prior to the parent becoming a legal resident of Hong Kong. Under this broad interpretation, a 50 year old man, as soon as his 75 year old father attains legal resident status in Hong Kong, automatically inherits the right of abode in Hong Kong. So too do his children and grandchildren. Due to the perceived social welfare consequences of such an immigration boom, and the belief that the CFA had incorrectly interpreted key elements of the Basic Law, the Hong Kong government on February 24 asked the CFA to "clarify" certain aspects of its ruling, and in June requested an authoritative interpretation of the legislative intent behind relevant provisions in the Basic Law.

Cox Report and Export Controls. On May 25, 1999, the House Select Committee on U.S. National Security and Military/Commercial Concerns with the People's Republic of China released an unclassified version of its report, cataloguing China's efforts to acquire sensitive military technology through espionage and commerce. Among the recommendations made by the Select Committee Chairman Chris Cox (R-CA) is a call for tightened controls over sensitive dual-use technology exports to Hong Kong.

Human Rights Covenants Signed, But Dissidents Denied Entry. In the Fall of 1997 and Summer of 1998 respectively, coincident with Sino-U.S. presidential summits, China signed the United Nations Covenant of Economic, Social and Cultural Rights and the Covenant on Civil and Political Rights. This move was welcome as a gesture to assuage concerns about the continued application of the terms of these covenants in Hong Kong. Political opposition and free expression have remained vigorous and relatively uninhibited in Hong Kong. Tiananmen anniversary vigils and public debates over the fate of democracy on the Chinese mainland continue. But starting on April 21, 1999, the HKSAR began denying entry visas to exiled Chinese dissidents wishing to participate in these activities. While Hong Kong remains home to several high-profile mainland dissidents, and the views of others are freely broadcast and discussed, this most recent gesture smacks of Beijing-like intolerance.

U.S. Military Port Calls Halted. In response to the tragic, but accidental, U.S. bombing of China's embassy in Belgrade on May 7, 1999, China announced that U.S. military vessels would no longer be permitted to port in Hong Kong. Most analysts consider this to be a temporary expression of China's sovereign prerogative, but do not take it as a given that U.S. military vessels will be able to resume port calls in Hong Kong in the near future. Prior port calls were viewed as a sign of continuity and good faith in U.S.-Hong Kong relations. Their termination, even temporarily, sends a disturbing strategic signal to the United States, but also to Hong Kong. Those most hurt by the absence of such visits are merchants in Hong Kong's well traveled tourist and entertainment districts. This gesture reduces Hong Kong to a pawn in China's geopolitical chess game with the U.S. and demonstrates a disregard for the impact of such political moves on the well being of Hong Kong residents.

NEW CAUSES FOR CONCERN

Since the establishment of Chinese sovereignty over Hong Kong, all of the pre-handover causes for concern remain. Hong Kong remains heavily dependent on international trade and investment. Its vulnerability to dramatic fluctuations in regional and global trade and investment flows has become shockingly clear to Hong Kong residents over the last two years. Hong Kong residents and outside observers remain anxious about the continued protection of political liberties and further development of democracy. An effective Independent Commission Against Corruption and firm commitment to the rule of law remain critical to Hong Kong's future success. And the People's Liberation Army presence in Hong Kong remains a latent concern to many, especially since the government has yet to define crimes against the state (as described in Basic Law Article 23) and how it intends to enforce such a prohibition. Notwithstanding these concerns, few problems attributable to the change of sovereignty have emerged over the last two years. I will briefly discuss two challenges to Hong Kong's high degree of autonomy that have captured a lot of recent attention.

Judicial Independence. As mentioned above, Hong Kong's Court of Final Appeal rendered a particularly controversial decision in January that many executive officials feared would pose a grave challenge to Hong Kong's social welfare. Few question the government's concern that a dramatic flow of mainland migrants into Hong Kong would strain government services and tax the generosity of current residents. The controversy arises from the question of whether the CFA's ruling reflected a correct interpretation of relevant provisions in the Basic Law, and the fact that the SAR government has been seeking ways to address the immigration concerns created by the ruling in ways that may compromise the Court's authority and Hong Kong's autonomy.

The CFA's interpretation of the Basic Law does appear to be unnecessarily (perhaps erroneously) broad, and the SAR government's request for an authoritative interpretation of the relevant Basic Law articles does appear to be an appeal of what was supposed to be a final adjudication. I speak here only in terms of appearances. There is a vigorous debate in Hong Kong among distinguished legal professionals (which I am not) over the merits of both of the above claims. But the dispute is rarely focused on the underlying issue—who qualifies for permanent resident status in Hong Kong and by what means. The central government and the SAR government clearly have the legal authority to control population flows into Hong Kong, and coordinated efforts in this regard are appropriate. I suspect that the means used in this case to resolve the underlying issue are not worth the political cost.

The problems created by this case appear to be more political than legal. As sovereign, Beijing has the right to interpret and amend the Basic Law any time it likes according to its own constitution and legislative process. If Hong Kong's autonomy has been compromised in the process, at least in this case, it would appear that it was done at the behest of many of Hong Kong's people and not initiated by Beijing. It is ironic that many who argue that the CFA's ruling must be final—one that would bring a large flow of mainland migrants into Hong Kong—view the flow of Han Chinese into Tibet as a threat to Tibet's autonomy, special identity, and culture. Events have proceeded too far in this case for there to be an ideal or even positive outcome. The court created a problem with no proposed solution and the government responded with a solution that created more problems. In the end, this issue only becomes a concern to the United States, if Hong Kong's judiciary continues to be questioned by the executive branch and overruled by the central government. If it remains an isolated incident, then it will be a regrettable event with manageable consequences.

Proposed U.S. Export Controls. Representative Cox's recommendation to consider new controls over sensitive dual-use exports to Hong Kong is understandable, given security concerns raised in the Select Committee's report and China's sovereignty over Hong Kong. The problem is that there has been no evidence that the SAR government has been anything less than cooperative with the United States in controlling the flow and monitoring the end use of sensitive technologies. Given the Hong Kong government's continued cooperation with these and many other security concerns, imposition of export controls risks dealing an unnecessary blow to Hong Kong's autonomy.

NEW REASONS FOR OPTIMISM

As before the handover, Hong Kong's successful integration into the People's Republic of China under the "one country, two systems" model remains critical to Beijing's key goals of expanding economic development and eventual reunification with Taiwan. The primary reason for optimism about Hong Kong's continued freedom and prosperity under Chinese sovereignty is the fact that its most debilitating developments are the result of events outside of China. Very few predicted that Hong Kong's greatest challenge over its first two years under Chinese rule would be economic. And even those visionary few who did, mistakenly assumed that Hong Kong's economic downturn would come about as the result of mainland micro-management and corruption. That may yet occur, but it is important to note that throughout this economic crisis, while much of the world offered Hong Kong its advice and criticism, Beijing was notably restrained and Hong Kong remains highly integrated and open to the global system of trade and investment.

Even some of the emerging causes for concern give rise to a measure of optimism. The decision to block exiled dissidents and to seek an interpretation of the Court of Final Appeal's "right of abode" decision, both appear to be the result of decisions made within Hong Kong. On nearly every issue other than the denial of U.S. military ship visits, Beijing has erred on the side of caution to avoid even the appearance of interference in the Special Administrative Region's affairs. Indeed the one area most analysts feared would become the first casualty of Chinese sovereignty—political freedom—has perhaps gone the most smoothly. The Hong Kong people remain enthusiastic about exercising their right to vote and ensuring government responsiveness to local needs. And Hong Kong continues to progress along its admittedly slow democratization path—next year's legislative election will bring a slight increase in the number of directly elected seats. I remain hopeful that this franchise will continue to expand and that the people of Hong Kong will have the means at their disposal to guarantee that their judicial, legislative, and executive leaders are accountable to them before all others.

The United States has a deep and abiding interest in seeing that Hong Kong maintains its high degree of autonomy and continues to be a shining example of how freedom works in a Chinese society. The U.S. should avoid policy measures that compromise Hong Kong's autonomous status or undermine its economic vitality. Continued expressions of support and concern for Hong Kong's future success, such as this hearing and the frequent visits by Members of Congress to Hong Kong, are important signals to all concerned that U.S. policymakers remain engaged in these issues and will continue to press for progress.

Thank you very much, Mr. Chairman and members of the Subcommittee, for interest in these issues. I look forward to your questions to help fill any gaps in my presentation.

Senator THOMAS. Thank you, Mr. Yates.
Dr. Cohen.

STATEMENT OF DR. JEROME A. COHEN, SENIOR FELLOW ON ASIA, COUNCIL ON FOREIGN RELATIONS; PROFESSOR OF CHINESE LAW, NEW YORK UNIVERSITY LAW SCHOOL; PARTNER, PAUL, WEISS, RIFKIND, WHARTON & GARRISON

Dr. COHEN. Mr. Chairman, I agreed with what you said about the importance of perceptions. And my purpose in coming here is to try to alter the popular perception of what has taken place in Hong Kong with respect to the recent decision of the Court of Final Appeal and what has followed.

I think what Mr. Roth said was correct, that more important than the court decision is what happened after. But that is not an excuse for ignoring the court decision, because I do not think you can understand what happened after, or put it in proper perspective, if you do not look at the court decision.

Now, Ms. Ng, for whom I have the greatest respect, as a lawyer, as a politician, as a columnist, as a friend, said something that I agreed with—that we have to evaluate what it is that happened. And I think we have to evaluate the Court of Final Appeal decision in a way that rarely has been evaluated in the press. I think the press has done a poor job in this country in helping people to understand what has taken place. And I think, consequently, we have seen not only misunderstanding perhaps, but some unfairness with respect to the People's Republic of China and its efforts to develop a legal system.

I think, in other words, to use informal parlance, they are getting a bum rap on this. And I think the Government of Hong Kong, to some extent, although it has made a few mistakes along the way, is also getting a bum rap.

Why do I say that? Ms. Ng has emphasized, as many people in Hong Kong do, that Hong Kong has a separate system. But nobody has mentioned here, so far, that it is not a totally separate system. The meaning of the hand-over was that Hong Kong was handed over to the People's Republic under a Joint Declaration, an international agreement, between the United Kingdom and China, and a Basic Law enacted by the PRC National People's Congress that, as Ms. Ng said, has been often referred to, even by the Court of Final Appeal, as a so-called mini-constitution.

That is a written constitution. It purports to allocate power between the central government and the local region, Hong Kong, the SAR. It does not confer on Hong Kong or its courts a totally unlimited power. The key to the arrangements of the Basic Law, as those of us who have grown up in a Federal system appreciate, is Article 158. And you cannot discuss what has happened without discussing the Court of Final Appeal's interpretation of Article 158.

Now, my own view—I will not read my statement, my statement tries to give you a capsule of how all this developed and what the implications might be. But my own view, simply stated, is that the Court of Final Appeal, in a very complex judgment that handled some issues correctly, did not handle the key issues correctly. The key issues are institutional and they are substantive. The substantive issues concern the interpretation of two provisions of the Basic Law concerning immigration.

The institutional question really concerns whether these questions or either of them was the kind of question that the Court of Final Appeal, before making its decision, under Article 158(3), should have referred to the Standing Committee of the National People's Congress for interpretation?

The substantive questions concern not only who should be a permanent resident of Hong Kong under the Basic Law, but also whether whoever is deemed to be a permanent resident under the Basic Law should still be required to obtain an exit permit from the People's Republic of China, as has been the custom and has been required by Article 22(4) of the Basic Law.

Now, the latter is obviously a question, both in law and in fact, “concerning the relationship between the Central Authorities and the Region.” And, indeed, since it has been the Chinese Government’s prerogative to issue these exit permits, it is also a matter “concerning affairs which are the responsibility of the Central People’s Government.”

Why do I use these phrases? Because these are the very criteria that require the Court of Final Appeal, before it makes its decision, to ask for an interpretation by the Standing Committee in Beijing. And yet, through the most elaborate, labored, theoretical constructs, the court arrives at a result that plainly is contrary to common understanding of the meaning of the words and to the factual situation.

Now, we keep talking about “the rule of law.” And people who are against what the government has done in response to the court’s decision wrap themselves in the mandate of “the rule of law.” But the rule of law has to begin with the bastion of the rule of law, which, in Hong Kong, is the Court of Final Appeal. And when you have a court composed of very able people, who make a bold leap to transform the natural meaning of the arrangements in the Basic Law in order to maximize Hong Kong’s autonomy, you are faced with a departure from the rule of law and a very bad model, especially for a mainland that is trying to develop a serious legal system.

I feel that if I were the judge, I would have interpreted the immigration provisions to take a narrower position than the Court of Final Appeal did. I would have agreed with the court that, in reading the Basic Law, a permanent resident under Article 24 should not be required to get an exit permit from China under Article 22. But reasonable people could go either way on both of these substantive issues of statutory interpretation.

But where I have the greatest difficulty with what the Court of Final Appeal has done is its refusal to send to Beijing, under the authorized legal process of Article 158(3) of the Basic Law, the matter of the interpretation of Article 22. That is what started off this whole process that has created a totally unnecessary dispute in Hong Kong. Hong Kong is going to have some very serious problems that cannot be avoided by the judiciary, including flag desecration issues that we, too, have struggled with. But this was a controversy that could have been avoided if the Court of Final Appeal had done the obvious legal thing.

It tried to make a really bold gamble. It almost got away with it. But the social and economic consequences of its interpretation were such that the Hong Kong Government felt obliged to seek the hearing in Beijing to which it was entitled under the Basic Law and which was denied it by the Court of Final Appeal. That is the frustrating position that the Hong Kong Government found itself in.

Under the law, it should have had an interpretation by the Standing Committee before the Court of Final Appeal made its decision. If that had been done, you would not have a crisis, the Standing Committee would have given its interpretation, the matter would have come back to the Court of Final Appeal, which would have had to apply that interpretation. But this was a kind

of power grab by these five able judges, a very bold and brassy thing to do and, as I say, it almost succeeded, but it did not.

And, frankly, from the perspective of someone who has studied Chinese law all his life—as well as grown up in our Federal system, a common lawyer integrated into a Federal system—I was angry when I read the Court of Final Appeal decision, because I thought these fellows are highly sophisticated and are engaging in legal legerdemain. It is unfortunate, because the experience of the United States is when judges are judicial activists, when they try to solve political problems by taking a very ambitious point of view, they often bring discredit to the institution to which they try to bring credit.

In my formal statement I quote Charles Evans Hughes, one of our greatest Justices and politicians, who said, in 1928, that “the Supreme Court has suffered severely from self-inflicted wounds.” What he meant by that is overly ambitious court decisions, including the Dred Scott decision, caused a loss of public confidence. And this is the lesson I hope that the Court of Final Appeal has learned in this Hong Kong crisis.

You asked the question earlier, Mr. Chairman, what the impact of this determination might be. My hope is that it will sensitize the Court of Final Appeal to a stricter reading of the Basic Law, and to the importance of the fact that judges must be sensitive to the needs of the community in which they live and not try to play games fast and loose with the law.

[The prepared statement of Dr. Cohen follows:]

PREPARED STATEMENT OF DR. JEROME A. COHEN

HONG KONG, CHINA AND THE RULE OF LAW

Mr. Chairman and Members of this Subcommittee:

I am glad to have the opportunity to take part in this hearing on recent events in Hong Kong. For almost forty years, as a law professor and lawyer, I have been involved with China and Hong Kong. During this period I have worked in Hong Kong for a total of almost ten years and in Beijing for approximately three years.

China is my “rice bowl.” For the two decades since China began its “Open Policy,” I have represented American and foreign multinational companies in their efforts to conclude contracts and settle disputes with Chinese companies. On a pro bono basis, I have also helped some Chinese government institutions—national, provincial and local—in their efforts to develop a legal system credible to foreign business and assisted in the education and training of China’s rapidly growing legal profession. I served as Honorary Professor at the Hong Kong University Law Faculty in 1979, and last year the Hong Kong Government asked my advice on a question concerning the Basic Law.

My perspective on Hong Kong’s relations with China’s Central Authorities is a dual one. It reflects not only my long specialization in Chinese law but also my training and experience as an American lawyer in a common law system that over two centuries ago began to be integrated into a federal constitutional structure.

Just two years ago, the United States and other Western powers awaited the United Kingdom’s “handover” of Hong Kong to China with great apprehension. Their fear was that China might not respect the complex arrangements of the 1984 Sino-British Joint Declaration and China’s 1990 Basic-Law that had fleshed out Deng Xiaoping’s unique “one country, two systems” formula for Hong Kong’s next half-century.

Now a political crisis that has been brewing in recent months has come to a boil in this Special Administrative Region of China. Ironically, responsibility for the crisis must be assigned to Hong Kong, not Beijing, and to Hong Kong’s highest court rather than to its government, as commonly supposed. This again demonstrates the wisdom of one of America’s greatest judges, Charles Evans Hughes, who long ago pointed out that overly ambitious Supreme Court decisions risk the loss of public

confidence. “The Court has suffered severely from self-inflicted wounds,” noted Hughes in 1928.

Hong Kong’s crisis came to prominence in January in a cluster of cases requiring its newly-minted Court of Final Appeal to interpret the Basic Law and related legislation in order to determine (i) which of several categories of mainland Chinese children who have at least one parent currently residing in Hong Kong are entitled to take up permanent residence in Hong Kong, and (ii) whether those entitled to permanent residence require an exit permit issued by the Chinese Government. The Court of Final Appeal’s January 29 decision, disagreeing with the lower courts that had considered these questions, stunned Hong Kong and the Chinese Government. It not only announced an interpretation that maximized the number of mainland persons eligible for permanent residence in Hong Kong but boldly challenged the Central Authorities in two institutional respects that have important implications for Hong Kong’s political future.

While popular attention in Hong Kong focused on the socio-economic impact of the Court’s decision to allow so huge a number of new permanent residents, what first caught the attention of Beijing’s political elite was the Court’s broad statement that a Hong Kong court has the power to invalidate any legislation of the National People’s Congress or its Standing Committee that it deems inconsistent with the Basic Law. This view, which may soon be put to the test in forthcoming cases involving the government’s right to punish desecration of the national flag, drew immediate protests from legal experts and media in mainland China. The Hong Kong Government sought to quiet matters by asking the Court for an unprecedented “clarification” of its remarks, which the Court promptly offered, without altering its immigration interpretations. However, its brief supplementary judgment, while toning down its original rhetoric, implicitly continued to claim that the Court can invalidate any national legislative act that it deems inconsistent with the Basic Law.

At least in form, if not substance, this “clarification” did “give face” to the Central Authorities and succeeded in quieting matters. Beijing appeared willing to overlook the Court’s second, initially less-noticed, institutional provocation, even though to many observers it seemed to fly in the face of Basic Law Article 158’s arrangements for allocating power between the Central Authorities and Hong Kong. Those arrangements give Hong Kong courts the power to finally adjudicate disputes, a power they had not enjoyed under the UK, which had authorized appeals from their decisions to the Judicial Committee of the Privy Council in London. But Article 158 also prescribes that, in any case in which the decision turns upon an interpretation of a Basic Law provision concerning affairs which are the responsibility of the Central Government or concerning the relationship between the Central Authorities and Hong Kong, the Hong Kong court making the final decision must request the Standing Committee of the National People’s Congress to make such interpretation before it makes its decision. That interpretation is then to be applied by the Hong Kong court to the facts and claims before it.

Resolution of the two major substantive issues in this litigation required interpreting ambiguous provisions of the Basic Law. One issue was whether, in order to be deemed a permanent resident of Hong Kong under Article 24(2)[3], “persons of Chinese nationality born outside Hong Kong of those residents listed” as permanent residents in Article 24(2)[1] and [2] must have been born at a time when either parent had already obtained permanent residence or whether it is sufficient if either parent subsequently acquired permanent residence. This I shall call the Article 24 issue.

The second issue was whether persons of Chinese nationality living on the mainland who qualify for permanent residence in Hong Kong nevertheless require an exit permit from the Chinese Government to leave the mainland before they can exercise the right of abode in Hong Kong enjoyed by all who are deemed permanent residents. This would not have been an issue were it not for Article 22(4) of the Basic Law, which provides that, for entry into Hong Kong, “people from other parts of China” must apply for approval from the Chinese Government and that the Central Government determines the number of persons who may enter Hong Kong for the purpose of settlement after consultation with the Hong Kong Government. The issue thus arose whether persons of Chinese nationality living on the mainland who acquire a permanent resident’s certificate should nevertheless be deemed subject to the requirement of Article 22(4) because they are “people from other parts of China.” This I shall call the Article 22 issue.

Neither of these issues was simple, as impressive technical and policy arguments were mustered by counsel on both sides. My own interpretation as a judge, based on the texts of the Sino-British Joint Declaration and the Basic Law plus the other available evidence of the drafters’ intention, would have been to read Article 24(2)[3] narrowly, unlike the Court of Final Appeal. But I would have agreed with the Court

on the Article 22 issue, holding that Chinese on the mainland who acquire permanent residence under Article 24(2)[3] should not be required also to obtain a mainland exit permit. Yet, conscientious judges might come out either way on each of these issues.

My greatest problem with the Court's decision is not over its substantive interpretations regarding the immigration issues but over its refusal to refer the Article 22 issue for interpretation by the Standing Committee of the National People's Congress before the Court rendered its judgment. The words of the Basic Law, in Article 158 as well as in other provisions, are rarely self-defining, and, of course, there is room for sophisticated judges to give meaning to them in ways that achieve the major purposes of the unique legislative construct of "one country, two systems." Yet, it is difficult for me to conclude that the question of whether under Article 22(4) the Central Government continues to have the power to require exit visas for those nationals who have acquired permanent Hong Kong residence and the power to regulate the number of them who can leave for Hong Kong is not an affair that is the responsibility of the Central Government or does not concern the relationship between the Central Authorities and Hong Kong.

Therefore, it seems clear that respect for the arrangements set forth in Article 158 should have required the Court to refer Article 22(4), which is found in Chapter II of the Basic Law entitled "Relationship between the Central Authorities and the Hong Kong Special Administrative Region," to the Standing Committee for its interpretation. This interpretation was needed to reach the decision and plainly affected the judgment of the Court. I find the Court's elaborate theoretical efforts to avoid the duty imposed by Article 15 8(3) strained and unconvincing.

Unlike the Article 24 issue, which at least in isolation can be regarded as a matter "within the limits of the autonomy of the Region" under Article 158(2), since it involves the determination of who is entitled to Hong Kong permanent residence, the Article 22 issue both in law and life "concerns the relationship between the Central Authorities and the Region" if words are to be given their intended meaning. Both before and after the "handover," the regulation of the immigration of mainland nationals to Hong Kong has been the subject of close cooperation between the Central Authorities and Hong Kong officialdom.

The five able members of the Court of Final Appeal who unanimously, if astonishingly, decided that there was nevertheless no need to refer the Article 22 issue for interpretation by the Standing Committee, were taking a bold gamble in the interest of maximizing Hong Kong's autonomy. They would have gotten away with it had not the Hong Kong Government's preparation for the anticipated immigration influx recently led it to believe that as many as 1.67 million people might have to be absorbed during the next decade by a population of merely 6.5 million. The Hong Kong Government used this figure as the centerpiece of a massive propaganda blitz designed to convince any doubters among an already anxious community that Hong Kong cannot cope with the housing, education, health, welfare, environment and other needs of such an immigration wave, at least without substantially degrading local life.

The Government's goal was to demonstrate overwhelming public support for an effort to reduce the impact of the Court's decision without affecting the decision itself or the rights of those who brought the litigation. The Government considered three Options: (1) bringing a new litigation in the hope that, upon reflection, the Court might adopt a narrower interpretation of the immigration provisions; (2) seeking an amendment of the Basic Law to the same effect; or (3) seeking a corrective interpretation by the NPC Standing Committee not only of the Article 22 issue but also of the Article 24 issue, which the Hong Kong Government had previously thought did not require Standing Committee interpretation. The Hong Kong Government rejected the first two options as too slow and uncertain in outcome and instead, via the Central Government, requested the Standing Committee's interpretation of both key issues. It evidently hoped that the Standing Committee would read the relevant legislation to exclude from the right of abode in Hong Kong any child if neither parent was resident there at the time of birth, thereby reducing to a relatively manageable 200,000 the number of people with a right to immigrate.

Although the Hong Kong Government's statistics and scare tactics have been criticized, the vast majority of the community supported its proposed solution. However, many members of the legal profession, the democratically-elected members of the Legislative Council and many commentators condemned the effort to obtain a Standing Committee interpretation, claiming, often in the most melodramatic language, that this marked the beginning of the end of Hong Kong's judicial independence, rule of law, local autonomy and individual rights. Some argued that, since the Basic Law makes no explicit provision for the Hong Kong Government to seek a Standing Committee interpretation, there was no legal basis for the effort.

Others concede that Article 158 confers full power upon the Standing Committee to interpret the Basic Law at any time and on its own initiative or in response to the request by others. Some also agree that Hong Kong's Chief Executive has the power to seek Standing Committee interpretation because of the responsibilities imposed upon him by the Basic Law for its implementation and administration of Hong Kong's Government. Yet, many question not the legality but the propriety of the request for interpretation. They fear that seeking an interpretation in the wake of a judicial decision will undermine the integrity of the judicial process. Frequent resort to this technique following judicial decisions adverse to the interests of the Hong Kong Government could render meaningless the line drawn by Article 158, which grants the Standing Committee the ultimate power of interpretation but which grants the Hong Kong courts the ultimate power of adjudication. Many have argued that substantive and procedural standards are needed to curb the exercise of this power.

The Hong Kong Government offers assurances that it will use its power to seek interpretations sparingly, only in exceptional cases. It emphasizes that under Article 158, Standing Committee interpretations cannot affect court judgments already rendered. It also points out that in many countries, including our own, the executive has the power to request legislative correction of statutory interpretations with which the executive disagrees, and the legislature has the power to make such changes, without altering the judicial decisions involved or undermining the judicial process.

Hong Kong's current political storm could have been avoided if the Court of Final Appeal had referred the Article 22 issue to the Standing Committee. The Court's refusal to do so highlights an omission in the Basic Law, which fails to provide for cases in which a Hong Kong court erroneously refuses to make a reference required by Article 158. This is why the Hong Kong Government had to devise an ad hoc method of seeking an interpretation. The Basic Law drafters apparently assumed that, since the Standing Committee can issue such interpretations of its own accord at any time, it was unnecessary to provide for a request outside the judicial channel.

The passion of those who have opposed the Hong Kong Government's request for interpretation can in large part be attributed to their lack of confidence in the Standing Committee's interpretive process. Until the recent immigration cases reached the Court of Final Appeal, attention seldom focused on this process, and little was known about it except by specialists. Obviously, to common lawyers Article 158's requirement that in certain instances Hong Kong's court of final adjudication must refer questions of interpretation of the Basic Law to a legislative, rather than a judicial, body for binding interpretation is a strange and discomfiting arrangement.

Every political-legal system that allocates power between its central and local governments in a federal-type arrangement requires some institution to interpret the terms of the relevant constitutive documents as questions arise. In most, but not all, countries familiar to Western lawyers, this role is played by a judicial or quasi-judicial institution, typically a supreme court or separate constitutional court. Because China's distinctive governmental system is nominally based on legislative supremacy rather than a separation of powers and the Standing Committee has generally enjoyed the power of final constitutional and legislative interpretation, the Basic Law conferred this crucial power of final interpretation upon the Standing Committee and not upon China's Supreme Court. The latter choice might have raised fewer misgivings since many might have assumed that even in China—a country not notably respectful of judicial independence—legal considerations are more likely to be taken seriously in Court than in a legislature. Yet such a choice might have been opposed on the ground that it too would undermine Hong Kong's power of final adjudication.

In order to bolster confidence in the legal and deliberative quality of the Standing Committee's interpretations, Article 158 requires that, prior to issuing any interpretation of the Basic Law, the Standing Committee must consult the Committee for the Basic Law established by the Basic Law for this purpose under the Standing Committee. Yet, apart from the fact that it is composed of twelve members, six from the mainland and six from Hong Kong, nothing else about the Basic Law Committee is prescribed.

As the date approached for the Standing Committee's deliberation on the Hong Kong Government's request, many questions arose concerning the role of the Basic Law Committee in this process. How would it function? Would it receive materials and hear arguments from non-members? Would its procedures permit serious discussion among its members? What weight would be attached to its recommendations? Would minority views be presented, and would Basic Law Committee recommendations be made public?

Most of these questions were soon answered. The Basic Law Committee, which has a number of legal experts from both the mainland and Hong Kong among its members, met for three days in Beijing during the week prior to the scheduled Standing Committee session. It had already received from the Hong Kong and Central Governments and other sources a vast amount of relevant legal and media materials. This was not a public hearing but an informal, private committee discussion that focused on a draft interpretation submitted to it by the Legislative Work Commission of the Standing Committee. After a good deal of give and take and apparently considerable lobbying by officials of both the Central and Hong Kong authorities, the Basic Law Committee submitted a slightly modified version of the draft interpretation to the Standing Committee, together with a report detailing its views and noting that two of its members, who were not identified, dissented with respect to what they believed to be the overly broad scope of the draft. As of this writing, the report has not been made public, although there is said to be a possibility that it might be.

On June 23, the Standing Committee's 155 members, headed by former Prime Minister Li Peng, met to consider a draft interpretation as well as an "Explanation" of the draft prepared by the Legislative Work Commission. The Standing Committee's procedures included discussion among small groups composed of approximately 25 members each, and the Committee also reportedly consulted the Law Committee of its parent, the National People's Congress.

On June 26 the Standing Committee issued its long-awaited interpretation, which was something of an anti-climax. Virtually all observers had anticipated that the outcome would be favorable to the Hong Kong Government on both the Article 22 and Article 24 issues, and it was. Indeed, the Standing Committee's conclusions were all but formally made known to the public following its June 23 meeting. Nevertheless, the interpretation is very important to Hong Kong's future not only because of its implications for immigration but also because of its constitutional significance.

First of all, the Standing Committee confirmed the procedure by which Hong Kong's Chief Executive can seek its interpretations—submission of a report by the Chief Executive to the State Council, China's highest administrative organ, which in turn submits a motion regarding the request for interpretation to the Standing Committee. The interpretation stated that the Chief Executive's submission of the report was pursuant to Articles 43 and 48(2) of the Basic Law, thereby implicitly confirming his power to seek an interpretation.

Second, the Standing Committee, without being wholly explicit, seemed clearly of the view that Article 24 as well as Article 22 of the Basic Law concerns affairs that are the responsibility of the Central Government and the relationship between the Central Authorities and Hong Kong. Therefore, the interpretation stated that the Court of Final Appeal, before making its judgment, should have sought an interpretation by the Standing Committee as required by Article 158(3). Since the Court failed to do so, the Standing Committee decided that having consulted its Basic Law Committee, it would make the necessary interpretation pursuant to the powers granted it by Article 67(4) of the Chinese Constitution and Article 158(1) of the Basic Law.

Adding insult to injury, the Standing Committee's interpretation went on to state that the Court of Final Appeal's interpretation "is not consistent with the legislative intent." It held, again without offering elaboration, that Article 22(4) includes persons of Chinese nationality born outside Hong Kong of Hong Kong permanent residents, who are subject to the same exit requirements when heading for Hong Kong as other "people from other parts of China." Moreover, it said, Article 24(2)[3]'s conferral of permanent residence is limited to persons of Chinese nationality born outside of Hong Kong of a parent who possessed Hong Kong permanent residence at the time of the child's birth.

At this point the Standing Committee went beyond the formal request for interpretation, which only sought guidance concerning the third category of Article 24(2). The interpretation stated that the legislative intent of all categories of Article 24(2) is reflected in the "Opinions on the Implementation of Article 24(2)" adopted by the Preparatory Committee for the Hong Kong Special Administrative Region of the National People's Congress on August 10, 1996. This broader interpretation, which was opposed by two members of the Basic Law Committee, reportedly was stimulated by the lobbying of the Hong Kong Government, which apparently decided to elicit an interpretation broad enough to cover certain future cases and thereby obviate the possible need for a subsequent request for interpretation.

Finally, the Standing Committee attempted to clarify the legal effects of its interpretation. Henceforth, it stated, the Hong Kong courts shall adhere to this interpre-

tation, but the interpretation does not affect the right of abode acquired by parties to cases decided by the Court of Final Appeal on January 29.

CONCLUSION

Where does this long saga leave us? Hong Kong responses to the Standing Committee's interpretation are varied but suggest that the matter is not about to be forgotten. Actually, the interpretation seems to have spawned a new rash of litigation and heightened the stakes for those whose cases are already before the courts, as would-be permanent residents seek to place themselves within its penumbra or to maneuver around it. Moreover, the air is full of extreme reactions and dire predictions. Judges reportedly feel depressed and embattled. Sympathetic columnists urge the Chief Justice to resign because of an allegedly devastating blow to his authority. Lawyers organize protest marches and write nasty letters to the Secretary for Justice. Dispirited young barristers are supposedly considering other lines of work. Editorial writers and democratic politicians condemn the Chief Executive for having compromised Hong Kong's legal autonomy and the rule of law.

The Hong Kong Government, having won the day—at least temporarily—is trying to speak with a voice of moderation and reconciliation, although inevitably it speaks with many voices. The masses of ordinary people and the business community appear to feel relieved that the threat of inundation by immigrants has been diminished.

My own hope is that “the chattering classes,” Hong Kong's democratic leaders and those members of the legal community who have been upset at the fate suffered by the Court of Final Appeal's January 29 decision, will calm down, develop more realistic expectations and strategies for integrating Hong Kong's legal system with that of the mainland and prepare for the long haul required for constitutional progress.

I also hope that they reflect on the wisdom of the Court of Final Appeal's bold but unsuccessful attempt to distort the delicately-balanced arrangements of the Basic Law. The current controversy could have been avoided had Hong Kong's supreme bastion of the rule of law itself followed the rules set forth in Article 158 of the Basic Law. Unnecessary controversy is not what Hong Kong needs. The ensuing months are likely to bring unavoidable judicial controversies that will tax the legal, political and emotional resources of the community.

I hope these remarks are helpful to the Subcommittee, Mr. Chairman.

Senator THOMAS. Thank you, sir.

I appreciate all of you taking the time to do this. And let me just ask a few questions. Very briefly, I feel that you would like to respond a little bit to Dr. Cohen.

Ms. NG. Mr. Chairman, thank you for the opportunity.

Mr. Chairman, I was trying to avoid going into the reasoning of the court decision. But having heard Mr. Cohen's testimony, I feel that that cannot be avoided, and I hope I will have your indulgence.

Senator THOMAS. Try to keep it short.

Ms. NG. Indeed, I will.

First, the court decision is who has the right of abode. Mr. Chairman would appreciate that the court has to interpret according to the language of the law. The language of Article 24 is very simple. It defines six categories of people with the right of abode in Hong Kong. The first three categories deal with Chinese nationals. The first is a Chinese national born in Hong Kong. The second is a Chinese national who has settled in Hong Kong for 7 years. The third is a Chinese national who is born outside Hong Kong of the first and second categories, full stop.

From this, the court is unable to interpret restrictions such as discrimination between children who are born in wedlock and outside wedlock, between children whose parents were born before their parents got the status and children whose parents got the status after they were born. By interpreting both the plain language of the provision and having regard to international conven-

tions protecting the unity of the family, which is incorporated into the Basic Law, the courts were unable to interpret in such a way as to separate the families, particularly when the meaning is plain.

Now, with respect to whether the other articles would limit this right, the Court of Final Appeal took this view. Now, what was considered was Article 24 (the right of abode of Hong Kong permanent residents), which is within the autonomy of the SAR. The matter for interpretation was the right of abode. It has been agreed between the parties, by the government itself, that the right of abode is a Common Law concept.

According to the Common Law concept of the right of abode, the right of abode is incapable of being restricted by immigration measures. So, in that sense, the SAR Government was not entitled to subject people who have the right of abode to immigration restrictions. That is why Article 24 cannot be restricted by another article, Article 22(4)—Mr. Chairman, I do not have to go into detail at all, because it is in my testimony on page 3 if you have time to read it.

Senator THOMAS. OK, fine.

Ms. NG. But Article 158, which is the heart of the matter—

Senator THOMAS. Let me see if I cannot—I understand the detail, but it seems to me, for those of us who are sort of interested in the future of how this works, that the broader thing is really in question, not the detail of this particular finding. But, rather, for instance, because of this, how often do you think there will be referrals to the Standing Committee? How much will this move things beyond the Court of Final Appeal in other issues?

Ms. NG. Mr. Chairman, the reason why I go into the details is because Mr. Cohen tried to say that the court had gone on some very wild interpretation.

Senator THOMAS. Right.

Ms. NG. But if the court had done so, then the lesson to learn is not to do so, not to deviate from the straight path of construction. But since the court had very carefully kept to all the most established rules of construction, for you to say that the court is wrong must mean that there is something wrong with the traditional rules.

Now, is the court therefore to sensitize itself to what the Standing Committee is about to say? This is exactly what the legal profession is most concerned about; namely, judges in judging, in considering their judgment, will consider not just the law, but the political consequence of how their conclusions will be taken in Beijing.

Now, it is said that judges ought to be more aware of social and economic consequences. But judges cannot, by the canons of the Common Law tradition, give a different view of the law, of the consequence of the law, if that follows from the interpretation of the law itself.

Senator THOMAS. Why do you think—and I am going to try and get you off the detail of it, because I think we are more concerned about the concept—

Ms. NG. Yes.

Senator THOMAS [continuing]. As to whether or not, in the future and in other issues, if someone in the authority in the government disagrees with the court decision, they will simply go on to Beijing.

Ms. NG. Yes, Mr. Chairman, the Basic Law is very restricted with referral. Namely, only the Court of Final Appeal can refer a provision to the Standing Committee for interpretation.

Now, nobody has ever dreamt that the government, the executive, can refer a matter to the Standing Committee. Now the government says that it has power under certain other parts of the Basic Law, which merely empowers the chief executive to implement the Basic Law. Now, if that is to be accepted as the basis for referring matters to the Standing Committee, it would be a very easy path for the government to do so.

Senator THOMAS. Would you say, is there a separation between your final appeal judiciary function and the executive C.H. Tung function?

Ms. NG. In Hong Kong, our system has always been a separation of the judiciary, the legislature and the executive. The executive is bound by law. So the court has that supervision over the lawfulness of a government's action.

If a government does not have to accept from the Hong Kong courts whether its action is lawful or not, but can go to Beijing, then the government will not be restricted by law.

Senator THOMAS. But is not that precisely what happened in this instance?

Ms. NG. Exactly, Mr. Chairman, that is precisely our concern.

Senator THOMAS. Yes.

Ms. NG. If the government thinks that the consequence, the social and economic consequence, is unbearable for Hong Kong, then the legal profession's position is that the government can seek an amendment of the law. This would be proper. It would leave the judicial process intact. And it would be protected by due process. We consider that to be a perfectly viable process, but it was not followed by the government.

Senator THOMAS. I understand. Let me go to Mr. Yates.

You indicated, and I understand it, some concern about the dependence on trade. But is not that true with Singapore? Is not that true with a number of places? Hong Kong is going to be much like that, are they not? Nothing can change that, can it?

Mr. YATES. Right. And in saying so, I would again emphasize I do not advocate that they raise barriers to control capital or flows of goods or information. It is difficult to say why Hong Kong was so heavily affected by the regional downturn, whereas Singapore, though affected, was not as deeply affected, without pointing to some of the differences between the two economic systems.

One of the unfortunate easy reads on the Asian financial crisis was that places that have more controls fared better. Many people in the PRC have pointed to capital controls as an important reason why their economy was able to remain stable. Our friends in Malaysia sometimes say that because of controls, they were able to weather the storm better than some of their neighbors.

Empirically, it is very difficult to say why Hong Kong was so profoundly affected. I only make the point to say that there are many forces beyond the control of the people in Hong Kong, as there will

be for any economy that does not have the blessing of being as powerful as the United States. When global capital flows are flooding through the region, Hong Kong is going to be vulnerable.

Senator THOMAS. One of the reasons might have been the very high level of investment—perhaps over-investment—as opposed to the mainland.

You mentioned in terms of the movement of goods and the security of that, that when we have evidence that there is something—how would you suggest that we be in a position to know whether there is evidence or not?

Mr. YATES. Well, as far as I can understand our cooperation with the Government in Hong Kong has always been very effective in this area. Whether we have evidence that certain things happened in China, if we can verify where a product has ended up, if we have evidence through whatever means to say that we have got cause for concern, as in fact the Select Committee says we do have cause for concern, I believe that we do have the capability to enforce controls. Many times, companies themselves can recognize that something that they sent to a partner is no longer there.

Senator THOMAS. Of course, one of the conflicts we are running into now, in terms of technical equipment, is the companies want to do that and the government does not want them to do that. So that is not a very good way to have the protection.

Mr. YATES. I do not think this is a perfect system.

Senator THOMAS. No. I understand that.

Dr. COHEN, you seem to dwell on the issue of whether this issue was determined properly or not. Regardless of that, do not you think there is some weakness in the system if you are just going to refer it on, beyond the—I mean who is always going to make a judgment whether the judges were wrong? You have. You said they were wrong, so it should go on. Who is going to do that each time they make a decision?

Dr. COHEN. In every Federal-type system—and the Hong Kong arrangements are a prototype of a Federal system—there has to be some institution, as you suggest, that interprets the written document. The allocation made by the parties that negotiated the Joint Declaration, and enacted in the Basic Law, left the power of final interpretation not to the Hong Kong courts, as the Washington Post reported erroneously the other day, but to the Standing Committee of the NPC in Beijing. They have the final interpretation—you cannot run a Federal system if you leave to the locality—

Senator THOMAS. There is no judicial autonomy, then, for Hong Kong?

Dr. COHEN. No, that is not the case at all. This NPC interpretation has not changed the decision of this case—

Senator THOMAS. The decision does not have anything to do with it, in my view. It is the process we are talking about. You keep talking about the decision. You can almost say, I do not care what the decision is; the question is that somebody overruled this court and went on to another. And is that the process you want?

Dr. COHEN. Could you run a Federal system in which the final determination of whether a matter was a Federal question is left to the Supreme Court of Wyoming? You cannot do it.

Senator THOMAS. We have a final court, do not we, right here in Washington?

Dr. COHEN. That is right.

Senator THOMAS. OK. And that is what they would—is not that what the people of Hong Kong perceived that their Court of Final Appeal was?

Dr. COHEN. I do not know what the people of Hong Kong were thinking when the Joint Declaration came out in 1984 and the Basic Law in 1990. But many people, including Martin Lee and others who participated in the negotiations of the Basic Law, were quite aware what Article 158 provides.

Senator THOMAS. Was not that an interpretation of the Basic Law, not judgments to be made on particular cases?

Dr. COHEN. You see, the Standing Committee can make an interpretation by itself on its own.

Senator THOMAS. Yes.

Dr. COHEN. It does not need the Hong Kong Government to stimulate that. It can be stimulated on its own.

Senator THOMAS. I see.

Dr. COHEN. It can be stimulated by Ms. Ng or anyone. But the problem is, what is the relation of the court decision that has been made to a further application of that decision in the future. If you are a member of the Senate and the Supreme Court tomorrow makes an interpretation of legislation that either you or the President of the United States disagrees with, the Congress is perfectly open to enact a law correcting that interpretation. Nobody says that undermines the judicial process.

Senator THOMAS. We cannot send that judicial decision to some other court.

Dr. COHEN. No.

Senator THOMAS. That is the Court of Final Appeal.

Dr. COHEN. And for that case, it is over.

Senator THOMAS. Yes.

Dr. COHEN. And that is the situation under the Basic Law. But you can look to the future and you can say that interpretation of the court is not one we agree with. We are not going to affect the court's decision but seek a new interpretation for future cases.

Senator THOMAS. No, that is true.

Dr. COHEN. But, for the future, we will say you have got to have a different interpretation.

Senator THOMAS. And the legislature in Hong Kong could operate the similar way.

Dr. COHEN. Absolutely.

Ms. NG. Indeed, Mr. Chairman, the National People's Congress can amend the Basic Law. And there is a provision in Article 159 for the Basic Law to be amended. In fact, ever since the government has said it cannot accept the social consequence of the decision of the court, the Bar's position had been that an amendment be sought of the Basic Law if it is felt that it does not correctly reflect the intent of the original provision.

Senator THOMAS. Your Legislative Council does not have the authority to do that.

Ms. NG. We cannot amend the Basic Law itself, because it was promulgated by the National People's Congress. But, Mr. Chair-

man, we do not have a Federal system. We have "one country, two systems," which is a very different kind of thing.

Senator THOMAS. Yes. It would be interesting to hear what the British, how the British interpreted the Basic Law.

Ms. NG. I think, Mr. Chairman, one thing you can understand from the British is that there is no remedial—I think this is documented—that 158 is not designed to provide a mechanism to revise the Court of Final Appeal's decision. It is envisaged that at a certain point the Court of Final Appeal, if they decide that the conditions are met, a provision will be referred to the Standing Committee for interpretation. When the Standing Committee had given its interpretation, then the court would apply that particular interpretation.

But if the court has already decided that it is not a matter for referring, it is not envisaged that the court's position can be overruled, in effect, by reinterpreting the provisions which the court has just interpreted.

Senator THOMAS. Let me see if I understand. I wrote to C.H. Tung about this. And I think he said that they instituted the referral, that the Government of Hong Kong instituted the referral; is that correct?

Dr. COHEN. Yes. You see, the mechanism provided in the Basic Law was not observed. So if they had not done it, perhaps there would be no way to get the proper interpretation before the courts.

Senator THOMAS. I was going to say, who else could have done that? Is there any other appeal mechanism, other than the Court of Final Appeal?

Dr. COHEN. This has nothing to do with the cases already decided. Once the Court of Final Appeal says, rightly or wrongly, we are not sending this case to Beijing before we make our decision, then it is over. That is their power. They have judicial autonomy. But it does not mean the rest of the world has to say, when confronted with the wrong interpretation, that in the future all cases must be governed by what may be a wrong interpretation. That is when the opportunity comes for the Standing Committee to say, in the future, we are going to have the right interpretation.

Senator THOMAS. Help me again; I do not quite understand. It was my understanding that the Court of Final Appeal had made their determination on this issue.

Dr. COHEN. They had.

Senator THOMAS. Well, you just got through saying, once they made it, there was no appeal.

Dr. COHEN. That is right. Once it is over, it is over, even if they—

Senator THOMAS. But there was an appeal, was there not?

Ms. NG. Indeed. Indeed. Of course, it is not an appeal, as such; it is a reinterpretation. The government—Mr. Chairman, you will find in the attachment, the documents attached, one of my newsletters to my constituents, dated the 23rd of May. And that gives a fairly detailed account. But what in fact happened was that the government then referred the matter to Beijing, to the Standing Committee, and asked them to reinterpret.

Senator THOMAS. It sounds like it is a way to appeal, though.

Dr. COHEN. It is not an appeal. It has nothing to do with the case that was decided. It is an attempt to get an interpretation—not a reinterpretation by the Standing Committee, because they have never been given the chance to make the interpretation.

Senator THOMAS. No. But it is a reinterpretation of what the Court of Final Appeal said.

Dr. COHEN. Yes. But not applicable to this matter. That is what is misleading. It is not an appeal. It does not overturn this case. All the litigants who won that case remain successful. It is a question for the future.

Ms. NG. Mr. Chairman, that is not quite right. We in the Hong Kong Legislature are going through this process. Now, it is a well understood Common Law principles that the court, once it has decided, does not only adjudicate as between the parties, but also decides a legal principle, and it applies to anybody who is in exactly the same position as the litigants.

For example, if the court rules that illegitimate children are all included, then that principle will not only apply to the parties before the court, but all illegitimate children wherever they are. And that will hold good until it is either overturned or the law is amended so that it no longer is the case.

Now, in the case before the court, this is not the situation. The situation was that only litigants known to the Director or Immigration were allowed to benefit from the decision of the Court of Final Appeal. In fact, if you look at the interpretation of the Standing Committee, in the very last paragraph it says that only people who were before the court before the judgment would benefit from the court's judgment.

Senator THOMAS. I see.

Ms. NG. So that anybody who comes after the judgments, but before it is reinterpreted by the Standing Committee, will not benefit.

Senator THOMAS. Well, it is an interesting thing. And I must confess that it is awful easy for us Americans to see our system, which we generally support and agree to, and think that everyone else ought to be the same. And of course each one is different.

But, frankly, it does seem as if this is a real issue in terms of not of this particular case, but of the system, and how much autonomy in the judicial area that they will have.

Ms. NG. Yes, indeed.

Senator THOMAS. You all have been very nice to do this. And even though you sort of do not have the same view, that makes it even more interesting.

Ms. NG. Mr. Chairman, I wonder if I could just add one short point.

Senator THOMAS. I have to go vote, so make it short, please.

Ms. NG. And that is that using 158 in this way is disputed very strongly, both by scholars in Hong Kong and in China. Now, if you can ask for a reinterpretation as the government claims, both before, during and after a judicial process, that would make life very difficult, indeed, in Hong Kong. And the question is not how often, but whether it is possible, and with what ease this can be done.

Senator THOMAS. I see.

Dr. COHEN. Can I add one sentence, Mr. Chairman?

Senator THOMAS. Certainly.

Dr. COHEN. Ms. Ng keeps talking about scholars, the legal profession. These people are all very divided. There are distinguished, able, responsible people on both sides, even within her profession.

Senator THOMAS. That is not unusual, is it?

Dr. COHEN. Not at all.

Senator THOMAS. Particularly when we have two lawyers at the table.

Thank you all very, very much. I appreciate it. The committee is adjourned.

[The following statement was submitted for inclusion in the record.]

PREPARED STATEMENT BY HUMAN RIGHTS WATCH
THREATS TO JUDICIAL AUTONOMY IN HONG KONG

Only two years have passed since the reversion of Hong Kong from British to Chinese sovereignty on July 1, 1997, but the autonomy of Hong Kong's legal system is already in jeopardy. In May 1999 the government of the Hong Kong Special Administrative Region (HKSAR), unhappy with a ruling by the Court of Final Appeal, the region's highest court, over who from mainland China was eligible to settle in Hong Kong, asked the Standing Committee of the National People's Congress (NPC) in China to review the ruling. The Standing Committee overturned the court's decision on June 26.

The threat to Hong Kong's judicial autonomy in this case comes less from the action of the NPC than from the political precedent set by the Hong Kong government and its chief executive, Tung Chee-Hwa, in turning to the NPC for an effective reversal of a court ruling it did not like. Members of Congress and the U.S. administration should raise their concerns with Mr. Tung and indicate that the implications of his actions go far beyond the "right of abode" question to the central question of whether Hong Kong's much-praised courts will retain any independence at all.

Background

Under the Joint Declaration, the document hammered out by Britain and China that transferred Hong Kong to China, and the Basic Law, which serves as the constitution of the HKSAR, Hong Kong's autonomy was to be protected primarily through a legal and judicial system separate from that of China. One of the most controversial aspects of the Basic Law was the provision that the National People's Congress would have the final say over the law's interpretation, meaning that legally, the NPC could indeed challenge rulings by the Court of Final Appeal. Hong Kong's legal community and pro-democracy activists clearly recognized the danger this provision posed, but it was not clear how or under what circumstances the NPC would choose to invoke its authority. Few suspected that the danger would come from the Hong Kong government's *inviting* the NPC to intervene.

Yet this is exactly what happened with the right of abode controversy. The Basic Law stipulates that persons of Chinese nationality born outside Hong Kong to parents who have permanent residency in the HKSAR would themselves be eligible for right of abode. Immediately following the transfer of sovereignty, a number of children and parents petitioned the Hong Kong government for recognition of this right. The Provisional Legislature, appointed by the Chinese government, passed a law, effective retroactively, to restrict this right. On January 29, 1999, the Court of Final Appeal issued a decision that gave the right of abode to a broader group of people than the HKSAR government chose to recognize. These included:

- Children born out of wedlock whose mothers do not have the right of abode in Hong Kong but whose fathers do.
- Children whose parents did not have the right of abode in Hong Kong at the time of their birth but who subsequently acquired that right.

The Hong Kong government expressed concerns about the number of people who could be eligible for entry into Hong Kong over the next ten years if the CFA's broader interpretation of the right of abode was allowed to stand. It also professed concern about the impact this influx would have on Hong Kong's social stability. It argued that Hong Kong did not have the resources to meet the housing, education, medical and health, and social welfare needs of the newcomers, although the numbers it used to make the argument were ludicrously overstated in the view of many legal scholars and social scientists.

After Chinese government officials objected to the CFA ruling, and after the CFA's Chief Justice was forced to issue an unprecedented "clarification" of the ruling, Tung Chee-Hwa decided to seek an interpretation by the NPC's Standing Committee as a way of avoiding implementation of the court's decision. Turning to China to resolve a critically important legal dispute was not the only option open to the Hong Kong government, but it was by far the worst. It could have allowed the CFA decision to stand and then waited to see if the numbers of Chinese seeking right of abode bore any resemblance to its apocalyptic predictions. It could have sought a new ruling from the CFA through new cases. Even working through the SAR Legislative Council to seek an amendment to the Basic Law would have been preferable than inviting Chinese intervention in Hong Kong judicial matters.

By turning to the NPC to bolster its own case, the Hong Kong government has set a dangerous precedent, effectively giving notice that any time the Court of Final Appeal rules in a way that the executive branch of the SAR finds objectionable, it will turn to China for assistance. This makes a mockery both of the notion of checks and balances within the SAR government as well as of Hong Kong autonomy itself.

The NPC Standing Committee responded predictably to the HKSAR government's request for interpretation. In its decision adopted last week, it said the Court of Final Appeal should have itself asked the NPCSC for an interpretation of the controversial part of the Basic Law before it gave its final ruling. It also stated that the CFA's interpretation was in violation of the spirit of the Basic Law. It upheld the Hong Kong government's restrictive interpretation of the right of abode of mainland children, limiting it to those, who at the time of their birth, had at least one parent who was already a permanent Hong Kong resident. Anyone else would have to seek permission from relevant departments in the Chinese government and there was no guarantee that permission would be granted. This interpretation applies to relevant future cases handled by Hong Kong courts but does not affect those who have already obtained the right of abode as a result of the Hong Kong Court of Final Appeal's initial ruling in January 1999.

The key issue from a human rights perspective is not the right of abode per se. It is the independence of the Hong Kong courts. This precedent has the potential of opening a wide swathe of judicial rulings to attack and "reinterpretation," particularly those that displease either the Chief Executive in Hong Kong or the government in Beijing.

Human Rights Watch urges the Administration and Congress to raise concerns, privately and publicly, with Hong Kong and Beijing officials about threats to the rule of law and the independence of the Hong Kong judiciary. For example, this issue should be on the agenda of President Clinton's talks with Chief Executive Tung Chee-Hwa at the APEC summit in New Zealand in September. Members of the business community should also continue to speak out, recognizing the importance of Hong Kong's legal system to its prosperity and economic vitality.

[Whereupon, at 3:30 p.m., the subcommittee adjourned, to reconvene at 10 a.m., July 21, 1999.]

RECENT STRAINS IN TAIWAN/CHINA RELATIONS

WEDNESDAY, JULY 21, 1999

U.S. SENATE,
SUBCOMMITTEE ON EAST ASIAN
AND PACIFIC AFFAIRS,
COMMITTEE ON FOREIGN RELATIONS,
Washington, DC.

The subcommittee met, pursuant to notice, at 10 a.m. in room SD-419, Dirksen Senate Office Building, Hon. Craig Thomas (chairman of the subcommittee) presiding.

Present: Senators Thomas, Helms, Biden, Coverdell, Kerry, and Torricelli.

Senator THOMAS. The committee will come to order. I want to thank each of the witnesses for being here today. The subcommittee meets to evaluate and to discuss recent developments in the cross-strait relations between Taiwan and the People's Republic of China.

On July 9, Taiwan's President Lee stated relations between Taiwan and the PRC should be conducted on the basis of a "state to state" relationship, or at least a "special state to state relationship." That statement, and subsequent amplifications from the foreign ministry and the Mainland Affairs Council, seemed to indicate that the ROC Government has moved away from its adherence to the one China policy, a policy that it has followed since the late forties.

The reaction from the People's Republic was predictably strident. The PRC officials have accused the ROC of pursuing independence, in a flood of public statements, media reports, and press releases, the defense minister has made several public statements emphasizing the People's Republic position that it does not adjure to force: "Should Taiwan declare independence the PLA is ready at any time to safeguard the territorial integrity of China and smash any attempts to separate the country." That was a quote.

It is unclear whether the PRC will have a reaction over and above the rhetoric, such as the movement of troops bordering the Taiwan Strait, as was the case in 1996, or missile testing north and south of the island.

This deterioration of cross-strait relations is very unfortunate. Recently, the two sides have resumed high level contacts after a 5-year hiatus. This resumption is important, because nothing is ever going to be resolved with the two sides, of course, sitting on each side of the strait without communications.

Equally important, in my view, is that both sides should leave the United States as sort of an impartial party. As I have stressed in past trips both to the PRC and the ROC, we do not want to be caught in the middle of what is basically a bilateral issue.

It is no surprise that Beijing and Taipei favor U.S. intervention that benefits their respective positions. However, there is little, if any, support for true mediation, that is, efforts by a neutral party to get both sides to give up significant parts of their respective negotiating positions to find a compromise.

Putting us in the middle serves no useful purpose. The two sides tend to talk to us and not to each other, and any U.S. statement or effort to bring the sides together is more likely than not to be received negatively by one side or the other as favoring the opposite side. This result is a lose-lose situation, generally, for us. This is a matter that needs to be resolved by Taiwan and the People's Republic, hopefully in a peaceful manner—that has been our position, as I understand it—without being triangulated.

Having said that, I cannot resist closing with some advice. First, the PRC. It would be in the country's best interest to adopt a low key approach to the recent statements. The statements have met, I think, with a relatively cool reception in international circles, and by exhibiting some self-control instead of indulging in an over-reaction, as was the case in 1996, Beijing could make some gains in how it is viewed in the Congress without expending a great deal of capital to do so.

Perhaps more importantly is the fact that Beijing should remember that, while we wish to be left out of the cross-strait dialog, we are firmly committed to the premise that any solutions must be peaceful. Any attempt to settle the question with the barrel of a gun is a threat to the peace and stability of East Asia, and thus a direct threat to U.S. interests.

Second, as for Taiwan, I would state that I do not believe that recent statements on Taiwan's status, even if they arguably reflect a de facto reality, have been helpful. In addition, I would like to caution Taipei against the tendency, which I have seen at some points, to sort of hide behind the skirts of the United States and say things that they would not, I think, say if they were not expecting the United States to be standing behind them in whatever those statements are, and that they expect us to come to the rescue.

So that is kind of where we are, obviously there is a good deal of interest in this. It says here in this Washington Times, "U.S. mulls cutoff of military aid to Taiwan." I do not know what it means. Here is one that says, "U.S. seeks to mend Taiwan-China rift," and, of course, Secretary Roth is over there. This one says—this is New York Times—"Taiwan's new doctrine unintelligible to the Chinese," which indicates apparently they have not been able to figure out what it means.

So obviously it is an issue of considerable importance, so gentlemen, thank you for coming. I think our purpose here is to get some ideas as to what this means, where we are from the standpoint of those groups you represent, and your experience, Mr. Ambassador, in terms of where you think we are and what we might do best to

serve the collective interest of the United States and the People's Republic and, indeed, of Taiwan.

So your statements will be carried in full in the record, and so if you want to comment, aside from that, that would be fine.

Why don't we start with you, Mr. Yates, senior policy analyst, the Heritage Foundation, in Washington, DC.

[The prepared statement of Senator Thomas follows:]

PREPARED STATEMENT OF SENATOR CRAIG THOMAS

Good Morning. Today the subcommittee meets to evaluate recent developments in cross-strait relations between Taiwan and the PRC. I will keep my statement short so that we can get to our witnesses.

On July 9, 1999, Taiwan's President Lee Teng-hui stated in response to written questions submitted to him by *Deutsche Welle* that relations between Taiwan and the PRC should be conducted on the basis of a "state-to-state" relationship "or at least a special state-to-state relationship." That statement, and subsequent amplifications from the Foreign Ministry and the Mainland Affairs Council, seem to indicate that the ROC government has jettisoned its adherence to the "one China" policy—a policy it had followed since the late 1940's.

The reaction from the PRC was predictably strident. PRC officials have accused the ROC of pursuing independence in a flood of public statements and media reports. Defense Minister Chi Haotian has made several public statements emphasizing the PRC's position that it does not abjure the use of force should Taiwan declare independence, and that the PLA is "ready at any time to safeguard the territorial integrity of China and smash any attempts to separate the country." It is unclear whether the PRC will have a reaction over and above the rhetoric, such as a movement of troops to provinces bordering the Taiwan Strait, military exercises, or—as in 1996—missile tests north and south of the island.

This deterioration in cross-strait relations is very unfortunate. Recently, the two sides had resumed their high-level contacts after a five-year hiatus. This resumption is important, because nothing is ever going to be solved by the two sides sitting on opposite shores of the Taiwan Strait staring glumly at each other.

Equally important, in my view, is that both sides should leave the United States out of it. As I have stressed on past trips to both the PRC and ROC, we do not want to be caught in the middle of what is a truly bilateral issue. It is no surprise that both Beijing and Taipei favor U.S. intervention that benefits their respective positions. However, there is little, if any, support for true mediation—that is, efforts by a neutral party to get both sides to give up some significant parts of their respective negotiating positions in order to reach a compromise solution.

Putting us in the middle serves no useful purpose. The two sides tend to talk through us, and not to each other. And any U.S. statement or effort to bring the sides together is more likely than not to be received negatively by one side as favoring the other. The result is often a lose-lose situation for us. This is a matter that needs to be resolved solely by Taiwan and the PRC, in a peaceful manner, without being triangulated.

Having said that, though, I cannot resist closing with some advice for both sides. First, for the PRC, it would be in that country's own best interests to adopt a low-key approach to the recent statements from Taipei. The statements have met with a cold reception in international circles, and by exhibiting some self-control instead of indulging in an overreaction similar to its 1996 military exercises, Beijing could make some gains in how it is viewed in Congress without expending a lot of capital to do so.

Perhaps more importantly though, is the fact that Beijing should remember that while we wish to be left out of the cross-strait dialog, we are firmly committed to the premise that any solution must be peaceful. Any attempts to settle the Taiwan question with the barrel of a gun is a threat to the peace and stability of East Asia, and thus a direct threat to U.S. interests.

Second, as for Taiwan, I will state directly that I do not believe that the recent statements on Taiwan's status—even if they arguably reflect a *de facto* reality—have been at all helpful. In addition, I would like to caution Taipei against a tendency I have seen at some points during my tenure as chairman; it should not feel that it can hide behind our skirts and occasionally goad the mainland secure in the knowledge that we will somehow come to their rescue like a big brother.

I look forward to the testimony of our witnesses this morning.

**STATEMENT OF STEPHEN J. YATES, SENIOR POLICY ANALYST,
HERITAGE FOUNDATION, WASHINGTON, DC**

Mr. YATES. Thanks very much, Mr. Chairman. I appreciate the opportunity to share some thoughts on this topic, and I have submitted for the record a couple of past studies on U.S.-Taiwan relations that I think might be helpful background, and I would request they be added to the record.

I would begin by stating that I perhaps have a different interpretation of the implications of President Lee's statement than many of my friends that I have heard of late. I do not believe that President Lee's statement represents a change in policy, but I do see it as an attempt to try to change the rules of the game that has been going on between Taiwan, the mainland, and the United States, and there are many important reasons for this, and these causes I think have been missed in the fit of analysis that has occurred since President Lee spoke.

Since 1991, President Lee was quite correct, the Republic of China had changed its constitution to renounce its claim of sovereignty over the rest of the mainland. In effect, for 8 years we have been operating under a policy that from Taiwan's point of view is quite strained in calling it a one-China policy, and so President Lee's statement I think does not reflect a great departure from what the nationalist government had been claiming for the last 8 years.

Still, I believe that the authorities in Taiwan have felt that they have been negotiating in good faith for several years to try to resume dialog under this notion of co-equal political entities, and that over time, Beijing and the United States have put them at a disadvantage in these negotiations.

First, we have the President's statement of the "three no's" in Shanghai, which, regardless of the merits of this statement, was viewed as a setback by Taiwan in its international standing, or at least its standing vis-a-vis the mainland, and it seems to be a move by the United States to place Taiwan at a disadvantage in its negotiations with the mainland.

Then we have, after the unfortunate embassy bombing and Premier Zhu Rongji's failed attempt to secure World Trade Organization membership here in April, an apparent change in position by the mainland, where it seems that they now oppose Taiwan's simultaneous accession to the WTO along with the mainland at the end of the year, assuming that can be achieved.

Simultaneous accession seems to be more or less an accepted notion, and the WTO, it is important to note, is not a State-based organization and, from Taipei's point of view, it is beginning to feel squeezed out of even the non-State-based international organizations.

To my view, it is important to recognize the importance of face and dignity on both sides of the Taiwan Strait. If people in Beijing acknowledge that the people in Taiwan are Chinese, certainly they can understand this notion. China has its own feelings about a century of humiliation under international dominance, and it is constantly referred to when we engage in discussions with them.

The representation of the students, throwing rocks at our embassy, was an actual honest outpouring of frustration of a younger

generation that has witnessed great change in China, and feels it is not getting adequate respect from the international community, primarily the United States.

They should certainly recognize the similar frustration on Taiwan, which seems to carry around this ignominious title of renegade province that is treated as some kind of international outcast. Taiwan has also experienced great change and success over recent decades, and many of its officials now at senior levels also want respect and dignity from the international community, but more importantly, from their counterpart, that claims to be their sovereign, and I think that this sense of dignity is an important concept that both sides should understand more.

The solution to this is not to penalize Taiwan, but to understand the need to afford greater dignity in this process of negotiation. I believe President Lee's statement emphasizes the need for the United States and for Beijing to at least acknowledge that there is a government on Taiwan through which these negotiations need to proceed.

I can find no example of peaceful unification in human history where two governments did not deal with one another directly. Perhaps a mind greater than mine will find an example of such, but I think that the reason German media was chosen for this interview was to make this point, that if people are serious about reunification, there is a process that needs to take place.

First, you need to acknowledge a government exists. Then you need to recognize some element of legitimacy in that Government negotiating about reunification, and then the long, painful process of coming up with a political resolution can take place. I do not see any other way around this.

Our policy on the Korean Peninsula seems to point in this direction, where we want both sides in that dispute to deal directly with one another, government to government. Why would reunification be different on the Taiwan-mainland situation?

I think that President Lee has raised an uncomfortable issue, but nonetheless one that challenges us to say, if you believe that President Lee was wrong, or spoke inappropriately, how should the elected government in Taiwan negotiate with the mainland? Who should be their representative, and when we have two forces at play, one that threatens to use military force, one that threatens to use political speech, who is the legitimate provocateur in this conflict?

I think the United States has been overly concerned about granting a blank check to Taiwan about what it might do to drag the United States in the conflict, and has unfortunately granted a blank check to Beijing to define its own terms of what constitutes a move toward independence, to define for the United States under what circumstances we would stand by while the mainland intimidates Taiwan into negotiations.

I think that the blank check notion places concern in the wrong place. We should be more concerned about Washington abiding by the terms and conditions of the Taiwan Relations Act, a concern reflected in that headline article in the Washington Times.

Our concern should also be about trying to deter force from being used to resolve political disputes, whether those disputes are in

Tiananmen Square, or the Taiwan Strait. I think the United States' fundamental interests are served by trying to add a level of dignity to the people on Taiwan.

They are a significant export market for our goods, more so than the 1.2 billion people on the mainland, they do have a democratic government, there are many elements of their system that serve as a wonderful example of how the principles we hold near and dear actually work.

So I welcome President Lee's statement. I agree that it is an attempt to change the rules of the game, but I think that the rules of the game have been tilted too far in one direction, to the disadvantage of Taiwan in these negotiations.

Thank you very much.

[The prepared statement of Mr. Yates follows:]

PREPARED STATEMENT OF STEPHEN J. YATES¹

Mr. Chairman and distinguished members of the Subcommittee, thank you for inviting me to address you on this topic of great consequence to American interests in Asia. I have submitted for the record two recent Heritage studies that explore in detail what I consider to be the myths and realities of U.S. Taiwan policy. Both studies outline my concerns with the policies of the Clinton administration, which I consider to be an unfortunate, and potentially dangerous, departure from past practice. I have also submitted a copy of a recent article that offers my initial assessment of President Lee's recent statement on cross-strait relations, the implications of which will be the focus of my testimony.

Ever since July 9th, when Republic of China President Lee Teng-hui used the words "state-to-state" to describe relations between Taipei and Beijing, experts and officials in the United States have with exasperation and criticism questioned Lee's motives. They charge Lee with abandoning the so-called "one China" principle, which to their thinking is the thread holding together a precarious peace in Asia. It is regrettable that so many Americans have rushed to brand Lee a trouble-maker without more thoughtfully examining his statement or considering his motives.

In fact President Lee's description of relations across the Taiwan Strait is not departure from past government policy, but it was an attempt to change the rules of the game managing relations with Beijing and Washington. There are three main reasons why President Lee felt the need to break new rhetorical ground and reassert the Republic of China's claim of sovereignty. First, Beijing began to unilaterally change the rules of the game, imposing its definition of China on international institutions and in dealings with the United States. Second, Washington, under the Clinton administration, seems to have forgotten how this game is played, and the importance of maintaining certain positions in the face of Beijing's bluster. Third, and perhaps most important, is the rising generation of leaders on Taiwan that demand greater respect from Washington and Beijing, and greater dignity in international affairs.

BEIJING'S UNILATERAL CHANGES

A major breakthrough occurred in cross-strait relations in 1993, when Taipei and Beijing agreed to send high-level former officials, in their capacity as heads of non-governmental cross-strait institutions, to Singapore to discuss ways to improve management of interactions between people on both sides of the Taiwan Strait. This meeting took place because both sides were able to set aside the contentious issue of how to define "China," and focused instead on "political entities" meeting to address pragmatic non-political issues.

Since the much lauded Singapore meeting in 1993, however, Beijing has seen fit to impose its particular definition of China on Taiwan and the world, in an attempt to squeeze Taiwan ever harder out of international society. Beyond United Nations membership, Beijing sought to exclude Taiwan from all state-based international organizations, and even obstruct Taiwan's participation in organizations that do not require statehood.

¹Members of the Heritage Foundation staff testify as individuals discussing their own independent research. The views expressed are their own, and do not reflect an institutional position for the Heritage Foundation or its board of trustees.

After Chinese Premier Zhu Rongji failed last April to secure an agreement with the Clinton administration over China's membership in the World Trade Organization, and NATO forces mistakenly bombed China's embassy in Belgrade, Beijing has pushed very hard for concessions out of Washington on the WTO and especially Taiwan. Linking the two issues, Beijing cast aside previous acceptance of Taipei and Beijing simultaneously joining the WTO, and instead now insists that Taipei must wait until Beijing is a full member before its membership can be considered. It was bad enough that Beijing has been successful in using its political muscle to force Taipei to wait for simultaneous accession, but it is unacceptable to Taipei (and should be to the United States) that their membership be held up beyond the end of this year.

WASHINGTON BLUNDERS

While Taipei has come to expect intransigence from Beijing, many officials have become dismayed at how detrimental Washington's actions have been to their interests. Since the Nixon administration, Washington has tried to strike a balance between its interests on both sides of the Taiwan Strait by avoiding the question of sovereignty over Taiwan. In a 1972 agreement with Beijing, the United States "acknowledge[d] that all Chinese on either side of the Taiwan Strait maintain there is but one China and that Taiwan is a part of China." This is the origin of what many call the "one China" policy. It is critical to note, however, that the United States never adopted a "one China" policy of its own, but merely acknowledged the "one China" policies of both Beijing and Taipei.

In 1979, when the U.S. established diplomatic relations with Beijing, Washington recognized "the Government of the People's Republic of China as the sole legal Government of China." Again it is significant to note that the United States did not agree that Taiwan was part of the PRC, but only that Taipei was not a legal government of China. As in 1972, the United States only "acknowledge[d] the Chinese position that there is but one China and Taiwan is part of China," and did not state that this was Washington's view.

This may seem like a tedious parsing of words, but it is this carefully chosen language and loose definition of "China" that has allowed the United States to conduct affairs vital to its interests with both parties without getting in the middle of what is technically an unresolved civil war. These terms have allowed Taiwan and the Mainland to coexist, even under periods of intense hostility, without any combat-related loss of life in more than four decades.

It wasn't until the Clinton administration that the United States adopted Beijing's definition of "one China" and Beijing's policy on Taiwan's membership in international organizations. Despite the dispatch of aircraft carrier battlegroups to Taiwan's side in 1996, Taipei has learned that the Clinton administration has forgotten how this war of words is played. Rather than supporting Taiwan while engaging with Beijing, the Clinton administration adopted policy guidelines in 1994 that sought to exclude Taiwan from most international organizations and block Taiwan's top leaders from entering the United States. In 1998, on the Chinese Mainland, President Clinton chose to declare Beijing's long-standing policy toward Taiwan as our own when he iterated the "three no's"—no independence, no "two China" policy, and no membership in state-based organizations.

While this rhetorical concession may seem small to most Americans, its significance was not lost on either Beijing or Taipei. It was a clear signal to both that Washington's policy was tilting in Beijing's favor, leaving Taiwan isolated internationally and unacceptably vulnerable to coercion from Beijing. Taipei has tried to achieve some sense of equality in its dealings with Beijing, but this equal footing became a casualty of Clinton's ill-advised intervention.

TAIPEI'S DEMAND FOR DIGNITY

The third factor leading to President Lee's statement has to do with domestic developments in Taiwan. Since moving its government to Taipei in the 1940's, the ROC has transformed an underdeveloped island into a major trading nation. During the cold war Taipei was a loyal ally of the United States in containing the spread of communism and remains a force for peace and stability in Asia. And since the 1980's, the ROC has transformed Taiwan's political system into one of the freest democracies in Asia. For all of Taiwan's success at expanding freedom while preserving stability and security, the people of Taiwan and their government believe they deserve a modicum of dignity and respect from abroad. And yet, they receive scant recognition from the United States or other members of the "free world," and Beijing continues to brand Taiwan with the ignominious label "renegade province."

Beijing should immediately identify, and even sympathize, with Taipei's demand for dignity and respect. After all, it was the People's Republic that was established in the wake of China's self-styled "century of national humiliation," where the Chinese people struggled for modernity and lost territory to foreign powers. More recently, a generation has grown up on the Mainland witnessing unprecedented change in economic, political, and diplomatic life. This younger generation knows more about CNN and cell phones than it does the cultural revolution. It is better educated, better paid, and more cosmopolitan than its elders, and yet passionately believes the United States prefers to ignore or insult China rather than accord it the respect due a significant rising power. Witness those who stoned the U.S. embassy in Beijing. These were not Maoists, but modern nationalists demanding that their interests and accomplishments be recognized.

After fifty years of separation from the Mainland, it should not surprise Beijing to find similar sentiments on Taiwan. Taiwan has experienced phenomenal economic success and transformed into a democracy. It too has a generation of people who have grown up in an era of great change, but who have no memory of or affinity for the Mainland. Like its Mainland counterpart, this generation on Taiwan feels it is slighted by the world. Its interests and accomplishments are routinely ignored by its neighbors and supposed friends, but most especially by its neighbor who claims to be its sovereign, and these Taiwan patriots are going to stand idly by no longer.

The key distinction between these two groups is that the Mainland nationalists are led by a generation of students, while the Taiwan patriots are led by a generation of accomplished adults, some of whom hold high government office. This rising tide in Taiwan does not demand independence as much as it demands that it be treated with dignity and respect—whether by Beijing or Washington. With the importance given to "face" in Chinese culture, Beijing should understand this better than anyone.

Given the unfavorable trend of recent events, from Washington weakness to Beijing belligerence, who can blame President Lee for standing up and reminding the world of the existence of his democratic government and what it stands for? The burden is on Lee's critics to come up with a more appropriate basis for Taiwan's democratic leaders to deal with Beijing.

[From the Heritage Foundation Backgrounder, Oct. 13, 1998]

PROMOTING FREEDOM AND SECURITY IN U.S.-TAIWAN POLICY

(By Stephen J. Yates)

On June 30, in what his advisers described as a "low-key setting," President Bill Clinton surprised many in the United States, and especially in Taiwan, when he decided to summarize publicly his Administration's Taiwan policy while in Shanghai, China: "we don't support independence for Taiwan, or two Chinas, or one Taiwan—one China. And we don't believe that Taiwan should be a member of any organization for which statehood is a requirement."

Although the President and his Administration view this iteration of what has become known as the "Three No's" as a restatement or clarification of long-standing U.S. policy, most media and congressional observers did not agree. The fact is that the President has changed U.S. policy toward Taiwan. His Shanghai statement departed from the carefully nuanced language of the past that has allowed the United States to conduct relations with both sides of the Taiwan Strait in a manner that promotes peace and prosperity.

The free and democratic people of Taiwan and their supporters in the U.S. Congress might have expected more from a President who had traveled four times to the Republic of China on Taiwan before taking office without ever setting foot in the People's Republic of China on the mainland. The only positive thing to say is that Clinton's statement in Shanghai touched off a healthy debate over the merits of the long-standing U.S. policy toward Taiwan.

The Administration's new Taiwan policy violates basic American values, misinterprets U.S. obligations under the 1979 Taiwan Relations Act (TRA) and three U.S.-China joint communiqués, and increases the likelihood of conflict in the Taiwan Strait. It was formulated in an ad hoc and reactive manner, incorrectly identifying the debate about Taiwan independence as causing heightened tensions with China and the risk of war in the Strait. To correct these flaws, the Administration should return U.S.-China policy to the principles and policies outlined in the Taiwan Relations Act.

Only when the United States resolves to deter aggression and promote democracy will a peaceful and democratic resolution of this conflict be possible.

FROM NEGLECT TO APPEASEMENT

U.S. policy toward Taiwan is bound first by legal obligations under the 1979 Taiwan Relations Act and secondarily by diplomatic obligations outlined in three joint communiqués signed with the People's Republic of China.¹ The joint communiqués place Taiwan issues within the context of broader U.S. relations with all of China. The United States acknowledges Beijing's view that Taiwan is a part of China, recognizes Beijing as the sole legal government of China, declares the U.S. interest in peaceful resolution of differences between Taipei and Beijing over Taiwan's status, and calls for the gradual reduction of arms sales to Taiwan as long as cross-Strait differences are being resolved peacefully.

The Taiwan Relations Act identifies U.S. policy obligations more specifically. It obliges the United States to deter Beijing from militarily intimidating or invading Taiwan, to provide defensive arms for Taiwan's self-defense needs, to preserve and enhance the human rights of the Taiwan people, and to preserve and promote extensive, close, and friendly commercial, cultural, and other relations with the people of Taiwan.

Each U.S. administration is charged with formulating its own strategy for conducting extensive, close, and friendly unofficial relations with Taiwan under this broad and sometimes ambiguous framework.² The Clinton Administration's attempt at devising a Taiwan strategy; called the Taiwan Policy Review, was reported to Congress in September 1994. In that Policy Review, the Administration declared that top-level Taiwan officials could enter the United States for "transit only" and must not engage in any public activities while in this country. The policy placed draconian restrictions on where and with whom Taiwan's "unofficial" representative could conduct government-to-government business, and declared as a matter of policy that the United States will not support Taiwan's membership in state-based international organizations. The President's "Three No's" in Shanghai on June 30 were consistent with this Taiwan Policy Review, but they do not follow the TRA-joint communique framework. Taiwan has become a casualty of the Clinton Administration's major China policy shift.

Surprisingly, President Clinton's "constructive strategic partnership" with China in 1998 stands in stark contrast with Governor Clinton's moralistic demonization of China and criticism of the Bush Administration's policy in 1992. In fact, in his 1992 campaign manifesto, *Putting People First*, Governor Clinton accused the Bush Administration of turning its back on those struggling for democracy in China. Clinton promised that his administration would "never forge strategic relationships with dangerous, despotic regimes. It will understand that our foreign policy must promote democracy as well as stability. We cannot . . . ignore the link between the two."³ And yet, in 1998, President Clinton is trying to forge a strategic relationship with the "dangerous, despotic" government of China. In the six years between issuing *Putting People First* and building a "constructive strategic partnership," the interests of Taiwan's democracy have been sacrificed by neglect and by design.

Administration Neglect. It took nearly two years for the Clinton Administration to issue its first comprehensive articulation of its policy toward Taiwan—the 1994 Taiwan Policy Review. This policy led to a crisis in May 1995, when Congress voted 493 to 1 to demand that the Administration grant Taiwan President Lee Teng-hui entry into the United States to deliver the commencement address at his alma mater, Cornell University, in June.⁴ Following the policy articulated in its Taiwan Policy Review, Administration officials, including Secretary of State Warren Christopher, had assured Beijing both publicly and privately that the United States would not grant President Lee an entry visa. After the congressional vote, the Administration was forced to reverse course and grant the visa.

¹ See Appendix, "United States Legal Obligations to Taiwan Under the Taiwan Relations Act" and "Statements of United States Taiwan Policy in the Three Sino-U.S. Joint Communiqués."

² See Appendix, "Reagan Administration Interpretation of U.S. Policy Obligations to Taiwan" and "Clinton Administration Interpretation of U.S. Policy Obligations to Taiwan" to contrast the approach different administrations have taken to implementing the same obligations.

³ Governor Bill Clinton and Senator Albert Gore, *Putting People First* (New York: Times Books, 1992), p. 138.

⁴ H. Con. Res. 53 passed the House (396-0) on May 2, 1995, and was agreed to by the Senate (97-1) on May 9, 1995.

Beijing responded to President Lee's celebrated commencement address with a nine-month campaign of military intimidation against Taiwan.⁵ It was a failed attempt to undermine support for President Lee as he campaigned for re-election. In late February to early March 1996, a reluctant Clinton Administration was forced to follow the legal obligations in the Taiwan Relations Act and deploy two aircraft carrier battlegroups to the Taiwan Strait to support Taiwan and deter Beijing from further military aggression.

Administration Appeasement. Frightened by this brush with possible war with China, the Administration decided to change course again. Convinced that it had incurred Beijing's wrath by allowing President Lee to enter the United States, the Administration sent National Security Advisor Anthony Lake to Beijing in July 1996 to begin the process of tilting U.S.-China policy back again toward Beijing. Taiwan would be sacrificed in this transformation of Clinton Administration China policy from condemnation to appeasement. Indeed, after being threatened by China's flagrant displays of military aggression in 1995 and 1996, the President rewarded Beijing with two high-profile summit meetings and a pro-Beijing presidential statement of Taiwan policy (the "Three No's"). Beijing then began pressuring Taiwan's leadership to "face reality" and reunify with China.⁶

By appeasing Beijing with policies like silencing Taiwan officials when they go abroad and barring them from private visits to the United States, the Administration only invites conflict between Beijing and Congress. By stating U.S. opposition to Taiwan independence and non-support for Taiwan's membership in almost all international organizations, the Administration risks polarizing Taiwan's domestic politics and provoking the kind of public debate and international activity that both the Administration and Beijing hope to avoid. The United States becomes an accomplice in Beijing's campaign to isolate Taiwan diplomatically; and it hides Taiwan's democracy under a bushel instead of using it as an example of what free people can achieve in a Chinese society. Finally, by failing to protect security and promote freedom in Taiwan, the Clinton Administration's China policy runs counter to long-standing U.S. interests in the Asia-Pacific region and violates the spirit, if not the letter, of U.S. law.

MYTH VS. REALITY IN CLINTON'S TAIWAN POLICY

The Clinton Administration's Taiwan policy—as outlined in the 1994 Taiwan Policy Review and the President's Shanghai statement of the "Three No's"—is based on several faulty assumptions, a misinterpretation of U.S. obligations under the Taiwan Relations Act and the three joint communiqués, and the misreading of current developments in Taiwan. The faulty assumptions, or myths, upon which the Administration's Taiwan policy rests make the cross-Strait relationship less stable and U.S. policy goals less achievable.

MYTH #1: Avoiding conflict with Beijing at all costs will lead to peace in the Taiwan Strait.

REALITY: Appeasing Beijing only invites increased demands and future aggression.

The key lesson the Administration's officials drew from the 1995–1996 confrontation with China over Taiwan was the paramount need to devise policies that, no matter the cost, would avoid conflict with China. The priority placed on avoiding conflict has led to further concessions, such as the "Three No's" in Shanghai.

But adopting the "Three No's" Taiwan policy has not guaranteed peace. Instead, it has guaranteed new calls from Beijing for further concessions, and should future conflict occur, Taiwan will be at a greater disadvantage. As long as Beijing is determined to use force if necessary and Washington is determined to avoid conflict at all costs, Beijing will continue to threaten to use force against Taiwan. Washington's

⁵ From June 1995 through March 1996, China engaged in a series of provocative military exercises which included the test firing of nuclear-capable missiles within 50 miles of Taiwan's two largest commercial ports. For additional details, see Richard D. Fisher, "China's Threats to Taiwan Challenge U.S. Leadership in Asia," Heritage Foundation *Asian Studies Center Backgrounder* No. 139, March 6, 1996, and Richard D. Fisher, "China's Missile Diplomacy: A Test of American Resolve in Asia," Heritage Foundation *Backgrounder Update* No. 269, March 12, 1996.

⁶ Days after Clinton's Shanghai statement, Beijing Foreign Ministry spokesman Tang Guoqiang said that Clinton's statement has "positive implications for the resolution of the Taiwan question," and added: "We hope that Taiwan authorities will get a clear understanding of the situation, face reality and place importance on the national [Beijing's] interest." See "China Tells Taiwan to 'Face Reality'; Reunification Talks Urged," *The Washington Post*, July 10, 1998, p. A28.

policy of appeasement will trap the Administration in a cycle of appeasing China for any aggression toward Taiwan.

MYTH #2: The debate about independence within Taiwan is the primary source of instability in the Taiwan Strait.

REALITY: Beijing's military modernization efforts and its threat to use force against Taiwan are the primary sources of danger and instability in the Taiwan Strait.

Two former Clinton Assistant Secretaries of Defense, Joseph S. Nye, Jr., and Chas W. Freeman, Jr., have identified Taiwan's "steps toward independence" as the primary threat to peace and stability in cross-Strait relations and U.S.-China relations. Both also have advocated that the United States discourage decisions and actions by Taipei (such as a declaration of independence or public referendum on the definition of Taiwan's identity) that could leave Beijing with little choice but to react militarily.⁷

The reality is that China is militarizing even as Taiwan is democratizing. China seeks to impose its will by force or intimidation; Taiwan debates whether to allow its people to exercise their right of self-determination. The independence debate is an outgrowth of Taiwan's democratic development. Democracy has opened the way for people to debate how best to constitute their government and how to define their national identity. It is a matter of freedom of expression and self-determination. If Taiwan formally declares independence, the mainland has stated repeatedly that it is likely to use military force against Taiwan. But this does not make the use of force legitimate or just. The side that threatens to use military force to impose its will on another can be identified legitimately as the source of danger and instability in a dispute. The People's Liberation Army, not democracy, is the problem.

MYTH #3: The independence movement is tempting the Taiwan people to separate formally and permanently from China.

REALITY: Beijing's military intimidation keeps the people of Taiwan from considering reunification.

Administration officials seem to assume that the people of Taiwan, persuaded by a populist campaign for independence and a belief that the United States will unconditionally guarantee their security, are exercising their right to self-determination flippantly and with no regard for the consequences. The truth is that independence rhetoric gains an audience in Taiwan not as the result of a proactive campaign, but as a consequence of Beijing's heavy-handed use of the military to intimidate those it deems under its sovereign control.

The brutal crackdown on democracy activists in Tiananmen Square on June 4, 1989, and thereafter dashed the Taiwan people's belief that the Communist Party—after a decade of free-market economic reforms—was becoming more tolerant of democracy. The use of military exercises to intimidate the Taiwan electorate prior to the 1996 presidential election fatally undermined Beijing's professed determination to seek peaceful reunification.

These flagrant displays of force have done far more to turn the people of Taiwan away from considering reunification than has the independence debate within Taiwan. To turn the Taiwan people away from talk of independence, Beijing needs to emphasize what it is prepared to do for Taiwan, rather than what it is prepared to do to Taiwan.

MYTH #4: Since Henry Kissinger's 1971 trip to China, the United States has consistently opposed Taiwan independence.

REALITY: No such opposition is stated in the Taiwan Relations Act or any joint communique.

Administration officials have indicated that, as early as 1971, National Security Advisor Henry Kissinger stated that the U.S. did not support independence for Taiwan. They also point out that Ronald Reagan declared in the 1982 U.S. "People's Republic of China Joint Communique that the United States did not have a one-China, one-Taiwan, or two-Chinas policy.⁸ However, the reality is that even if Kissinger did state U.S. opposition to Taiwan independence in his meetings with Chi-

⁷ Joseph S. Nye, Jr., "A Taiwan Deal," *The Washington Post*, March 8, 1998; Chas W. Freeman, Jr., "Preventing War in the Taiwan Strait," *Foreign Affairs*, July/August 1998, pp. 6-11[10].

⁸ High-level Administration official speaking on background at July 23, 1998, National Press Club symposium hosted by the United States China Policy Foundation. Quote from "New Trends in U.S.-China Relations," *Lecture Notes*, United States China Policy Foundation, Washington, D.C., August 1998.

na's top leadership in 1971, his word could bind only the policy of the Nixon Administration.

The President alone has the authority to bind future administrations by signing laws, treaties, and communiqués. Opposition to Taiwan independence simply is not stated anywhere in the Taiwan Relations Act or joint communiqués. Given the fact that Beijing and Taipei both objected strenuously to Taiwan independence at the time each of these documents entered into force, the only reasonable explanation for the omission of such a policy from these documents is that Washington objected to stating its opposition to Taiwan independence. Even in the 1982 communiqué—in which the United States declares that it has no intention of “pursuing a policy of ‘two Chinas’ or ‘one China, one Taiwan’”—the United States does not state its objection to such an outcome, only its intention not to create that outcome.

MYTH #5: Taiwan President Lee Teng-hui advocates permanent separation from China.

REALITY: President Lee advocates eventual reunification with China after the mainland has undergone a democratic transformation.

The Republic of China (ROC) has never ceased to exist since its establishment in 1911. After its Nationalist government fled to Taiwan in 1949, the ROC capital was established in Taipei and was recognized by the United States as the legal government of all of China until 1978. President Lee's position that the ROC has been an independent sovereign state since 1911, and that Taipei effectively governs Taiwan and its surrounding islands (not the Chinese mainland), is closer to reality than either Beijing's or Washington's official position.

Lee's assertion of ROC sovereignty does not translate into a call for permanent separation from the mainland. Indeed, the ROC constitution and the platform of Lee's Nationalist (Kuomintang) Party declare an official policy of eventual reunification. Lee's contribution is his insistence that reunification can take place only after the mainland undergoes a democratic political transformation. If President Clinton believes his own past assertions about China moving inevitably toward democracy, how can his Administration view Lee's position as unreasonable?

The tragedy of this myth is that President Clinton and Chinese President Jiang Zemin risk wasting the best opportunity to date (as well as for the foreseeable future) to negotiate a peaceful settlement of many controversial cross-Strait issues with an enormously popular, democratically elected, and native-born leader of Taiwan. Instead, Clinton has chosen to follow Jiang's lead in undermining Lee's legitimacy and questioning his intentions.

MYTH #6: The United States legally should not be permitting Taiwan's president or other top leaders to make private visits to, or engage in public activities in, the United States.

REALITY: Such a policy has no basis in principle or law.

Administration officials have argued, as in the Taiwan Policy Review, that for the United States to be consistent with its unofficial relationship with Taiwan, visits as opposed to transits by Taiwan's top leadership must not be permitted. Moreover, while in transit, Taiwan's top leaders are not permitted to engage in public activities.

There are two critical problems with this policy. First, it violates Section 221 of U.S. Public Law 103-416, which provides that the President of Taiwan and any other high-level official of Taiwan shall be welcome in the United States at any time to discuss a host of important bilateral issues.⁹ Second, the Clinton Administration has allowed the heads of other states and non-states with which the United States does not maintain diplomatic relations to visit the United States and engage in public activities. Most notably, Fidel Castro was welcomed in New York City by Members of Congress and permitted to speak publicly there, and Yasser Arafat met with President Clinton in the White House.

MYTH #7: The United States should not support Taiwan's membership in state-based international organizations.

REALITY: This policy violates the spirit of the Taiwan Relations Act and has no basis in principle or law.

President Clinton stated in Shanghai that “we don't believe that Taiwan should be a member of any organization for which statehood is a requirement.” Supporters

⁹H.R. 783, the Immigration and Nationality Technical Corrections Act of 1994, was signed into law (Public Law 103-416) by President Clinton on October 25, 1994, one month after the announcement of the Administration's Taiwan Policy Review. Ironically, Section 221 of this act was a key provision in the congressional resolution (H. Con. Res. 53) that forced the Clinton Administration to contradict its Taiwan Policy Review and grant Taiwan President Lee Teng-hui an entry visa for his private visit to Cornell University in June 1995.

of this Administration policy assert (as does Beijing) that in order to be consistent with the so-called one-China policy, the United States must oppose Taiwan's membership in organizations that admit only states.

The reality is that the United States has no such policy, and the Administration's policy of excluding Taiwan from most international organizations does not follow from the Taiwan Relations Act and the three joint communiqués. Aside from the fact that lack of official U.S. diplomatic relations does not change Taiwan from a state to a non-state any more than it does Cuba, Taiwan's participation in international organizations receives no mention in any of the joint communiqués and is mentioned only once in the Taiwan Relations Act. Section 4(d) of the TRA states that "nothing in this act may be construed as a basis for supporting the exclusion or expulsion of Taiwan from continued membership in any . . . international organization." To be consistent with the TRA, if the United States is to have any policy at all concerning Taiwan's participation in international organizations, it should err on the side of supporting Taiwan's membership.

RESTORING CLARITY AND CONSISTENCY TO TAIWAN POLICY

Inconsistency and neglect have characterized Clinton's Taiwan policy for too long. Ill-conceived and politically untenable policies with regard to the travel, public activities, and meetings of high-level Taiwan officials in the United States, as well as positions taken on Taiwan's international participation and internal political debate, have undermined U.S. credibility. To restore clarity and consistency to U.S. policy toward Taiwan, the Administration and Congress should take every opportunity to:

- Promote process, not outcomes, in the cross-Strait dispute. The United States should not take a policy position that prejudices the outcome of the cross-Strait standoff. It should neither endorse nor oppose Taiwan's independence or reunification with the mainland; it should insist only that any eventual resolution of this conflict come through peaceful means and with the consent of the people of Taiwan.
- Distinguish between long-term obligations and short-term Administration policy. To avoid miscalculation and miscommunication with both Taipei and Beijing, the United States should make clear to both sides which aspects of Taiwan policy constitute long-term binding obligations and which reflect the Administration's chosen interpretation of how to implement those obligations. It would be useful for Members of Congress to tell officials in Taipei and Beijing that the measures advocated in the Taiwan Policy Review are the short-term policy of the Clinton Administration, and may be rescinded or replaced by a future Administration.
- Deter Beijing's military aggression. The United States must recognize that China's military modernization efforts and its willingness to use force to impose its will on Taiwan are the primary sources of danger and instability in the Taiwan Strait. The TRA requires the President and Congress to ensure that the United States has the capability to deter and, if necessary, defeat any potential Chinese threat to Taiwan's security and U.S. interests in Asia. In addition, the TRA instructs the United States to sell Taiwan arms of a defensive nature in order to provide for its own self-defense needs. Adequate deterrence is the best guarantee against military intimidation or attack.
- Promote Taiwan's democracy in China and abroad. If the United States is to have any credibility at all in advocating democracy on the Chinese mainland, it must properly recognize and reward the Taiwan people for their success in establishing a democracy. The Taiwan people deserve better than a well-armed cold shoulder from Beijing and exile from the international community. Taiwan should be held up as an example of what free people can achieve in a Chinese society. The United States should make clear that democracy allows for the free and open debate of controversial views, such as independence. It should not view such a debate as just cause for Chinese military intimidation.

CONCLUSION

American policy toward Taiwan has challenged nearly every President since Harry Truman. Effective presidential leadership requires a broad strategic vision within which to define Taiwan's role. Even President Jimmy Carter was convinced of the need to preserve U.S. options regarding Taiwan when he signed the 1979 Taiwan Relations Act into law.

Unfortunately, President Clinton has no such strategic vision and has approached Taiwan policy in an ad hoc and reactive manner. If the Administration truly wishes to avoid military conflict in the Taiwan Strait, it must shelve the restrictive rec-

ommendations of its own Taiwan Policy Review and faithfully implement the spirit and the letter of the 1979 Taiwan Relations Act.

Only if the United States resolves to deter aggression and promote democracy will it be possible for the 50-year standoff across the Taiwan Strait to be resolved peacefully and with the consent of the Taiwan people.

[Appendix]

UNITED STATES LEGAL OBLIGATIONS TO TAIWAN UNDER THE TAIWAN RELATIONS ACT ¹⁰
(P.L. 96-8, APPROVED APRIL 10, 1979)

- Preserve and promote extensive, close, and friendly commercial, cultural, and other relations between the people of the United States and the people of Taiwan.
- Consider any effort to determine the future of Taiwan by other than peaceful means, including boycotts or embargoes, a threat to regional peace and security and of grave concern to the United States.
- Provide Taiwan with arms of a defensive character, based solely upon the judgment of the President and Congress of the needs of Taiwan.
- Maintain the U.S. capacity to resist any resort to force or other forms of coercion that would jeopardize the security, or the social or economic system, of the people of Taiwan.
- Preserve and enhance the human rights of all the people on Taiwan.
- Do not support the exclusion or expulsion of Taiwan from membership in any international organization.

STATEMENTS OF UNITED STATES TAIWAN POLICY IN THE THREE SINO-U.S. JOINT COMMUNIQUE SHANGHAI COMMUNIQUE, SIGNED FEBRUARY 28, 1972 ¹¹

- The United States acknowledges that all Chinese on either side of the Taiwan Strait maintain there is but one China and that Taiwan is a part of China. The United States government does not challenge that position.
- It reaffirms its interest in a peaceful settlement of the Taiwan question by the Chinese themselves.
- It affirms the ultimate objective of the withdrawal of all United States forces and military installations from Taiwan.

NORMALIZATION COMMUNIQUE, SIGNED JANUARY 1, 1979 ¹²

- The United States of America recognizes the government of the People's Republic of China as the sole legal government of China. Within this context, the people of the United States will maintain cultural, commercial, and other unofficial relations with the people of Taiwan.

ARMS TO TAIWAN COMMUNIQUE, SIGNED AUGUST 17, 1982 ¹³

- The United States government has no intention of . . . pursuing a policy of "two Chinas" or "one China, one Taiwan."
- The United States government understands and appreciates the Chinese policy of striving for a peaceful resolution of the Taiwan question.
- The United States government states that it does not seek to carry out a long-term policy of arms sales to Taiwan.
- The two governments will make every effort to adopt measures and create conditions conducive to the thorough settlement of this issue.

REAGAN ADMINISTRATION INTERPRETATION OF U.S. POLICY OBLIGATIONS TO TAIWAN ¹⁴

(Known as the Six Assurances of the United States to the Republic of China on Taiwan) July 14, 1982

- The United States has not agreed to set a date for ending arms sales to Taiwan;
- Has not agreed to hold prior consultations with Beijing on arms sales to Taiwan;
- Will not play any mediation role between Taipei and Beijing;
- Has not agreed to revise the Taiwan Relations Act;

¹⁰ See <http://ait.org.tw/tra.html>.

¹¹ See <http://ait.org.tw/shanghai.html>.

¹² See <http://ait.org.tw/prc.html>.

¹³ See <http://ait.org.tw/817.html>.

¹⁴ Robert L. Downen, *The Tattered China Card; Reality or Illusion in United States Strategy?* (Washington, D.C.; Council for Social and Economic Studies, Inc., 1984), p. 125.

- Has not altered its position regarding sovereignty over Taiwan;
- Will not exert pressure on Taiwan to enter into negotiations with Beijing.

CLINTON ADMINISTRATION INTERPRETATION OF U.S. POLICY OBLIGATIONS TO TAIWAN ¹⁵

(*Known as the Taiwan Policy Review*) As Reported to Congress in September 1994

- Consistent with our unofficial relationship, visits as opposed to transits, by Taiwan's top leadership will not be permitted.
- While in transit, Taiwan's top leadership shall conduct no public activities.
- Taiwan Representative is not permitted access to State Department, Old Executive Office Building, or White House.
- U.S. will not support Taiwan membership in organizations that admit only states.
- U.S. will actively support Taiwan's membership in international organizations which do not require statehood and will look for ways for Taiwan's voice to be heard in others.
- U.S. officials authorized to travel to Taiwan may meet with officials at whatever level necessary to achieve their objectives.
- U.S. Cabinet officials from economic and technical departments may meet with Taiwan representatives in official settings.
- State Department officials from economic and technical divisions must meet with Taiwan representatives in unofficial settings.
- U.S. and Taiwan will conduct sub-cabinet economic dialogue.
- U.S. will send high-level officials from U.S. economic and technical agencies to visit Taiwan.

[From the Heritage Foundation Backgrounder, Apr. 16, 1999]

THE TAIWAN RELATIONS ACT AFTER 20 YEARS: KEYS TO PAST AND FUTURE SUCCESS

(By Stephen J. Yates)

Signed into law on April 10, 1979, the Taiwan Relations Act (TRA, Public Law 96-8) was born of the need of the United States to find a way to protect its significant security and commercial interests in the Republic of China (ROC) on Taiwan in the wake of President Jimmy Carter's termination of diplomatic relations and a mutual defense treaty of 25 years.¹ Provoked by the lack of prior consultation and the inadequacy of the Carter Administration's proposed legislation, lawmakers from both parties in Congress worked together to craft a bill that truly tackled the challenge of allowing for diplomatic relations with mainland China while maintaining all substantive relations with Taipei.

The Taiwan Relations Act has played an indispensable role in shaping American policy toward Taiwan and U.S. strategy in Asia. It represents America's best ideals and safeguards fundamental security and commercial interests. The TRA is unique in purpose and form. It is the only law to govern nearly every aspect of U.S. relations with a foreign government in the absence of diplomatic relations. It sets forth clear policy goals and establishes an institutional framework sufficient to meet those objectives.

The fact that the Taiwan Relations Act remains in force today, without amendment, is a testament to the wisdom and foresight of its drafters. Who in 1979 could have foreseen the dramatic changes that would transform Taiwan, China, and the world over the next 20 years? Taiwan is now a vibrant democracy. China is gradually adopting market reforms. The Soviet Union is no more. Yet through it all, the Taiwan Relations Act remains constant, relevant, and effective.

Although many things have changed, some things remain the same. Taiwan is still a much more significant export market for U.S. goods than is China. The United States still concludes government-to-government business with Taipei, though such dealings are conducted via a private non-profit corporation, the American Institute in Taiwan, instead of through normal diplomatic channels. The United States continues to provide Taiwan with defensive arms, and such transfers remain as objectionable to Beijing now as they were in 1979. A fragile peace survives in the Taiwan Strait. None of this would have been possible, as Ronald

¹⁵ See testimony of Assistant Secretary of State Winston Lord and others in hearings, *Review of U.S. Policy Toward Taiwan*, Subcommittee on East Asian and Pacific Affairs, Committee on Foreign Relations, U.S. Senate, 103rd Cong., 2nd Sess., September 27, 1994.

¹ See Excerpts cited in Appendix I; full text available at <http://ait.org.twa/ait/tra.html>.

Reagan noted in 1980, had it not been for “the timely action of the Congress, reflecting the strong support of the American people for Taiwan.”²

ORIGINS OF THE TAIWAN RELATIONS ACT

On December 15, 1978, President Carter announced that as of January 1, 1979, the United States would end its diplomatic relationship with the Republic of China on Taiwan and instead recognize the government in Beijing as the sole legal government of all of China. The announcement came as quite a shock to many in Taiwan and in United States, but it could not have been entirely unexpected. Ever since President Richard Nixon’s opening to China in 1972 and the signing of the Shanghai Communiqué, the U.S. government had been seeking to find a way to establish relations with Beijing without sacrificing significant American interests in Taiwan. It was well-known that this was a high priority for the Carter Administration. Although a majority of Americans seemed to support President Carter’s efforts to improve relations with Beijing—efforts which were born more of a fear of Soviet expansion than of dissatisfaction with Taiwan—his administration had fallen woefully short in addressing America’s continuing interests in Taiwan.

The Administration hastily produced the initial draft of the Taiwan Relations Act soon after the President’s December 15 announcement. The proposed legislation was then passed to the foreign affairs committees in the House and Senate.

Members of the Senate Foreign Relations Committee expressed concern over the haste with which the Administration had moved late in 1978, as well as with the lack of consultation with Congress and the lack of adequate consultation between the United States and its allies. The committee’s report pointedly noted that the bill as submitted by the Administration contained no reference to the interests of United States in Taiwan’s security, and lacked any reference to the sale of defensive arms to Taiwan.³

The House Foreign Affairs Committee expressed similar views in its report. It emphasized that the executive branch bill failed to address Taiwan’s security needs and did not provide an adequate legal foundation for continuing the broad scope of nongovernmental activities that constitute the great bulk of relations between United States and Taiwan.⁴

Fortunately, Congress was swift and effective in its response. In February and March 1979, Congress redrafted, debated, and passed by overwhelming majorities the version of the Taiwan Relations Act that has governed U.S. relations with Taiwan successfully for the past 20 years.

OBJECTIVES OF THE TAIWAN RELATIONS ACT

Congressional debate over the Carter Administration’s proposed legislation emphasized the inadequacies of the bill and the unacceptable manner in which the Carter Administration dealt with Taiwan issues in the process of normalizing relations with China. Congressional remedies focused primarily on three areas: providing for Taiwan’s security, providing a sufficient legal framework for continued relations, and formalizing congressional oversight. Along the way, other congressional priorities, like human rights interests and Taiwan’s membership in international organizations, were also addressed.⁵

OBJECTIVE #1: TAIWAN SECURITY

The lack of a policy to address Taiwan’s security needs was the most glaring shortcoming of the Carter Administration’s proposal. Given that Taiwan for 25 years had been a partner with the United States to a mutual defense treaty, this was a shocking omission. The Carter bill did not even mention arms sales or address the U.S. interest in Taiwan’s security. Unable to secure a renunciation of force from Beijing, the Administration seemed to rely almost entirely on Beijing’s understanding that Washington expected peace in the Taiwan Strait.

Congress filled this void with a policy that declared peace in the Taiwan Strait a matter of international concern, linked diplomatic recognition of Beijing with peaceful treatment of Taiwan, considered any non-peaceful action a threat to regional peace and security, provided for the sale to Taiwan of arms sufficient for self-

² Statement by Ronald Reagan, Los Angeles, California, August 25, 1980, p. 6.

³ Excerpts from Senate report as cited in Lester L. Wolff and David L. Simon, eds., *A Legislative History of the Taiwan Relations Act with Supplement*, prepared by Touro College, Pacific Community Institute, August 1993, p. 13.

⁴ Excerpts from House report as cited in Wolff and Simon, eds., *Legislative History*, p. 15.

⁵ For text of TRA sections relevant to these issues, see excerpts cited in Appendix I.

defense, and committed the U.S. to maintain the capacity to resist any resort to force or coercion against Taiwan.

Broadening the U.S. view of Taiwan's security blunted Beijing's claim that Taiwan's status was solely an internal matter, but it also made clear to U.S. policymakers what would happen if the United States failed to honor its commitments to Taiwan. As Senator Robert Dole (R-KA) noted, "If the Taiwanese question is not resolved in favor of freedom and independence, then . . . none of the nations who rely on the strength of America and the good faith of our commitments to dissuade stronger and more aggressive alliances . . . can hope for freedom of choice in a secure and stable future."⁶

Understanding the importance of protecting Taiwan's security, Congress then turned its attention to deterring acts of aggression against Taiwan. Diplomatic recognition of Beijing was linked to the expectation that China would use only peaceful means in dealing with Taiwan. Building on the language of the 1954 Mutual Defense Treaty, Congress declared any use of force or coercion against Taiwan, including boycott and embargo, to be a threat to regional peace and security and of grave concern to the United States.

Beyond these diplomatic deterrents, Congress made clear that the United States would continue to sell arms to Taiwan, that these arms would support a sufficient self-defense, and that China would have no veto over such sales. During committee debate, Representative Robert Lagomarsino (R-CA) made the point crystal clear: "If President Carter is going to abrogate the defense treaty with Taiwan, the least we can do is sell arms to willing buyers on Taiwan."⁷

"[We] do not mean that we will deliver to [Taiwan] outmoded, outdated, horse-drawn vehicles," emphasized Representative Lester Wolff (D-NY). "We mean that we will deliver to them appropriate equipment which is necessary to the defense of Taiwan."⁸ Representative Edward Derwinski (R-IL) added during final floor debate that "This provision is meant to ensure that Taiwan's defense needs are determined by its authorities and those of the United States without regard to the views of the PRC."⁹

The final element of security strategy came in the form of an amendment offered by Representative Dan Quayle (R-IN). The Quayle amendment made sure that, in addition to assisting Taiwan's self-defense, the United States would maintain its own capacity to resist any resort to force or other coercion that would jeopardize either Taiwan's security or its social or economic system.¹⁰ U.S. readiness to resist mainland aggression or coercion against Taiwan serves the purpose of increasing the cost and complication of any plans by China to threaten Taiwan's security or economic and social stability.

OBJECTIVE #2: FRAMEWORK FOR CONTINUED RELATIONS

To maintain the extensive, close, and friendly relations Americans have enjoyed with the people of Taiwan, a new legal framework had to be created to reflect Taiwan's new status. Taiwan would need to continue to be treated as a friendly government under U.S. domestic law in order to facilitate trade and to maintain bilateral agreements.

Senator John Glenn (D-OH) explained that "any benefits the United States decides to confer on Taiwan by statute can be conferred without regard to Taiwan's international legal identity"¹¹ Senator Glenn also expressed the need for specificity in this new legal framework in order to provide a stable and predictable commercial environment, and declared that "American interests in our moral obligation demands that we assist Taiwan adapting to these changed conditions."¹²

To take the place of the U.S. Embassy, a new diplomatic instrument was created—the American Institute in Taiwan (AIT). The Institute is a private organization, incorporated in the District of Columbia. It is funded by the U.S. government, and the members of its board of trustees are appointed by the Secretary of State. Modeled after Japan's representative office in Taipei, the AIT functions in many respects as a consulate, managing travel documents, facilitating communication with local authorities, and representing the United States in concluding commercial and other agreements.

⁶S. 2132, March 7, 1979, cited in Wolff and Simon, eds., *Legislative History*, p. 19.

⁷H. 1153, March 8, 1979, cited in *ibid.*, p. 103.

⁸H. 1183, March 8, 1979, cited in *ibid.*, p. 125.

⁹H. 1743, March 28, 1979, cited in *ibid.*, p. 96.

¹⁰See TRA Section 2(b)(6), cited in Appendix I.

¹¹S. 2123, March 7, 1979, cited in Wolff and Simon, eds., *Legislative History*, p. 203.

¹²S. 2123, March 7, 1979, cited in *ibid.*, p. 46.

During congressional debate over the new Institute, many lawmakers lamented that the Carter Administration had not succeeded in maintaining a liaison office in Taipei similar to the one that had functioned in Beijing prior to 1979. The AIT has functioned very effectively over the past 20 years, putting to rest concerns that its perceived lack of standing would hinder Washington's ability to conduct "unofficial" government business.

OBJECTIVE #3: CONGRESSIONAL OVERSIGHT

In response to the secretive and inadequate manner in which the Carter Administration dealt with Taiwan in the process of formalizing relations with China, Congress felt the need to establish clearly its oversight and consultative role with the executive branch in managing future relations with Taiwan. Representative L. H. Fountain (D-NC) summarized well the sentiment of many of his colleagues when he scolded the Administration, saying, "I hope this legislation is seen by the President and his advisers as a forthright and compelling response by the Congress to his . . . singlehanded recognition of Red China . . . without consulting meaningfully ahead of time with the Congress."¹³

In addition to assigning various committees to oversee different aspects of U.S.-Taiwan policy, Congress also included a very important reporting and consultation mechanism. The TRA requires that the President inform Congress promptly of any anticipated danger to Taiwan and then consult with Congress to devise an appropriate response. Representative William Broomfield (R-MI) clarified the intent behind this provision—that the President should "promptly inform the Congress of anticipated dangers and should not await their actual occurrence."¹⁴ The Administration is to report promptly any military capabilities that might threaten Taiwan or any perceived efforts to undermine Taiwan's social or economic system.

Given the clear intent behind this provision, it is difficult to understand how Beijing's 1996 missile tests did not elicit a formal Administration report to Congress. The missile tests certainly have had a significant impact on Taiwan's economic and political system, yet the Clinton Administration never provided a formal report in compliance with the TRA.

OBJECTIVE #4: HUMAN RIGHTS

In 1979, Taiwan was not a democracy. It was a one-party authoritarian state under martial law. Much of the discussion of Taiwan and human rights in the context of the TRA debate focused on resisting the Communist threat. Representative Derwinski expressed such a view while arguing for final passage of the TRA, declaring that "any effort by the People's Republic of China (PRC) to impose restrictions on Taiwan or encroach on its people would constitute a violation of the human rights of the people on Taiwan."¹⁵

Many Members, however, expressed concern about the lack of democracy and political liberty on Taiwan. Representative Jim Leach (R-IA) urged the Congress to advocate "majority rule based on respect for individual rights" for the Taiwanese people.¹⁶ Senator Claiborne Pell (D-RI) urged the new American Institute in Taiwan to promote political liberties in Taiwan such as "freedom of speech, freedom of the press, [and] freedom to take part in government."¹⁷ These human rights admonitions are the only part of the TRA debate that express dissatisfaction with the Taiwan government.

Thankfully, with wise leadership and dedicated citizens, Taiwan has transformed itself into a vibrant democracy. Now that concerns about political liberty are largely resolved, Congress should return its attention to the right of the Taiwan people to live free from military threat and Communist encroachment.

OBJECTIVE #5: MEMBERSHIP IN INTERNATIONAL ORGANIZATIONS

The clearest statement in the TRA concerning Taiwan's membership in international organizations unfortunately is phrased in negative language. Section 4(d) of the Act states that nothing in the Act should be construed as supporting the expulsion or exclusion of Taiwan from any international organization.

The legislative history indicates, however, that in 1979 Congress viewed Taiwan's continued membership in international organizations as conducive to Taiwan's stability and economic security. Representative Eldon Rudd (R-AZ) expressed this view

¹³H. 1744, March 28, 1979, cited in *ibid.*, p. 269.

¹⁴H. 1151, March 8, 1979, cited in *ibid.*, p. 144.

¹⁵H. 1743, March 28, 1979, cited in *ibid.*, p. 114.

¹⁶H. 1164, March 8, 1979, cited in *ibid.*, p. 114.

¹⁷S. 2152, March 7, 1979, cited in *ibid.*, p. 112.

the first time the TRA came to the House floor for a vote: "It is important that Taiwan's economic security not be threatened, even indirectly, by President Carter's unilateral and unexpected move. Stability is crucial, and this can be encouraged by U.S. insistence that Taiwan remain a member of . . . international organizations."¹⁸

In the 1980s and 1990s, debate has focused more on whether Taiwan should be admitted to, rather than expelled from, a variety of international organizations ranging from the United Nations to the World Trade Organization. With U.S. support, Taiwan became a member of the Asian Development Bank and the Asia Pacific Economic Cooperation (APEC) forum. But the United States has not actively supported Taiwan's membership in the World Bank, International Monetary Fund, World Health Organization, or United Nations.

As a matter of policy, the Clinton Administration does not support Taiwan's membership in international organizations that require statehood. This policy seems to be at odds with the TRA. If, as the TRA clearly states, the absence of diplomatic relations shall not affect Taiwan's status under U.S. law or the application of international agreements entered into with the United States, why should it undermine U.S. support for Taiwan's membership in international organizations?

HOW THE TRA HAS ADVANCED U.S. INTERESTS

The Taiwan Relations Act has proved to be a surprisingly effective guide for U.S. policy. Over the past 20 years, the TRA has allowed the United States to preserve peace, promote freedom, and maintain flexibility in balancing its relations and interests with the governments on both sides of the Taiwan Strait. The TRA has been a source of clarity and consistency for U.S. policy from administration to administration, Democrat and Republican alike. It has maintained its relevance in the face of changing politics at home and in Taiwan, and remains an important safeguard against any Administration's sacrificing U.S. interests in Taiwan in pursuit of improved relations with Beijing.

The TRA has advanced U.S. interests in the following areas:

- **Providing Deterrence.** By deterring aggression by the mainland, the U.S. has protected Taiwan from being forced into negotiations with China under the threat of armed attack or other forms of coercion. In 1995 and 1996, China tested America's resolve by conducting provocative military exercises and missile tests in Taiwan's vicinity. The Clinton Administration initially downplayed the threat of these "tests" to Taiwan's security, even when some Chinese officials provocatively questioned whether the United States would be willing to risk American lives in Taiwan's defense. U.S. determination to uphold the Taiwan Relations Act was made clear in March 1996 when China undertook threatening military exercises on the eve of Taiwan's presidential election. Emboldened by the mandates of the TRA, the United States responded with its most powerful show of military force toward China since the Taiwan Strait crises of the 1950s. The U.S. Navy deployed two aircraft carriers and 36 ships and submarines in support.
- **Fostering Freedom.** The TRA maintains the stable and secure environment within which Taiwan has transformed itself into one of the world's leading free-market democracies. Taiwan's democratic transition is a blessing to its people, but it is also a critical factor in American strategy as the United States seeks to balance its interests across the Strait. Taiwan's democracy is an important example to the mainland of how to expand political freedom and increase social stability. Taipei's economic success is also an important example to Beijing, and Washington should remember that the 21 million people on Taiwan buy nearly twice as much in American goods as do the 1.2 billion people on the mainland.
- **Preserving Flexibility.** The TRA also preserves U.S. diplomatic flexibility as China-Taiwan relations evolve. Taiwan no longer claims sovereignty over the mainland;¹⁹ but Taipei's search for greater international status has led to accusations from Beijing that Taiwan seeks independence, and China has threatened to respond with war to a declaration of independence. In June of last year, President Clinton tilted U.S. policy toward China when he said that the U.S. does not support independence for Taiwan. This tilt was unnecessary.²⁰ The brilliance of the TRA is that it does not require amendment to adjust to new

¹⁸H. 1256, March 13, 1979, cited in *ibid.*, p. 76.

¹⁹In 1991, President Lee Teng-hui ended the "period of national mobilization for suppression of the communist rebellion," and the Republic of China ceased to claim sovereignty over all of China. Instead, the ROC asserted that there is one China, but two equal political entities.

²⁰Stephen J. Yates, "Promoting Freedom and Security in U.S.-Taiwan Policy," Heritage Foundation *Background* No. 1226, October 13, 1998, p. 1.

realities in Taiwan. Policies as outlined in the TRA are clear enough to protect U.S. interests and flexible enough to allow the United States to have substantive relations with both sides of the Taiwan Strait. Because the TRA at its core addresses U.S. policy interests, not outcomes, its efficacy would not be affected substantially by the existence or absence of diplomatic relations. Taiwan's development toward democracy only enhances the relevance of the TRA. The TRA is now more than a shield against Communism—it is a guardian of democracy.

FAITHFUL IMPLEMENTATION OF THE TRA

To honor American commitments made under the Taiwan Relations Act, Congress and the Clinton Administration should strive to enhance Taiwan's freedom and security. For 20 years, the TRA has provided a security umbrella that has facilitated Taiwan's impressive economic expansion and democratization. To protect these gains and continue faithfully to implement the TRA, the United States should:

- Urge Beijing to renounce the use of force against Taiwan. Beijing's military modernization, provocative live-fire exercises, and concentration of missiles opposite Taiwan pose a direct threat to regional peace and stability and contradict Beijing's stated policy of peaceful reunification. Given the U.S. expectation that Taiwan's future will be determined by peaceful means, seeking a renunciation of force from Beijing is the least the U.S. should do under such circumstances.
- Sell Taiwan missile defense system and technology. Under the terms of the Taiwan Relations Act, the United States is legally required to assist Taiwan in providing for its self-defense. Considering China's provocative military exercises and nuclear-capable missile tests near Taiwan in 1995 and 1996, and China's increased deployment of missiles near Taiwan, providing assistance for Taiwan's missile defense is both appropriate and consistent with the TRA.
- Actively support Taiwan's membership in international organizations. The United States should not aid—either intentionally or inadvertently—China's attempts to interfere with the ability of Taiwan officials to conduct foreign relations. With a strong economy and vibrant democracy, Taiwan is clearly prepared to make significant contributions to the international community through institutions involved in trade, economic development, and humanitarian assistance. Beijing's success in shutting Taiwan out of the international community has limited Taiwan's ability to offer such advice and assistance to other Asian economies.
- Promote Taiwan's democracy in China and abroad. Consistent with its interest in human rights on Taiwan, the United States must properly recognize and reward the Taiwan people for their success in establishing a democracy. Taiwan should be held up as an example of what free people can achieve in a Chinese society. One way to do this is to treat Taiwan's leaders officially with the respect appropriate to duly elected representatives of a thriving democracy. Nothing in the TRA or in communiqués with China prevents allowing these leaders to enter the United States in their official capacities or prohibits conducting meetings with them in official venues. But such courtesies—routinely extended even to unfriendly states—are routinely denied the leaders of America's long-time friend and ally.

CONCLUSION

In 1979, there was great concern about the political, economic, and security cost to American interests that would have to be paid in the process of normalizing relations with Beijing. Some doubted whether any arrangement short of the previous Mutual Defense Treaty and normal diplomatic relations would adequately protect American interests in Asia or in Taiwan. But the TRA has survived the test of time, without significant amendment and in the face of constant criticism from Beijing. Indeed, the Taiwan Relations Act has exceeded expectations in delivering a working, if unofficial, relationship with the people and government of Taiwan that has provided more continuity than change in the bilateral relationship.

Today, as President Clinton works to create a strategic partnership with China, many in Congress are concerned, as were their colleagues in 1979, that such a partnership may come at the expense of Taiwan's security or other American commitments outlined in the TRA. It is an appropriate time for Members of Congress to reflect on the masterful language of the TRA that has maintained a consistently clear expression of American interests and policy. The prescience of the authors of the TRA is demonstrated by how well this 20-year-old language fits the new challenges of today.

It is up to Congress to keep America committed to the simple goals of the Taiwan Relations Act: to deter aggression from the mainland, promote economic freedom, and protect the human rights of the people of Taiwan. Ronald Reagan described American commitments under the IRA as a “moral obligation” to a long-time friend and ally. Consistent with this sentiment, the United States must do all it can to help the democratic people of Taiwan live free from military coercion and to guarantee Taiwan’s ability to make an appropriate contribution to global institutions that promote peace and prosperity.

The Taiwan Relations Act is an example of American foreign policy at its best. There is no better way to mark the 20th anniversary of its enactment than to reaffirm the U.S. commitment to its honorable goals and to restore clarity and consistency to America’s China policy.

[Appendix I]

Excerpts from the Taiwan Relations Act (P.L. 96-8, approved April 10, 1979)²¹

Sec. 2(b)(1) It is the policy of the United States to preserve and promote extensive, close, and friendly commercial, cultural, and other relations between the people of the United States and the people on Taiwan;

Sec. 2(b)(2) to declare that peace and stability in the area are in the political, security, and economic interests of the United States, and are matters of international concern;

Sec. 2(b)(3) to make clear that the United States decision to establish diplomatic relations with the People’s Republic of China rests upon the expectation that the future of Taiwan will be determined by peaceful means;

Sec. 2(b)(4) to consider any effort to determine the future of Taiwan by other than peaceful means, including by boycotts or embargoes, a threat to the peace and security of the Western Pacific area and of grave concern to the United States;

Sec. 2(b)(5) to provide Taiwan with arms of a defensive character;

Sec. 2(b)(6) to maintain the capacity of the United States to resist any resort to force or other forms of coercion that would jeopardize the security, or the social or economic system, of the people on Taiwan.

Sec. 2(c) Nothing contained in this Act shall contravene the interest of the United States in human rights, especially with respect to human rights of all the approximately eighteen million inhabitants of Taiwan. The preservation and enhancement of the human rights of all people on Taiwan are hereby reaffirmed as objectives of the United States.

Sec. 3(a) 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.

Sec. 3(b) The President and the Congress shall determine the nature and quantity of such defense articles and services based solely upon their judgement of the needs of Taiwan, in accordance with procedure established by law.

Sec. 3(c) The President is directed to inform the Congress promptly of any threat to the security or the social or economic system of the people on Taiwan and any danger to the interests of the United States arising therefrom. The President and the Congress shall determine, in accordance with constitutional processes, appropriate action by the United States in response to any such danger.

Sec. 4(a) The absence of diplomatic relations or recognition shall not affect the application of the laws of the United States with respect to Taiwan, and the laws of the United States shall apply with respect to Taiwan in the manner that the laws of the United States applied with respect to Taiwan prior to January 1, 1979.

Sec. 4(d) Nothing in this Act may be construed as a basis for supporting the exclusion or expulsion of Taiwan from continued membership in any international financial institution or any other international organization.

Sec. 6(a) Programs, transactions, and other relations conducted or carried out by the President or any agency of the United States Government with respect to Taiwan shall, in the manner and to the extent directed by the President, be conducted and carried out by or through The American Institute in Taiwan . . . or such comparable successor nongovernmental entity as the President shall designate.

Sec. 14(a) The Committee on Foreign Affairs of the House of Representatives, the Committee on Foreign Relations of the Senate, and other appropriate committees of the Congress shall monitor—(1) the implementation of the provisions of this Act; (2) the operation and procedures of the Institute; (3) the legal and technical aspects of the continuing relationship between the United States and Taiwan; and (4) the

²¹ See <http://ait.org.tw/ait/tra.html>.

implementation of the policies of the United States concerning security and cooperation in East Asia.

[Appendix II]

“Six Assurances of the United States to the Republic of China on Taiwan,” July 14, 1982²²

The United States has not agreed to set a date for ending arms sales to Taiwan;
Has not agreed to hold prior consultations with Beijing on arms sales to Taiwan;
Will not play any mediation role between Taipei and Beijing;
Has not agreed to revise the Taiwan Relations Act;
Has not altered its position regarding sovereignty over Taiwan;
Will not exert pressure on Taiwan to enter into negotiations with Beijing.

[From the Los Angeles Times, July 13, 1999]

IT'S MORE LIKE A CHANGE IN POSTURE

(By Stephen J. Yates)

Taiwan President Lee Teng-hui raised a lot of eyebrows—and Beijing's ire—when he declared that Taiwan's relations with China should be viewed as “country-to-country, or at least as special state-to-state relations.” Many have taken Lee's statement, made in an interview with a German radio station Saturday, as a provocative departure from Taipei's long-standing “one-China” policy. But the statement reflects more a change in posture than in policy toward the Chinese mainland.

Lee broke new ground by being the first president of the Republic of China on Taiwan to publicly describe Taipei's relationship with Beijing as “state-to-state.” Past references have usually been couched in innocuous terms like “two co-equal political entities.” Even if a departure from past practice, Lee's remarks are a more accurate reflection of current reality than the strained fancy of “one-China,” and represent a legitimate basis for eventual reunification with the mainland.

A more complete translation of Lee's statement reveals the context within which his remarks were made. When asked to respond to Beijing's continued reference to Taiwan as a renegade province, Lee said, “Ever since the constitutional revisions of 1991, cross-Strait relations have been classified as country-to-country, or at least a special state-to-state relationship, as opposed to an internal “one China” relationship between a legal government and a renegade group, or a central government and a regional government.”

In 1949, Chiang Kai-shek's ROC government lost the mainland, retreated to Taiwan and has governed the island ever since. For 30 years the U.S. officially entertained Taipei's fanciful notion that it was sovereign over all of China. Since 1979, the U.S. has entertained Beijing's equally fanciful claim that it is sovereign over all of Taiwan.

As long as both Beijing and Taipei claimed that Taiwan was part of China under one (albeit differently defined) China, both parties and the U.S. could pretend they had a “one-China” policy. This all changed in 1991, as President Lee said, when Taipei ceased to claim sovereignty over all of the mainland.

While Beijing portrays Lee's remarks as further evidence of his sympathy for Taiwan's independence, and American officials anxiously await Lee's retirement to the golf course next spring, both fail to answer the question President Lee raises: What is the nature of Taipei's current and future relationship with Beijing?

As uncomfortable as Lee's remarks may be for some, they reflect truth. And truth is a stable foundation on which to build a common future. Officials on all sides of this problem need to face the reality that a country that is not divided does not need to unify.

Taiwan is not a renegade province but an economy based on free-market principles, a government that is democratically elected, and a society that has evolved separately from the rest of China. In this regard President Lee's remarks are a welcome provocation; even if his remarks' substance does not represent a significant departure from his government's policy since 1991, there is a difference in the directness and tone of his comments. Some may wonder why Lee would raise these issues in this manner now, at a time when U.S.-China relations are already strained and nationalism is on the rise in Beijing.

²²Robert L. Downen, *The Tattered China Card: Reality or Illusion in United States Strategy?* (Washington, D.C.: Council for Social and Economic Studies, Inc., 1984), p. 125.

Perhaps Lee's remarks are designed to position his party favorably in negotiations with the mainland when People's Republic of China representative Wang Daohan arrives in Taipei in October, and in the upcoming presidential election in Taiwan next March. No future president is likely to hold the mandate Lee possesses. He is the first native Taiwanese and first directly elected president of the Republic of China. He already holds an honorable place in history, but charting a future course for relations with the mainland will be his legacy—for good or for ill.

By staking out a strong position, Lee has invited world leaders to recognize the magnitude of the challenge facing both sides of the Taiwan Strait.

Senator THOMAS. Thank you, Mr. Yates.
Ambassador Lilley.

STATEMENT OF HON. JAMES R. LILLEY, DIRECTOR FOR ASIAN POLICY STUDIES, AMERICAN ENTERPRISE INSTITUTE, WASHINGTON, DC

Ambassador LILLEY. I would like to have put in the record an editorial from the People's Daily, 22 June, 1999, 17 days before Lee Teng-hui's statement. I think if people read this they will see without sentimentality or wishful thinking or anecdotalism what the Chinese are really all about, how they feel about us, how they feel about our foreign policy. It is important that we get a grasp of this. It all happened before Lee Teng-hui's statement, so I would like to have this put in the record. This is an authoritative party statement in the People's Daily by the Observer.

Senator THOMAS. It will be in the record.
[The information referred to follows:]

LORD OF THE EARTH—EXCERPTS FOLLOWED BY FULL TEXT

After the bombing of the Chinese Embassy in Belgrade, the depiction of America's foreign policy in the official Communist Party newspaper became particularly vivid. The U.S. was likened to Nazi Germany in eight specific ways in a long article that concluded that the pursuit of such Nazi-like policies would end in "complete failure."¹

In lieu of excerpting many other articles that also describe U.S. foreign policy as a search for world domination, this one will be quoted in sufficient detail to provide the Chinese assessment of American goals clearly. It begins by asking rhetorically how the U.S. today and Nazi Germany are alike:

1. First, their self-centeredness and ambition to seek hegemony are exactly the same. In his notorious book, "Mein Kampf," Hitler advocated "ethnic superiority" and "living space," maintaining that human society was one that observed the law of the jungle, and that ethnic Germans should expand and become the "lords of the earth." If we ask which country in the world wants to be the "lords of the earth" like Nazi Germany did in the past, there is only one answer, namely the United States, which upholds hegemonism.

2. Second, the United States has outdone Nazi Germany with respect to increasing military budgets and expanding its armament. Although the United States has yet to launch a new world war, the size of its armament expansion and the frequency of its use of military strength overseas have far exceeded those of Nazi Germany in the past.

3. Third . . . when Hitler came to power, he made anti-Communism both his strategic goal and tactical means for realizing his ambitions of engaging in arms expansion and war preparations and of contending for world hegemony. . . . It was also precisely under the guise of possessing "common values" that the United States and Japan have reinforced their military alliance, so that the latter will play the role of the "NATO of the Far East." What substantive differences are there between this kind of expansionist tactic and the Nazism of the past?

4. Fourth, the trend toward replacing global international organizations with military alliances is not without precedent. After World War I, on the proposal of then-US President Wilson, 44 countries formed the League of Nations in 1920 . . . Ger-

¹Observer, "We Urge Hegemonism Today To Take a Look at the Mirror of History," *People's Daily*, June 22, 1999.

many was a permanent member of the league's executive council. It withdrew from the league in October 1933 due to restrictions on its program of arms expansion and war preparations. . . . Of course, the United States and its allies will not withdraw from the United Nations. But is not the way they have repeatedly bypassed the United Nations and wantonly intervened in other countries through their military alliance or bloc very similar to the Fascist way of Germany. . . .?

5. Fifth, the strategic priorities and directions of global expansion are basically similar. Hitler made Europe a strategic priority . . . Today, Europe is also the US global strategic priority . . . the United States has reinforced its military alliance with Japan in Asia, making Japan an important accomplice in its armed intervention against other Asian countries. This is also an attempt to gain control of the European and Asian continents from the Western and Eastern fronts, with the ultimate goal of fulfilling its strategy of dominating the world.

6. Sixth, the methods they employed in dismembering other countries' territories and encroaching upon their sovereignty through exploiting their ethnic contradictions were very similar. Hitler, to secure the passageway for taking over the Balkans, plotted in June 1937 the "Green Project" of annexing Czechoslovakia by employing its ethnic issues. Czechoslovakia was a multiethnic country and its Sudetenland was inhabited by some Germans . . ." Gorpel [name as transliterated] clamored that 3.5 million Germans in Sudetenland were "tortured" and Germany could not afford to "watch as an onlooker." . . . In less than five months, Nazi Germany took over the entire Czechoslovakia. Today, the US-led NATO is attempting to dismember and control the Federal Republic of Yugoslavia by taking advantage of its ethnic problems. . . . Is it not exceedingly clear from what the United States and NATO did during the Kosovo crisis who was acting like Nazi Germany?

7. Seventh, utilization of advanced technology to slaughter peaceful citizens is by no means less barbaric. . . . Hitler not only used in war what were considered to be the most advanced weapons of the time, such as airplanes, tanks, and long-range artillery, to massacre peaceful citizens in anti-fascist countries, but also built concentration camps in Auschwitz and in other areas to slaughter Jews and prisoners of war with "advanced" technology. Executioners drove hundreds and thousands of people into gas chambers and poured cyanide through air holes in the roof, killing them all. Today, the US hegemonists used high-tech weapons to attack the FRY's civilian facilities several hundred miles away from the battlefield or with laser and global position system several thousand meters above the sky, treating innocent and peaceful citizens as live targets. The flagrant use of missiles by the US-led NATO to attack the Chinese embassy in Yugoslavia was a barbaric atrocity that the then Nazi Germany had not dared to commit.

8. Eighth, there is no difference between brazen undermining of international law and aggressive acts. What is the difference between the modern day hegemonists who willfully undermine international law and the erstwhile Nazi Germany?

9. When we read world history, we know that many empires that had dominated for some time finally ended in decline. Particularly in this century, the worldwide colonial system that the Western powers built for several hundreds of years has collapsed. They employ the wishful thinking that fortune is now on their side and that it seems to be the turn of the United States—the sole superpower in the world—to dominate the world and to become "the master of the globe . . . Even though they may run rampant for a while, they will eventually end in complete failure."

Although this article harsher intone and more intemperate than others, it does not deviate much in substance from Chinese authors who condemn the "hegemonic" goals of the United States.

FULL TEXT

Renmin Ribao in Chinese 22 Jun 99 P 6

Observer's Article (guan cha jia wen zhang "We Urge Hegemonism Today To Take a Look at the Mirror of History")

The US-led NATO, brutally trampling on the UN Charter and norms governing international relations and depending on its economic, technological, and especially military superiority, recently used force against the Federal Republic of Yugoslavia [FRY], a sovereign state outside the territories of NATO members, by bombing the country inhumanly and indiscriminately for more than two months. This aggressive war has evoked the wrath of people around the world and brightened people's eyes. More and more people can now see clearly the ferocious features of hegemonism and its ambition of seeking world hegemony.

To put a halo on this unjust war, the United States and NATO used the mainstream media in the West for their misleading and demagogic propaganda, doing their utmost to exaggerate the FRY's "ethnic cleansing" and "oppression of human rights" in Kosovo. They even regarded the FRY and its leader as contemporary Nazi Germany and Hitler, saying that the reason why NATO must strike at the FRY was that they had learned the "tragic lesson" of appeasing Hitler 60 years ago.

When they succeeded with their indiscriminate bombings but suffered disastrous political and moral defeat and had to declare a suspension of their bombings, they intensified their efforts in fanning up hatred against the FRY leader who dared to stand up to NATO's aggression, clamoring that he should "turn himself in" to the International Court of Justice. They also openly "appealed" to the FRY people to overthrow the FRY Government, saying such things as "so long as your country is still ruled by a prosecuted war criminal," we the American lords will not spend a dime to help you "rebuild" your homes. This is strange indeed. The war initiator now wants to take the war victim to the International Court of Justice. It is true that the FRY people need to "rebuild" their homes. But just tell me: Just who destroyed their homes? Are the United States and NATO not the ones that caused thousands upon thousands of civilian casualties, destroyed huge numbers of civilian facilities, and inflicted economic losses reaching hundreds of billions of US dollars during the barbaric bombings that went on for 78 days on end? No wonder Marset, a Spanish EU parliamentarian, who, after NATO suspended its bombing, filed a suit at the International Court of Justice, accusing NATO Secretary General and US President of being "guilty of war crimes" against the FRY. As for the preposterous propaganda of comparing the FRY and its leader as the modern Nazi Germany and Hitler, it is simply untenable. Nevertheless, since the United States and NATO accused others of being the modern Nazi Germany and Hitler, they should have the courage to take a look at the mirror of history and compare their hegemonist conduct today and the conduct of Nazi Germany in the past to see whether or not there is a striking resemblance in many ways. Doing so is useful for the power holders themselves who seek hegemony.

We would like to explain with some facts in the following respects:

First, their self-centeredness and ambition to seek hegemony are exactly the same. In his notorious book, "Mein Kampf," Hitler advocated "ethnic superiority" and "living space," maintaining that human society was one that observed the law of the jungle, and that ethnic German should expand and become the "lords of the earth." Hitler classified human races in the world into these three: "the creator, the inheritor, and the destroyer of civilization." He preached that Aryan-North European Germans were a superior race of noble descent, and that German, the best of the best, should have the power to rule the world. If we ask which country in the world wants to be the "lords of the earth" like Nazi Germany did in the past, there is only one answer, namely the United States, which upholds hegemonism. During the Cold War, the United States regarded itself as the "leader of the free world." When the Cold War ended following the disintegration of the Soviet Union, the United States even considered itself to be the savior leading the whole world. Last year, the United States stated in the report, "The Strategy for National Security in the New Century," that the objective of the United States in the 21st century is "to lead the whole world," and that it will never tolerate any big country or country bloc challenging its leading status. Last February, the US leader openly stressed that the foothold of US foreign policy in the 21st century is that the world "must have, and can only have, one leadership," and that "the United States is most capable of leading this world."

US power holders have also classified countries in the world into three:

1) Allies of the United States; 2) big countries such as China and Russia; and 3) the so-called "rogue countries." To seek world hegemony, the United States has wildly attempted to incorporate all socialist countries and developing countries into the US-led "free world system," which fully complies with the interests of the US monopoly capital; and has exercised all kinds of pressure on whoever disobeys the United States, and has even used force against them in a big way. Is this not very similar to the Nazi Germany that tried to conquer and dominate the world?

Second, the United States has outdone Nazi Germany with respect to increasing military budgets and expanding its armament. Immediately after Hitler assumed power in 1933, he did everything he could to break the restrictions which the Treaty of Versailles imposed on Germany's rearmament after World War I. During the 1933-1936 period, the number of Germany Army soldiers increased from 300,000 to 462,000, the number of airplanes increased from 368 to 4,021, and the budget of the Navy increased from DM190 million to more than DM650 million. It was through this mammoth war machine that Nazi Germany annexed Austria and Czechoslovakia and then launched World War II shortly afterward. Today the United

States is the super military power in the world. The United States once cut its military budget after the Cold War during which the US and Soviet military blocs confronted each other. In recent years, however, the United States has substantially increased its military budget, emphasizing that military strength is the “core support for the global role,” and that US military strength must have the “overwhelming strategic superiority.” In order to pursue its aggressive war against the FRY, the United States recently increased its military budget by \$11.7 billion. Consequently the United States’ actual military budget for fiscal year 1999 has reached as high as \$287.9 billion, or about 1.5 times the combined military budgets of the European Union, Japan, Russia, and China. The United States will continue to increase its military budgets by \$112 billion in the next six years. While developing its National Missile Defense (NMD) and Theater Missile Defense (TMD), the United States has also been making great efforts to develop all kinds of high-tech offensive weapons. Since the nineties, the United States has used its military strength overseas on more than 40 occasions. Following the “Desert Fox” campaign against Iraq last year, the United States and its allies have again circumvented the United Nations and attacked the FRY with its aerial tomahawks this year. Although the United States has yet to launch a new world war, the size of its armament expansion and the frequency of its use of military strength overseas have far exceeded those of Nazi Germany in the past.

Third, there is no difference whatsoever between the formation of military alliances under the banner of anti-Communism and encroachment upon the territorial sovereignty of other countries. When Hitler came to power, he made anti-Communism both his strategic goal and tactical means for realizing his ambitions of engaging in arms expansion and war preparations and of contending for world hegemony. Under the banner of anti-Communism, he first smashed the trammels imposed on Germany by the “Treaty of Versailles.” Hitler confided in his trusted aides: “We should use the specter of Bolshevism to rein in the Versailles countries, so that they will believe Germany is a decisive fortress against Red calamities. This is the only way for us to weather the crisis, break away from the ‘Treaty of Versailles,’ and rearm ourselves.” He capitalized on the anti-Soviet and anti-Communist psychology of Britain, France, and other countries to stage the “Munich Putsch,” and unscrupulously incited German troops to annex small and weak European countries. Germany, Italy, and Japan even formed an anti-Communist alliance to brazenly carry out armed intervention in the Spanish Civil War, invade Abyssinia, and wage a large-scale aggression against China . . . [ellipses as published], eventually leading to the outbreak of World War II. After World War II, the United States invaded Korea and Vietnam, organized mercenary troops to invade Cuba, and established the NATO military alliance and the US-Japan alliance. All of these were undertaken under the banner of anti-Communism. The United States and its allies now give wide publicity to so-called “democracy” and “human rights” and advocate “fighting for values.” This is directed against socialist countries, as well as developing countries that are not socialist but that do not obey the United States. Moreover, the United States uses “common values” as a bonding agent for consolidating its relations with its allies. It was precisely under the slogan of “fighting for values” that US-led NATO launched barbaric air attacks against the FRY, in an attempt to incorporate this “red fortress of Europe” into the so-called “Western democratic community.” It was also precisely under the guise of possessing “common values” that the United States and Japan have reinforced their military alliance, so that the latter will play the role of the “NATO of the Far East.” What substantive differences are there between this kind of expansionist tactic and the Nazism of the past?

Fourth, the trend toward replacing global international organizations with military alliances is not without precedent. After World War I, on the proposal of then-US President Wilson, 44 countries formed the League of Nations in 1920 to handle the division of the post-war spoils among the great powers. The United States did not join the league because of congressional displeasure with the manipulation by Britain and France and the inequitable distribution of the spoils. Germany was a permanent member of the league’s executive council. It withdrew from the league in October 1933 due to restrictions on its program of arms expansion and war preparations. Japan in the East also withdrew in the same year because the League of Nations did not recognize the “Manchukuo” that it was fostering. In 1937, Italy joined the German-Japanese anti-Communist alliance and withdrew from the League of Nations. After their withdrawal from the League of Nations, Germany, Italy, and Japan formed a Fascist group of “Axis Powers,” serving as the hotbeds of another world war in Europe and Asia. The United Nations formed after World War II was fundamentally different from the League of Nations. The formulation of the “UN Charter” and the birth of the United Nations reflected the common desire of people in all countries to sue for peace, increase cooperation, and promote

development after having endured the ravages of two world wars. The objectives and principles of the "UN Charter," in particular, have become universally acknowledged norms governing international relations today. However, the United States, one of the founding members of the United Nations, has adopted a pragmatic policy toward this broadly representative and authoritative international organization. Should the need arise, it would try to manipulate and take advantage of the United Nations and would carry out its hegemonic plot under the banner of this international organization. If it does not need the United Nations, especially if it feels that the latter is getting in its way, it would bypass it, trample upon the objectives and principles of the "UN Charter," and wantonly impose so-called "sanctions" against other countries through the NATO military alliance that it leads as well as through the Western bloc, going so far as to flagrantly resort to force. The heads of NATO countries have even claimed that if the United Nations does not allow itself to be manipulated, they will separately form a so-called "Alliance of Democratic Countries." Of course, the United States and its allies will not withdraw from the United Nations. But is not the way they have repeatedly bypassed the United Nations and wantonly intervened in other countries through their military alliance or bloc very similar to the Fascist way of Germany, Italy, Japan of the past?

Fifth, the strategic priorities and directions of global expansion are basically similar. From the 16th to 19th centuries, old-line colonial powers primarily fought for colonies abroad. Nazi Germany thought that the colonial system of European powers was an "inverted pyramid." It believed that most European nations, despite their large colonies abroad, were weak and had limited weapons, and that it could dominate the world if it gained control of Europe. Accordingly, Hitler made Europe a strategic priority from the outset. After forming the anti-Communist alliance, Germany, Italy, and Japan thought it necessary to gain control of the European and Asian continents if they were to conquer the world. During World War II, Nazi Germany and Fascist Japan, in a vain attempt to conquer other countries, joined forces in South Asia but were ultimately routed. Today, Europe is also the US global strategic priority. With the admission into NATO of Poland, Czechoslovakia, and Hungary in March this year, the United States formed a circle around the FRY, which insists on being independent. Later, the United States found an excuse to launch an armed intervention against the FRY. One of its purposes was to open the way for NATO's continued eastward expansion by first gaining control of the strategically important Balkans and then steadily moving toward gaining control of the entire Europe, including Russia. Meanwhile, the United States has reinforced its military alliance with Japan in Asia, making Japan an important accomplice in its armed intervention against other Asian countries. This is also an attempt to gain control of the European and Asian continents from the Western and Eastern fronts, with the ultimate goal of fulfilling its strategy of dominating the world.

Sixth, the methods they employed in dismembering other countries' territories and encroaching upon their sovereignty through exploiting their ethnic contradictions were very similar. Hitler, to secure the passageway for taking over the Balkans, plotted in June 1937 the "Green Project" of annexing Czechoslovakia by employing its ethnic issues. Czechoslovakia was a multiethnic country and its Sudetenland was inhabited by some Germans. Taking advantage of this, Germany, through the "Sudeten German Party," put forward the "demand" that Sudetenland should become fully "autonomous," and that all the officials there should be Germans. When members of the party rebelled and clashed with the Czech police, Germany started its propaganda machine to smear the Czechs, saying that they embarked on "ethnic oppression." Goppel [name as transliterated] clamored that 3.5 million Germans in Sudetenland were "tortured" and Germany could not afford to "watch as an onlooker." In September 1938, under Hitler's war threat, Britain and France adopted an appeasement policy and signed with the German and Italian fascists the sinful "Munich Agreement," under which all the Czech troops must pull out from Sudetenland within 10 days and the entire Sudetenland and its military and industrial facilities were handed over to Germany. Within one month after the "International Committee" formed by the above four countries stationed in Czechoslovak, all other Czech regions also went to Germany. In less than five months, Nazi Germany took over the entire Czechoslovakia. Today, the US-led NATO is attempting to dismember and control the FRY by taking advantage of its ethnic problems. While the ethnic issue in Kosovo is quite complex, it nevertheless is the FRY's internal issue that should be addressed justly on the basis of respecting the FRY's sovereignty and territorial integrity and the legitimate rights and interests of people of all ethnic groups in Kosovo. Kosovo is a province of the FRY Serbia and the Serbs regard it as their political and cultural cradle. After the Ottoman Empire invaded it in the 14th century, many Albanians moved there en masse. When Serbia declared independence in 1878, Kosovo became part of the country. During World War

II, Italy took over Kosovo. After the war, it became part of Serbia again. With its inhabitants most Albanians, Kosovo became an autonomous province in 1963. The Albanians began to demand full "independence" in 1981 and established the "Republic of Kosovo" in 1991. Ever since February 1998, the so-called "Kosovo Liberation Army" [KLA] which had overt and covert support from the West, has had numerous armed clashes with the FRY army and police forces. Thus, the United States and NATO, while going all out to accuse the FRY for engaging in "ethnic cleansing," were prepared to use force against the FRY. During the talks held in the French city of Rambouillet last February, NATO forced the FRY to accept the "Rambouillet Agreement" which favors and supports the Albanian secessionists. It is just natural that the FRY refused to accept the agreement. Then, the US-led NATO began its so-called "air strikes" against the FRY. Is it not exceedingly clear from what the United States and NATO did during the Kosovo crisis who was acting like Nazi Germany?

Seventh, utilization of advanced technology to slaughter peaceful citizens is by no means less barbaric. Advanced science and technology are the result of civilization created by human society, which should be used to benefit mankind. But when they are in the hands of colonialists, imperialists, and hegemonists, they become the "advanced" weapons and means for their aggression, expansion, and slaughtering of peaceful citizens. In those years, Hitler not only used in war what were considered to be the most advanced weapons of the time, such as airplanes, tanks, and long-range artillery, to massacre peaceful citizens in anti-fascist countries, but also built concentration camps in Auschwitz and in other areas to slaughter Jews and prisoners of war with "advanced" technology. Executioners drove hundreds and thousands of people into gas chambers and poured cyanide through air holes in the roof, killing them all. Today, the US hegemonists used high-tech weapons to attack the FRY's civilian facilities several hundred miles away from the battlefield or with laser and global position system several thousand meters above the sky, treating innocent and peaceful citizens as live targets. The flagrant use of missiles by the US-led NATO to attack the Chinese embassy in Yugoslavia was a barbaric atrocity that the then Nazi Germany had not dared to commit. During the US air raids, it dropped a large number of radioactive depleted uranium bullets, which could lead to leukemia and to various deformities in newborn babies, and cluster bombs, which were banned by the Geneva Convention. This not only caused heavy casualties among the FRY people but also created a long-term and disastrous impact on the ecological environment in all of Europe. That the United States uses modern advanced technology to carry out an unjust war and to massacre peaceful citizens is a blasphemy and challenge to human civilization, which fully exposes the barbarity of today's hegemonists.

Eighth, there is no difference between brazen undermining of international law and aggressive acts. Some 30 countries were affected during World War I with 40 million casualties. After the war, the international community sought to stop wars through international treaties. In 1928 some countries signed the "General Treaty on Abolishment of War as an Instrument of National Policy," or the "Non-War Convention" for short. Germany also joined this convention. This treaty opposed the use of war to settle international disputes and to make war a means to implement national policy internationally; it also stipulated that all disputes between nations should be settled through peaceful means. However, no sooner was Hitler in power than Germany scrapped all international treaties that inhibited its aggression and embarked on a massive aggression and expansion. After the end of World War II, fascist war criminals were finally sent to the trial court of history. According to the "Nuremberg Verdict," "any country that uses war as an instrument of national policy will be considered as violating the treaty" following the signing of the "Non-War Treaty;" and "any one who engages in planning and carrying out war that brings about unavoidable and terrible results should be considered as engaging in criminal acts." Sixty countries were implicated in World War II in which the number of people killed in the war alone topped 50 million. After the war, the international community formulated a series of norms governing international relations to avoid the repeat of the tragedy of war. The "United Nations Charter," adopted in 1945, called on member nations to abide by the principle of using peaceful means to settle international disputes; not to use or threaten to use force against other countries; and not to interfere in any other countries' affairs that in essence fall under internal jurisdiction. It is up to the United Nations Security Council to decide on whether to adopt military action to maintain and restore international peace and security. The United Nations General Assembly adopted in 1949 the "Resolution on the Draft Declaration on the State's Rights and Obligations," which stipulated not to use force to infringe on other countries' territorial integrity and political independence. In 1965 the United Nations General Assembly passed the "Declaration on Not Interfer-

ing in Other Countries' Internal Affairs and on Protecting Their Independence and Sovereignty," which stipulated that no country should use economic, political, or any other measures to threaten other countries or to subjugate other countries in the area of exercising sovereignty or to interfere in other countries' internal disturbances. These stipulations were defined as the basic principles of international law in relevant declarations at the 1970 United Nations General Assembly. These norms governing international relations were, however, trampled upon at will by hegemonists. The US-led NATO used force to interfere in another country's "internal disturbances" without being restrained by the United Nations. NATO had used force to destroy the peaceful homes of another country's people and now they are attempting to force another country to submit to their will in the name of post war "reconstruction." These are all hegemonist acts that nakedly violate international law. The US Chicago Tribune recently carried an article by Wolf Rucker [name as transliterated], who was a prosecutor at the Nuremberg War Crime Trial. This article hit the nail on the head by pointing out that "rectification of an anti-humane act through slaughter is not convincing in and of itself," which is nothing but "an excuse for ignoring international law, for arrogantly asserting one's own right of domination and hegemonist position." The US launching a war of aggression against Yugoslavia violated the "United Nations Charter" and constituted a serious criminal act "whose aim was to show that it can call the shots in the world."

What is the difference between the modern day hegemonists who willfully undermine international law and the erstwhile Nazi Germany? When we read world history, we know that many empires that had dominated for some time finally ended in decline. Particularly in this century, the worldwide colonial system that the Western powers built for several hundreds of years has collapsed. The delusion of a "long thriving of the fortunes of military might" harbored by the German, Italian, and Japanese fascists who tried to dominate and enslave the people of the world turned into a bubble. But the US hegemonists have failed to draw a genuine and "painful lesson" from world history. They again mistakenly judged the development and changes in the international situation following the end of the Cold War. They employ the wishful thinking that fortune is now on their side and that it seems to be the turn of the United States—the sole superpower in the world—to dominate the world and to become "the master of the globe."

The US hegemonists, however, were completely mistaken. Today's world is one for all peoples of the world. All nationalities in the world should all be equal and live in harmony. Every sovereign state, whether big or small, strong or weak, regardless of different social and political systems, development modes, cultural traditions and values, is an equal member in the international community. Every country's internal affairs should be managed by its people and brook no wanton interference from any outside forces. Disputes between nations should be settled through peaceful talks and allow no use of force nor brook the threat of the use of force. International affairs and global issues should be settled through discussions and consultations by various countries in the world and no country should be allowed to impose itself upon the international community and decide all by itself. All in all, the call for maintaining world peace, promoting common development, for establishing a new international political and economic order that is fair and rational, and for fundamentally changing an old order marked by the big and powerful bullying the small and the weak and by the rich oppressing the poor is becoming a strong wish and a just appeal among all the people in the world and an unstoppable historical tide. Looking back to the past and looking ahead, we can clearly see that, despite history's twists and turns in its development, its general trend is toward progress and civilization, which is an objective law that cannot be changed by the people's will. The various actions that the United States adopted to realize its global strategy to dominate the world are tantamount to making enemies with all countries and people who love peace, which run against the historical tide that is rushing ahead as well as the development trend of a multi-polar world. Even though they may run rampant for a while, they will eventually end in complete failure. If the US hegemonists go it alone and persist in their foolhardy ways, they will surely follow the track of the old colonialists and fascists of yore and cannot escape from the judgement of history, justice, and law.

Ambassador LILLEY. You cannot separate Taiwan from Kosovo, and certainly the Chinese in this document have said we are worse than Adolph Hitler and the Holocaust.

I notice that Mr. Roth and Dr. Lieberthal are going to go over to China to talk about various issues involving Taiwan and other places. In this context Kosovo was an ideological issue from the be-

ginning. China attacked us for interfering in a sovereign State Yugoslavia on behalf of a minority the Albanians who sought independence, and we used military power to do this.

This is a neuralgic issue with China. What gave it an emotional push was the Belgrade Embassy bombing. This then set off a frenzy of activity and became a major issue in Chinese foreign policy. When you add the Lee Teng-hui statement, then you have a rolling momentum.

Let me briefly go to Lee's statement. Lee's statement is part of the Chinese great game of correct names. Confucius, said, "rectify names lest great affairs of State cannot be handled." Names are important to China. As far as the United States is concerned, we had better stay out of that complex game, because I do not think we will ever understand it.

If the game goes too far, of course we then can exert some influence, but it seems to me that this is primarily a complicated Chinese back-and-forth.

Second, I agree with Steve Yates that—and I will put it more crudely, that Lee Teng-hui is raising the ante. Both sides started off with one China, in 1992 your interpretation, our interpretation, and this led to the Singapore talks in 1993 and continued through to 1998 when Koo Chen-fu of Taiwan went to Beijing.

What Lee Teng-hui is saying is, we agreed originally on this formula in 1993. You changed it with your 16-character definition, which said in effect that the only China is the PRC, and that Taiwan is a province of the PRC, and this is the definition of one China. This, of course, goes directly against what Taiwan is trying to accomplish.

So Lee fired back at them and said equal and special state-to-state relations. He was still for a one China under the right conditions. He basically stuck to his three-point guidelines, namely, first stage, talks, and Lee has insisted that the talks continue, second stage, agreements between the two sides, third stage, discussion of unification.

My own sense now as far as American is concerned is, it should be very important for us to back off and change the subject to WTO. Get WTO on a fast track, get China in, and get Taiwan in. We have a very troubled premier in China who gave us a very good deal in April, which we turned down. Premier Zhu Rongji has been given the authority by Jiang Zemin to not only reform the domestic economy but to work out a WTO deal. This means to keep the Taiwan-China economic relationship going, which is critical to both China and Taiwan.

In order to do this, he has had to turn over foreign policy, national security to the hard liners and the propagandists, hence, this statement.

What the United States has to watch out for right now, and it is reflected in the Washington Times article, is that we are going to start to turn the screws on Taiwan to make them move back from their statement and to engage Beijing on what has been termed interim agreements.

I think Mr. Roth initiated that term. The U.S. then is, in effect, pressuring Taiwan, and is apparently using arms sales and contracts as leverage to push Taiwan into this relationship. We have

to be very careful on that. It goes against the TRA, and if we push Taiwan too hard we will not decrease the chances of war, but probably increase them. The relation of the military balance right now is in China's favor. I have the statistics here if you would like to see them.

And as long as the U.S. remains involved, there is not any real military option, but if Taiwan is stripped of its military capability, or downgraded, and if missile defense talks are canceled, and if we cancel the E2T, this could change the whole nature of our contacts with Taiwan. My sense is we will begin to weaken and widen the power balance, which in my experience is an invitation for adventurous military action.

There is another thing we Americans should pay very close attention to in this whole game between China and Taiwan. It goes back to the Confucian statement on correct names. Rhetoric and gong-banging, Chinese opera, thrust and parry, threats, gamesmanship, pull-back, advance, are very much part of this game.

I would say rhetoric is probably 75 to 80 percent. We have gone through this for about 41 years now. In fact the last time anybody got killed in combat was in 1958, in the Quemoi crisis. This is not Kosovo, Korea, or Kashmir.

I do not however rule out the dangers of military confrontation. We have to be very conscious of that. But if you examine the record, there is a lot of rhetoric, and the United States often gets drawn into the rhetoric. We have a certain fascination with this whole nomenclature business, of for instance state-to-state relations. The Chinese have a pretty clear idea of the way they say it in Chinese. The New York Times was a bit off base on a number of items in this mornings paper. There is a way of being quite specific in the Chinese language.

But I want to get back to how one exerts leverage. The Washington Times says E2T aircraft are being held up, the U.S. defense delegation to Taiwan has been postponed, maybe all contacts with the Taiwan authorities will now be handled through AIT, and there will be no more direct contacts between defense at the lower levels with Taiwan. This is a pressure device. We have to decide whether we are using this leverage to punish and to pressure Taiwan. Then what are we going to do to China at the same time.

China has already cut off all military contacts with us. They have told our ships to stay out of Hong Kong. They have demanded compensation for the bombing, and this is in fact justified. They have delivered this horrific 22 June propaganda blast against us.

What we seem to be doing with China is negotiating the size of the compensation package for our accidental bombing. This is fine, but there is a difference in the way we manage the rest of the relationship. We should look at that very carefully.

Having said this, I do think that the timing of Taiwan's statement was off. I do not think Taiwan should pick a time between the PRC's party congress—I mean, their party anniversary on 1 July and the politburo conferences in August to drop a verbal bombshell on them. No matter how this is interpreted, it was provocative to the Chinese.

Taiwan was raising the ante and getting the negotiations back on an equal basis. Also there is tremendous support in Taiwan for

Lee Teng-hui's position. The polls, as I see it, show that he has about 73 percent support. What Lee is trying to do is to undercut his political opposition in Taiwan.

Another aspect of this that we do not adequately understand is the enormous number of high-level contacts that go on between Taiwan and China every day outside of these semi-official talks. The number of Chinese leaders and businessmen and Taiwan businessmen that deal with each other at the highest level, while discussing investment, there exists a dynamic there that few Americans understand.

We tend to deal with the rhetoric and the movement of naval ships and planes, and do not really understand the full flow of dialog between the two sides. We do not have to get involved in this. We do not know enough about it.

Finally, I would make these two points. First of all, it is very important the PRC notice that this issue is being debated democratically in Taiwan. Lee Teng-hui is coopting his opposition, the DPP, [Democratic Progressive Party] and also another independent politician, James Soong, who is laying out a new agenda for China relations with Taiwan, which in effect opens up the three communications, does not push for Taiwan entry into the United Nations, and says Taiwan is not ready for TMD.

These three positions are positions that China desires. Soong has laid these positions out and has challenged Lee Teng-hui. Let us see how the democratic process handles this. It will be very instructive for China to watch how this plays out.

So what I would add to what you have said, Mr. Chairman, is that the Chinese have an old expression about when you come to the brink. You step back from the brink and the seas will widen and the skies will open. That to me is good advice.

Thank you.

Senator THOMAS. We have been joined by the ranking member of the full committee, Senator Biden. It is good to see you, sir. If you have any comment we will be glad to hear it.

Senator BIDEN. I just thank you for letting me sit in on the subcommittee.

Senator THOMAS. Senator Kerry has also joined us, the ranking member of the subcommittee. Senator.

Senator KERRY. Mr. Chairman, thank you. I am not going to interrupt the flow of witnesses with an opening statement at this point, but I do think this is obviously on its face a very important clarification hearing, and there are some key issues we are all deeply concerned about, based upon Lee's most recent statements, and I look forward to exploring that.

Senator THOMAS. Thank you.

I am not sure I mentioned we of course invited Secretary Roth to be here, and he called. He is in China as a matter of fact and so was unable to be here, but not because he did not choose to.

Dr. Gong.

STATEMENT OF DR. GERRIT W. GONG, DIRECTOR, ASIAN STUDIES, CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES, WASHINGTON, DC

Dr. GONG. Mr. Chairman, a moment ago Ambassador Lilley talked about gong-banging. I assume he meant that metaphorically.

I am delighted to join you and this committee, and without minimizing cross-strait tensions, I want today to focus on the opportunities in the current situation, and I will do so by asking us to consider fundamental U.S. anchor interests in the spirit of your opening statement.

First, the opportunity. Beijing and Washington are reestablishing positive contact which reduces possible misunderstanding over Taiwan. President Clinton and President Jiang have reiterated established positions and expressed hope for bilateral progress.

As you mentioned, State Department and American Institute and Taiwan senior officials are on their way to Beijing and Taipei. Initial conversations with President Lee are putting his remarks in the context of current de facto and de jure realities. This sets the groundwork for constructive clarification by Mr. Koo Chen-fu, chairman of Taiwan's Exchange Foundation, in preparation for the expected October visit of Mr. Wang Daohan from the PRC.

Sino-U.S. market access talks will proceed, which will hopefully contribute to both Beijing and Taipei joining the WTO this year. There is impetus for upcoming high level meetings, including between Secretary Albright, Chinese Foreign Minister Tong this weekend in Singapore, and between President Clinton and President Jiang in Auckland this September.

What Washington, Beijing, and Taipei share is a basic interest in Taiwan Strait peace, prosperity, and stability. We can promote this together by preserving the dynamic framework that both sides of the strait consider themselves part of a single China, the definition of which remains under discussion, and that their dynamic relationship will not be changed by force, will not be changed by unilateral timetables for communication, and will not be changed by unilateral declarations of independence. That is what we have in common.

The U.S. can contribute, as we said, Mr. Chairman, in the spirit of your opening remarks, Beijing and Taipei together pursuing these common interests, when we adhere to six anchor interests. They are in my statement. Let me review them quickly.

First, it is in the U.S. interest for there to be an equilibrium of confidence between the two sides of the Taiwan Strait. This equilibrium of confidence means both sides can determine the pace and scope of their interaction peacefully. They both need a credible military defense for a minimal sense of security in order to engage in cross-strait dialog free of intimidation or coercion. Both sides should feel the U.S. is evenhanded. Neither side should feel pressured into negotiations or arrangements, especially imposed unification timetables or interim agreement.

Second, it is in the U.S. interest that neither Taipei nor Beijing shift its responsibility for cross-strait peace and communication here to Washington. We have an interest to minimize the tendency, (a) by some in Beijing to underestimate our resolve, or to assume

that we could somehow simply deliver Taiwan, and (b) at the same time, by some in Taipei to overestimate the nature or scope of U.S. support, or assume that Washington could sell out Taiwan.

Third, it is in the U.S. interest that we encourage an environment for Beijing and Taipei to engage in constructive direct dialog. Many levels and authorized channels of communication will be necessary for Taipei and Beijing to deal directly with each other over their differences.

This does not mean direct or indirect pressure on either Beijing or Taipei for dialog or for unrealistic U.S. expectations or responsibilities placed on cross-strait dialog. There is some tendency, I think, for us to put so much hope on cross-strait dialog that there might be an unrealistic hope for what it might accomplish in the short term.

As we have just heard, intentionally undermining the confidence of Beijing or Taipei as a means to promote this dialog will be counterproductive. Consistent, confirmed, authoritative messages between the two sides of the Taiwan Strait are required to build cross-strait trust and confidence on a solid foundation.

Let me say, at appropriate times and in appropriate ways broadening cross-strait dialog could increase understanding. As I have testified before, at some point some Beijing-Taipei military-military dialog through established cross-strait channels could foster basic and then, perhaps, over time, more far-reaching confidence-building measures. That is military-to-military discussion between the two sides at an appropriate time.

Third, it is in the U.S. interest that other Asian Pacific countries publicly state their interest in regional peace, security, and stability. All countries in north and southeast interests have a stake in maintaining the change in the region occur peacefully, and in so stating.

Fifth, in our domestic sphere, it is in the U.S. interest that U.S. politics not become a dispute resolution mechanism for Beijing-Taipei issues. Healthy discussion of the alternative merits of different policy approaches is a hallmark of our democracy, but it is not in our interest to allow Washington domestic politics to become the dispute resolution for issues better addressed directly by the involved parties.

Sixth, it is in the U.S. interest that we review U.S. obligations under the three communiques under the Taiwan Relations Act so U.S. adjustments to evolving strategic circumstances do not surprise either side. This is required so Washington can meet defense commitments that contribute to rather than detract from China-Taiwan understanding and cross-strait stability.

Now, in conclusion, let me say again, our current opportunity is for U.S. leadership to secure the reaffirmation of all parties in their shared interest in cross-strait peace, stability, and prosperity. This will occur within a dynamic framework that (a) both sides of the strait consider themselves a single China, as I said, the definition of which is still being worked through, and (b), their dynamic relationship will not be changed by force, by unilateral timetables for unification, or by unilateral declarations of independence.

Extreme care is required so this opportunity to affirm common interests is not squandered in a reactive rush to policy overclari-

fication. It is not in the U.S. interest, nor is it in our capability, to impose a solution between China and Taiwan. Both power and principle demand we maintain a balance between realities and creative ambiguities across the Taiwan Strait.

This is hard for us, because we want clarity, because we want to solve issues once and for all, but this is a Chinese issue that the Chinese themselves must solve. We can contribute to a framework to that end, and we do so by placing that framework on a basis of anchor U.S. interests consistent, as I said, with our interests and our values.

Thank you.

[The prepared statement of Dr. Gong follows:]

PREPARED STATEMENT OF DR. GERRIT W. GONG

U.S. ANCHOR INTERESTS ACROSS THE TAIWAN STRAIT

Current Opportunities

Thank you, Mr. Chairman and members of this committee, for the opportunity to testify on a timely issue vital to the U.S. interest in Asia-Pacific peace, stability, and prosperity.

Without minimizing cross-strait tensions, I want today to focus on opportunities in the current situation.

Beijing and Washington are re-establishing positive contact, which reduces possible miscalculation over Taiwan. In their phone conversation, President Clinton and President Jiang reiterated established positions and expressed hope for bilateral progress. Senior State Department and AIT (American Institute in Taiwan) officials are on their way to Beijing and Taipei, respectively.

Initial conversations with President Lee and other senior Taiwan officials are putting his remarks in the context of current de facto and de jure realities. This sets the groundwork for constructive clarification by Mr. Koo Chen-fu, chairman of Taiwan's Straits Exchange Foundation, in preparation for the expected October visit of the chairman of the PRC's Association for Relations Across the Taiwan Straits Mr. Wang Daohan.

Sino-U.S. market access talks are proceeding, which will hopefully contribute to both Beijing and Taipei joining the World Trade Organization (WTO) this year. There is impetus for upcoming high-level meetings including between Secretary Albright and Chinese Foreign Minister Tang this weekend in Singapore and President Clinton and President Jiang this September in Auckland.

This kind of communication is essential to address fundamental differences in perception and interest between Beijing and Washington. Let me illustrate. Just prior to kick-off of the Women's World Cup final between China and the United States, a televised formation of U.S. F-18 fighter jets overflew the Rose Bowl. What most Americans would see as an innocent if exuberant symbol of national pride some Beijing viewers could interpret as a potentially threatening symbol of assertive U.S. values or military capability. These perceptual and interest differences underlie divergent U.S. and PRC interpretations of the May 7, 1999, accidental bombing of the PRC embassy in Belgrade; similarly, they underlie often divergent U.S. and PRC approaches to Taiwan.

Where Washington, Beijing, and Taipei do not diverge is in the shared interest that Taiwan Strait peace, prosperity, and stability be promoted. This requires preserving the dynamic framework that both sides of the strait consider themselves part of a single China (the definition of which remains under discussion) and that their dynamic relationship will not be changed by force, by unilateral timetables for unification, or by unilateral declarations of independence.

President Jiang Zemin says he does not want Taiwan to become an Asian Kosovo. In such matters, Chinese memory is too long when it interprets every international action through a historical lens that presumes intent to bully or humiliate China. In such matters, U.S. memory is too short when it fails to perceive how arrogant and short-sighted American triumphalism can appear.

Recent statements by President Lee Teng-hui regarding Taiwan's political status underscore significant changes in both China and Taiwan since the U.S. first acknowledged in the 1972 Shanghai communique that all Chinese on either side of the Taiwan Strait maintain there is but one China and that Taiwan is a part of China. Taipei says it is clarifying and specifying, that its mainland policy remains

intact. Beijing remains suspicious that Taiwan is using semantics to further separation from China.

If the changes over the past three decades are viewed positively both China and Taiwan have a chance to create new cross-strait opportunities, possibly including regarding a single Chinese nation, as both the PRC and Taiwan have suggested. Or these changes could precipitate crisis if they are taken negatively.

Six U.S. Anchor Interests

The U.S. facilitates Beijing and Taipei pursuing the positive by adhering to four U.S. “no’s” (including no use of force) and six U.S. “yes’s.”

These six U.S. “yes’s” include the following U.S. anchor interests for cross-strait relations:

- preserve an equilibrium of confidence;
- make Taipei and Beijing responsible to maintain their cooperation and competition;
- encourage Beijing and Taipei to engage each other directly;
- prompt other Asia-Pacific countries to state publicly their interest in peaceful dispute resolution;
- prevent U.S. domestic politics from becoming an alternative dispute resolution mechanism for Beijing-Taipei issues; and
- anticipate changing U.S. strategic and technological obligations under the three U.S.-PRC communiques and Taiwan Relations Act to maximize stability and minimize tension.

Each of these American anchor interests is worth elaborating briefly.

1. An equilibrium of confidence means both sides of the Taiwan Strait can determine the pace and scope of their interaction peacefully.

Both Beijing and Taipei need a credible military defense for a minimal sense of security in order to engage in cross-strait dialogue free of intimidation or coercion. Both sides should feel the U.S. is even-handed in its approach. Neither side should be pressured into negotiations or arrangements—including imposed reunification timetables or interim agreements.

Some argue that U.S. interest in Beijing-Taipei relations is based primarily on power. They say China and the U.S. are natural competitors in Asia and maintenance of the Taiwan Strait status quo is therefore a U.S. strategic interest. Others argue that U.S. interest in Beijing-Taipei relations is founded on principle—either in the free democratic expression of the 21 million people in Taiwan or in the eventual unification of “one China.”

The U.S. interest is, in fact, a combination of both power and principle. The U.S. should thus reject any challenge to the status quo by force, and discourage Taiwan independence, while leaving it to Beijing and Taipei to create the positive conditions necessary to entice peaceful unification.

2. The responsibility of Taipei and Beijing for their continuing relations means neither side should be allowed to shift its responsibility for cross-strait peace and communication to Washington.

The U.S. interest is to minimize the tendency by (a) some in Beijing to underestimate U.S. resolve or to assume that Washington could simply “deliver” Taiwan and (b) some in Taipei to overestimate the nature or scope of U.S. support or to assume that Washington could “sell out” Taiwan.

The U.S. deployment of two aircraft carrier battle groups on one occasion and President Clinton’s enunciation of three no’s, including no U.S. support for Taiwan independence on another occasion, demonstrate that the U.S. will challenge those who engage in provocative or threatening behavior on either side of the strait. Though Beijing-Taipei competition will continue, the U.S. interest is to build margins of safety, not just limits of tension.

3. Encourage an environment for Beijing and Taipei to engage in constructive direct dialogue. Many levels and authorized channels of communication will be necessary for Taipei and Beijing to deal directly with their differences.

This does not mean direct or indirect pressure on either Beijing or Taipei for dialogue, nor unrealistic U.S. expectations or responsibilities placed on cross-strait dialogue. Intentionally undermining the confidence of Beijing or Taipei as a means to promote cross-strait dialogue will be counter-productive. Consistent, confirmed, authoritative messages between the two sides of the Taiwan Strait are required to build cross-strait trust and confidence on a solid foundation.

At appropriate times and ways, broadening cross-strait dialogue could increase Beijing-Taipei understanding. For example, as I have previously testified, some Bei-

ing-Taipei military to military dialogue, through established cross-strait channels, could foster basic and than more far-reaching confidence building measures.

In any case, positive developments in relations between Beijing and Washington, Beijing and Taipei, or Taipei and Washington need not be zero-sum. Indeed, some practical linkage remains between the pace and scope for improved U.S.-PRC relations and U.S.-Taiwan relations and the pace and scope for improved Beijing-Taiwan cross-strait dialogue.

4. Encourage other Asia-Pacific countries to state publicly their interest in regional peace, security, and stability.

All countries in Northeast and Southeast Asia have a stake in maintaining change in the region occur peacefully, and they need to say so. This does not mean other countries should take sides in what they may see as a Chinese political issue. But there is a danger to all the region if non-peaceful means are employed to resolve questioned borders, territorial lines, or other disputes. While formal Asia-Pacific collective security agreements have yet to be developed, emerging regional institutions should see a collective interest in peaceful dispute resolution, including if necessary issues touching sovereign concerns.

5. In the domestic sphere, prevent U.S. politics from becoming a dispute resolution mechanism for Beijing-Taipei issues.

As the Cox Commission demonstrated, a bipartisan working consensus can reflect basic U.S. security, political, economic, and human rights interests. In cross-strait matters, such a U.S. bipartisan working consensus can transcend domestic U.S. politics, thereby dealing responsibly with important China-Taiwan developments, especially those determined by factors beyond the U.S.

Healthy discussion of the alternative merits of different policy approaches is a hallmark of U.S. democracy, but it is not in the U.S. interest to allow Washington domestic politics to become the dispute resolution mechanism for issues better addressed directly by the involved parties.

6. Review U.S. obligations under the three U.S.-PRC communiques and Taiwan Relations Act so U.S. adjustments to evolving strategic circumstances do not surprise either side. This is required so Washington can meet defense commitments that contribute, rather than detract from, China-Taiwan understanding and Taiwan Strait stability.

New patterns of cooperative engagement capability; of dealing with classic time, distance, and weight issues are “theaters” and “front lines” are redefined; of establishing credible U.S. political presence and commitment when U.S. forces may not be immediately visible or deployed in-area—these and many other emerging issues will shape the nature of competition and conflict in ways which will require periodic security enhancement updates to U.S. commitments within the three Sino-U.S. communiques and Taiwan Relations Act.

Conclusion

Crisis and opportunity can go together, especially when dealing with China and Taiwan. The tendency to react to crisis and to miss potential opportunity can be ameliorated by focusing on U.S. anchor interests. The current opportunity is for U.S. leadership to secure the reaffirmation of all parties in their shared interest in cross-strait peace, stability, and prosperity. This will occur within a dynamic framework that (a) both sides of the strait consider themselves part of a single China (the definition of which remains under discussion) and (b) their dynamic relationship will not be changed by force, by unilateral timetables for unification, or by unilateral declarations of independence.

Extreme care is required so this opportunity to reaffirm basic common interests is not squandered in a rush to policy over-clarification. Such could counterproductively lose the dynamic tension between realities and creative ambiguities which can and should continue to serve U.S. interests on both sides of the Taiwan Strait so well.

Thank you very much.

Senator THOMAS. Senator Coverdell, welcome. Do you have any comment you would like to make?

Senator COVERDELL. I do not. I think we should proceed.

Senator THOMAS. Very well. Thank you. We will take some questions and try to keep a time limit on those.

Mr. Yates, you seem to question the one-China statement as not being very realistic. Is that not the position of the United States?

Mr. YATES. I do not believe, until the Clinton administration, that any administration had said the United States has a one-China policy. We had always acknowledged that both sides of the Taiwan Strait had a one-China policy, and while they both maintained it, it was a useful framework for us to avoid difficult issues and move forward with substantive dialog in exchange.

I think that it is difficult for the United States to claim there is a one-China policy without the burden being placed on us to define it, and I do not think that we have an interest in doing so.

One of the difficulties in the one-China statement, even if it is the policy, is that in Chinese there are two different words for referring to China. One is "zhonghua," which kind of refers more to the grand culture of the nation, the people's emphasis on a common tradition, and the other is "zhongguo," which is more emphasis on country, emphasis on political entity, and it is difficult for us in English to toy with these subtle differences.

Similarly, there is a difficulty in taking words like State, country, and nation, which have different meanings in international relations theory to English-speaking people, but do not go easily back into Chinese, into the framework that they have been using to engage in this dialog, so even when President Lee uses the words, state-to-state, when he uses those Chinese words, if you look across the American media, they were translated as nation-to-nation, country-to-country, and state-to-state, and I think there are important distinctions in those, so for me I do not believe that the one-China slogan is particularly useful.

Senator THOMAS. You do not think that is in the communiqués?

Mr. YATES. I think in the communiqués we acknowledge China's claim of sovereignty, and we acknowledge that both sides maintain that there is but one China, and it is very clear that we have tried to avoid answering that question in specificity in my analysis.

Senator THOMAS. You indicated there needs to be government-to-government negotiations. There have been negotiations going on across the strait. Isn't that government to government?

Mr. YATES. Most of the high profile negotiations I am aware of go through two quasi-governmental organizations. Clearly, they are endowed with the authority to negotiate on what are usually more mundane issues.

There has been a controversy about the two sides resuming this dialog, because Beijing would like to discuss political issues, which apparently means some kind of discussion for a political resolution of the status of Taiwan, and Taiwan says we will take on the political dialog, but we want to discuss democratization of the mainland.

My point is, until there is a formal statement from the mainland that acknowledges that a government exists on Taipei, I do not believe you can take the mainland's desire for unification very seriously. I just do not see any path toward unification that does not acknowledge the existence of a government and attributes some element of legitimacy to it before you engage in the dialog.

Senator THOMAS. It is a little naive to suggest there is no government there.

Ambassador Lilley, do you think there is any particular meaning to the timing on the Taiwan pronouncement?

Ambassador LILLEY. I think so, but I would first like to make one statement, that the United States, in its normalization communique and its August 1982 communique recognized the PRC as the sole legal Government of China.

But as far as the timing is concerned, I believe a number of factors converged. One was the upcoming cross-strait talks between China and Taiwan, and the need to raise the ante before those talks started. Lee Teng-hui saw that Beijing was trying to establish its own interpretation of what China defined as one China, so he was raising the ante.

Number 2, he has got a domestic political situation which drove him to try to isolate his opposition, as I mentioned, James Soong, and to bring in 70 percent of the Taiwan voters behind him. It was a political process where he is trying to gain leverage.

And third, I do not think you can separate all this from Kosovo. The United States took a position in Kosovo which was very interesting to Taiwan, namely, the U.S. does intervene militarily in a situation where there are great human rights violations, and even genocide. The U.S. moved in with military force to bring about an autonomous situation protected by NATO power. This disturbed Beijing very much, and this sort of precedent fit into President Lee's definition of his own predicament. He wanted to establish this legacy of autonomy and equality before he steps down.

Senator THOMAS. Senator Kerry.

Senator KERRY. Would you say, Ambassador Lilley, that—does this represent the question in a lot of people's minds? Is sort of sorting through the terminology Mr. Yates was talking about, and the word, *zhonghua*, and what it means, State, nation, country, and so forth, is it your judgment that this is a new statement of some kind, or is this really the continuation of policy that Taiwan now insists they were sort of articulating?

Ambassador LILLEY. I think, Senator, it is both. It is expanding on understandings which Lee Teng-hui has been pushing for a long time. It is the continuity from equal political entities to Taiwan as a sovereign State. The ROC was founded as a state in 1912, before the PRC was founded in 1949. These arguments Lee Teng-hui has raised consistently.

What is different is the use of the term, specifically, state-to-state relations or special state-to-state relations, and this set off Beijing's real concerns. The PRC saw it as another push in the direction of getting equality for Taiwan and perhaps working toward a U.N. seat and equal and earlier access to the World Trade Organization, perhaps even the World Bank. The PRC felt it really had to move in and stop this both decisively and early.

But again, I say both, sir.

Senator THOMAS. You are nodding, Dr. Gong. Let me read you—this is a letter that I received from Mr. Chen, representing the office here in Washington, and he says, he references the interview and he says, "President Lee's statement represents a pragmatic assessment of current realities," and he repeats what you were just saying. "The ROC was established in 1912 and remains a sovereign State. The Chinese Communists established the People's Republic of China in 1949, but the PRC's jurisdiction has never extended over Taiwan . . .".

And then he says, and I think this is important, “It is also important to note that our President’s statement represents a continuation of policy. President Lee stated in the interview that the cross-strait issue cannot be simply resolved by unification or independence. The crux of the issue is the political system. The ROC is the first to achieve democratization in all Chinese societies. We hope that the PRC would begin democratic reform to create better conditions for a democratic unification. Before that, we wish to maintain the status quo.”

In short, President Lee’s statement was intended to shed light on the current state of cross-strait relations, and to reiterate that there has been no change or revision in our mainland China policy.

[The letter, with enclosures, that Senator Thomas refers to follows.]

TAIPEI ECONOMIC AND CULTURAL REPRESENTATIVE
OFFICE IN THE UNITED STATES,
Washington, DC, *July 14, 1999.*

The Honorable CRAIG THOMAS
United States Senate,
Washington, DC.

DEAR SENATOR THOMAS:

Today I am writing to inform you of a significant declaration of my country’s policy regarding our relations with the communist China.

In a recent interview with the Deutsche Welle (Voice of Germany), President Lee Teng-hui of my country, the Republic of China (ROC), stated that relations between the two sides of the Taiwan Strait should be characterized as a “special state-to-state relationship.”

President Lee’s statement represents a pragmatic assessment of current realities. The ROC was established in 1912 and remains a sovereign state. The Chinese communists established the People’s Republic of China (PRC) in 1949, but the PRC’s jurisdiction has never extended over Taiwan, Penghu, Kinmen or Matsu, which comprise the area ruled by the ROC government. It is an indisputable political and historical fact that the ROC and the PRC are separate governments ruling respectively the Taiwan area and the mainland area. In other words, two states—ROC and PRC—co-exist in a Chinese nation.

It is also important to note that our president’s statement represents a continuation of policy. President Lee stated in the interview that the cross-Strait issue cannot be simply solved by unification or independence. The crux of the issue is the political system. The ROC is the first to achieve democratization in all Chinese societies. We hope that the PRC would begin democratic reform to create better conditions for a democratic unification. Before that we wish to maintain the status quo. In short, President Lee’s statement was intended to shed light on the current state of cross-Strait relations, and to reiterate that there has been no change or revision in our mainland China policy.

In the Guidelines for National Unification promulgated in 1991, we declared that the two sides of the Taiwan Strait were “two equal political entities.” We had hoped this formulation would help the two sides temporarily set aside disputes over sovereignty and create extended opportunities for interactions. However, Beijing has responded to our goodwill with hostility ever since. It has time and again expanded the definition of its “one China” policy by equating the PRC to China and saying that Taiwan is a part of the PRC.

The abnormal relations between the two sides are caused by Beijing’s refusal to face reality. At the dawn of the 21st century, relations between the two sides should be clearly defined based on objective political and legal reality, so that the two sides will be able to avoid disputes over the meaning of “one China.”

We earnestly hope that President Lee’s statement will provide new insight into the unique nature of the relations between the two sides of the Taiwan Strait and help form a solid basis for further dialogue between the PRC and the ROC. Your continued support for my country is indispensable, and I look forward to having the opportunity to brief you more fully on this issue in the future.

With best regards,
Sincerely,

STEPHEN S. F. CHEN, *Representative*.

[Enclosures].

RESPONSES TO QUESTIONS SUBMITTED BY DEUTSCHE WELLE TO LEE TENG-HUI,
PRESIDENT, REPUBLIC OF CHINA, JULY 9, 1999

Question 1. Your Excellency, Taiwan's economy is a success story admired around the world. Another impressive success in recent years has been Taiwan's democratic achievements. However, Taiwan is considered by Beijing's government as a "renegade province." This is a cause for permanent tensions and threats against your island from the mainland. How do you cope with these dangers?

Answer: I will answer your question from the historical and legal viewpoints. There has been an impasse in cross-strait relations because the Beijing authorities ignore the very fact that the two sides are two different jurisdictions and that the Chinese mainland continues to pose a military threat against us. The historical fact is that since the establishment of the Chinese communist regime in 1949, it has never ruled the territories under the Republic of China (ROC) jurisdiction; Taiwan, Penghu, Kinmen, and Matsu.

In the 1991 constitutional amendment, Article 10 of the Additional Articles (now Article 11) limits the area covered by the Constitution to that of the Taiwan area, and recognizes the legitimacy of the rule of the People's Republic of China on the Chinese mainland. Articles 1 and 4 of the Additional Articles clearly stipulate that the members of the Legislative Yuan and the National Assembly shall be elected from the Taiwan area only.

The 1992 constitutional amendments further stipulate in Article 2 of the Additional Articles that the president and the vice president shall be popularly elected by the people of the Taiwan area. Thus, the reconfigured national agencies represent only the people of the Taiwan area. The legitimacy of the rule of the country comes from the mandate of the Taiwan people and has nothing to do with the people on the mainland.

The 1991 constitutional amendments have placed cross-strait relations as a state-to-state relationship or at least a special state-to-state relationship, rather than an internal relationship between a legitimate government and a renegade group, or between a central government and a local government. Thus, the Beijing authorities' characterization of Taiwan as a "renegade province" is historically and legally untrue.

In the face of cross-strait developments, we will continue to prudently advance cross-strait exchanges and actively promote dialogue and consultations. Moreover, we will continue to further develop our democratic system, pursue stable economic growth, and actively strengthen contacts with the international community, so as to ensure our survival and development.

We believe that consolidating mutual trust through exchanges and fostering stable relations through mutual trust is the most effective way to resolve a crisis. Taiwan and the Chinese mainland should develop a win-win relationship based upon reciprocity and mutual benefit.

Question 2. Declaring Taiwan an independent state does not seem to be a realistic option, and Beijing's "one country, two systems" formula is not acceptable for the majority of people in Taiwan. Is there any room for compromise between these two lines of policy? And if there is, what does it look like?

Answer: I have already explained very clearly that the Republic of China has been a sovereign state since it was founded in 1912. Moreover, in 1991, amendments to the Constitution placed cross-strait relations as a special state-to-state relationship. Consequently, there is no need to declare independence. The resolution of cross-strait issues hinges on the issue of different systems. We cannot look at issues related to the two sides simply from the perspective of unification or independence. Progression from an integration of systems to a gradual political integration is the most natural and most suitable choice to guarantee the welfare of all Chinese people. At present, the ROC has become the first democracy in the Chinese community. We would like to take a more active role in the Chinese mainland's modernization process; therefore, we hope that the authorities there can proceed with democratic reform to create favorable conditions for democratic unification. This is the direction of our efforts. We want to maintain the status quo, and maintain peace with Beijing on this foundation.

Question 3. The treatment of Hong Kong as a “Special Administrative Zone,” since its handover from the British in summer 1997, and the treatment of Macau after its return from Portugal in December this year, may be considered by the Chinese mainland as a rehearsal for the larger event of taking over Taiwan in a peaceful manner. Isn’t this a tempting idea for the outside world—by solving the Chinese problem that otherwise poses as a great long-term danger to your region?

Answer: The root of the Chinese problem affecting regional security lies not in the return of Hong Kong and Macau to the Chinese mainland, nor whether Taiwan will return to its fold. The ROC on Taiwan is not a colony of any nation. This is how Taiwan differs from Hong Kong and Macau. The crucial question is the Chinese mainland’s overemphasis on nationalism and its failure to implement democracy. The Chinese mainland has not only conducted smear campaigns and saber rattling against us, but has also refused to renounce the use of force against Taiwan. Furthermore, it has tried everywhere to minimize the ROC’s international presence. This overbearing attitude does not promote a harmonious relationship across the Strait, nor is it beneficial to stability in the Asia-Pacific region. The Chinese mainland has placed an excessive emphasis on nationalism and continuously advances military expansionism. Under these circumstances, there can be no doubt that such acts would arouse suspicion from neighboring countries. A long-term resolution is to replace totalitarian rule on the mainland with democracy, thus easing tension in the region.

The Chinese mainland’s promise of a “one country, two systems” formula for Hong Kong and Macau is irrelevant to Taiwan, since the formula contains intrinsic contradictions, violates the basic principles of democracy, and denies the existence of the Republic of China. Although the Chinese mainland has attempted to apply the “one country, two systems” formula to the ROC, as it has in Hong Kong and Macau, Taiwan is neither Hong Kong nor Macau. Hong Kong and Macau were colonies, but the ROC is a sovereign, independent state. Taiwan is basically different from Hong Kong and Macau. Only when a free and democratic system has been implemented on both sides of the Taiwan Strait will the peace and security of Asia be ensured.

Question 4. If everything goes wrong and the situation gets out of control on both sides of the Strait between Taiwan and the Chinese mainland, to the effect that military actions start, by what means and on whom, aside from the Taiwanese themselves, would you rely for your defense in such a war?

Answer: All issues between the two sides of the Strait should be resolved by peaceful means. This is our firm and consistent position, as well as the expectation of the international community. The ROC announced the termination of the Period of National Mobilization for the Suppression of the Communist Rebellion in 1991, renouncing the use of force to achieve national unification and intending to resolve difference through peaceful means. However, the Beijing authorities have never been willing to renounce plans or preparations for using force to resolve issues between the two sides. This has caused serious cross-strait tensions and is the key threat to the region’s security. The international community should urge the Beijing authorities to renounce the use of force against Taiwan, use peaceful means to resolve disputes, and join in safeguarding stability in this region.

The situation in the Taiwan Strait and the security of the Asia-Pacific region are inseparable. Therefore, on April 8, 1999, at a meeting of our National Unification Council, I offered my idea on “establishing a mechanism for cross-strait peace and stability.” Our hope is that both sides will achieve beneficial interaction through exchanges and consultations, promote bilateral relations and thus ensure the security and peace of both sides and the region.

In addition to stressing the close and inseparable linkage between the stability of the Taiwan Strait and the peace of the Asia-Pacific region, the ROC values our cooperation with the United States. For many years, the United States has made necessary defensive weapons available to the ROC. Exchanges in every area of economics, culture, science, and technology have continued to grow. In the foreseeable future, the cooperation in security between the Republic of China and the United States will still be one of the important factors for maintaining stability in the Taiwan Strait.

Question 5. The United States and other Western countries are fascinated by the huge market of the Chinese mainland. This will likely diminish their support for Taiwan. Does this mean that Taiwan’s future will be gloomy?

Answer: Acting in their own self-interest, many countries have in recent years strengthened trade relations with the Chinese mainland. That is understandable. However, we should not overlook the fact that trade relations between the ROC and other Western countries including the U.S. are also very close. For example, the ROC is the seventh largest trading partner and export market of the United States.

Currently, the ROC's total imports from the U.S. have varied from 1.3 to 1.6 times those of the Chinese mainland. Furthermore, if we examine the internal developments in the Chinese mainland, we see the emergence of many structural economic problems. Because the future overall development of the Chinese mainland is filled with many uncertainties, we should closely monitor any changes.

In contrast to the uncertainties on the Chinese mainland, development in Taiwan is quite stable. Taiwan is important for two reasons: its safeguarding of democracy and human rights and its important strategic position in the Western Pacific region. Most of the people in the world today value democracy and human rights and expect the Chinese mainland to do the same.

Democracy and human rights are important pursuits of countries throughout the world. The world also expects the same of the Chinese mainland. Over the years, we have promoted political democracy, actively participated in the international community, and greatly improved cross-strait relations. For these efforts we have gained the world affirmation. We believe the Taiwan experience can serve as a catalyst for the modernization and democratization of the Chinese mainland.

Taiwan is strategically located in the sea-lanes controlling maritime shipping in the Western Pacific region, and is thus important to the U.S., Japan, and South East Asia. Therefore, Taiwan plays a crucial role whether it be in the cross-strait relationship or in regional stability.

Question 6. In spite of the deep political rift between Taipei and Beijing, Taiwan's economy is heavily engaged in the economy of the People's Republic of China through investments worth billions of U.S. dollars. This kind of involvement in the mainland makes Taiwan prone to economic blackmail by Beijing. How could you possibly prevent such a movement by Beijing's leadership?

Answer: Investments on the mainland by Taiwan enterprises are gradually forming an upstream, midstream, and downstream network. Indeed, this has already exerted some competitive pressure on our economy. Therefore, we need to consider how we can maintain our competitive advantage and the autonomy of Taiwan's economy, during the process of developing economic and trade relations between the two sides of the Taiwan Strait.

Fundamentally, the economies of Taiwan and the Chinese mainland are complementary, rather than competitive. I have proposed the policy of "patience over haste, steady progress over a long term" as the principle directing cross-strait relations. The goal is to establish reasonable regulations for investments on the mainland with a rational and moderate disposition. These regulations include limiting investments in areas of high technology and basic infrastructure, and conducting more scrupulous assessments and examinations of large-scale investment worth over U.S. \$50 million.

On the other hand, we have also promoted construction of science-based industrial parks to upgrade Taiwan's industry. At the present time, high-tech products account for over 40 percent of our exports. The ROC government has also initiated the privatization of state-run enterprises and encouraged the private sector to participate in public construction, in order to create more domestic investment opportunities for enterprises. Hopefully, enterprises will "leave their bases in Taiwan," so that Taiwan's economy will continue to grow.

Question 7. The Chinese mainland is struggling with many serious economic and social problems, as there are growing numbers of jobless people and shrinking reserves of foreign exchange. The Beijing government may feel forced to devalue the renminbi to avoid major economic difficulties and the resulting social unrest. Wouldn't such a devaluation of the renminbi cause a serious economic backlash for Taiwan?

Answer: The Chinese mainland imposes many regulatory measures on foreign exchange. Thus, even if the renminbi is allowed to depreciate, we do not expect the situation to get out of control, because the economies of Taiwan and the Chinese mainland are complementary, rather than competitive. Although a devaluation might place certain mainland products in price competition with ours, an increase of exports from the mainland would actually increase demand for intermediate products from Taiwan, therefore, Taiwan's exports would not be markedly affected.

However, expectations that the depreciation of the renminbi could possibly cause the New Taiwan (NT) dollar to fall, which would have a direct or indirect destabilizing effect on our foreign exchange and stock markets. Therefore, we will take steps to explain to our citizens that a devalued renminbi will not significantly impact Taiwan's economy. The fluctuations of the NT dollar and the renminbi are not necessarily related. However, a problem of concern is whether the depreciation of the renminbi will affect the financial situation of Taiwan businessmen on the Chinese

mainland, which, in turn, may affect Taiwan. We are fully prepared for this possibility.

Question 8. Would the ROC still be interested in purchasing German submarines?

Answer: We have discussed this issue with your government for quite some time; however, your government, wary of Beijing's attitude, has not yet approved the sale of submarines to the ROC. Beijing has deployed more than a hundred old and new submarines in the East China Sea. In such a vast area, it is questionable that the number of submarines we could purchase would be adequate to defend Taiwan on a submarine-to-submarine basis. Moreover, countering submarines with submarines is a rather difficult defense strategy, the effectiveness of which requires further consideration.

EXPLANATION ON PRESIDENT LEE'S REMARKS IN AN INTERVIEW WITH THE VOICE OF GERMANY—JULY 9, 1999

During an interview with the Voice of Germany (Duetsche Welle) this afternoon (July 9), President Lee described cross-strait ties as a "state-to-state" relationship or a "special state-to-state relationship." We hereby stress the following points:

1. The Republic of China has been a sovereign state ever since its founding in 1912. Following the establishment of the People's Republic of China in 1949, the two sides of the Taiwan Strait have been under divided rule and separate jurisdiction. This is an objective historical fact. The Republic of China on Taiwan is by no means a "renegade province" as claimed by the PRC.

2. The ROC terminated the Period of National Mobilization for the Suppression of the Communist Rebellion in 1991. After several amendments to the Constitution, the effective jurisdiction of the ROC under the Constitution now covers only Taiwan, Penghu, Kinmen and Matsu. This is a statement of the legal fact.

3. Our mainland policy has remained unchanged. The ROC will continue to promote cross-strait exchanges according to existing policies to develop cross-strait relations based on reciprocity and mutual benefits. There will be no changes to our current "no haste, be patient" and the "three direct links" policies for the moment.

4. Peace and stability of the Taiwan Strait are inseparable from the security of the Asia-Pacific region. We hope Beijing will not threaten Taiwan with military means and suppress or blockade our diplomatic space in the international arena because such moves will not promote sound interaction between the two sides of the Taiwan Strait.

[Press Release, July 12, 1999]

MAINLAND AFFAIRS COUNCIL

In a recent interview with a foreign radio station, President Lee Teng-hui stated that relations between the two sides of the Taiwan Strait should be characterized as a "special state-to-state relationship." This declaration will provide an important basis for the normalization of cross-strait relations in the next century.

President Lee's declaration carries a three-fold significance.

First, it is pragmatic. Although the Chinese communists established the People's Republic of China in 1949, its jurisdiction has never extended over Taiwan, Penghu, Kinmen, and Matsu, the area ruled by the government of the Republic of China. Since the revision of the constitution in 1991, the president, the vice president, and the people's representatives at all levels of government in the Republic of China have been directly elected by the people, and the legitimate right to govern the state has thus been derived only from the people of the Taiwan area. Therefore, it is an indisputable political and historical fact that the ROC and the PRC are separate governments ruling respectively the Taiwan area, and the mainland area.

Second, the declaration represents a continuity of policy. Under President Lee's leadership, the ROC's mainland China policy has progressed in full conformity with mainstream public opinion amid a growing consensus forged among the ruling and opposition parties. President Lee's declaration is primarily a clarification of the current state of cross-strait relations. There has been no significant change or revision in our mainland China policy, and Taipei will continue to promote the ongoing exchanges and dialogue between the two sides.

Third, it is innovative. In the Guidelines for National Unification published in 1991, we have declared that the two sides of the Taiwan Strait are two equal political entities. This definition was established to temporarily set aside disputes over sovereignty, and create extended opportunities for interactions between the two

sides. Subsequently, in a show of goodwill, we have adopted a series of policy adjustments, including terminating the Period of National Mobilization for Suppression of the Communist Rebellion, promoting consultations, expanding exchanges, and formulating the Statute Governing Relations between the People of the Taiwan Area and the Mainland Area.

However, as we review events over the past few years, it is clear that Beijing has responded to our goodwill with hostility. It has time and again expanded the definition of its "one China" policy. Under the guise of its Hong Kong and Macau models, Beijing has attempted to apply its "one country, two systems" formula to Taiwan. At the same time, Beijing has test-launched missiles into the Taiwan Strait. It has verbally disparaged and militarily intimidated us. Beijing even cooked up excuses to suspend the institutionalized cross-strait consultations and exchanges. It has purposely procrastinated in resolving the issue of disorderly cross-strait exchanges. Overall, it has used every imaginable method to minimize the ROC's existence in the international community.

The abnormal relations between the two sides are caused by Beijing's refusal to face reality. At the dawn of the 21st century, relations between the two sides should be clearly defined based on objective political and legal reality, so that the two sides will be able to avoid disputes over the meaning of "one China," thereby opening a new page for interactions between them under an innovative concept. It is believed that Taipei and Beijing can, on an equal footing, discuss any issues that the two sides currently face, including political consultations that the Chinese mainland has always advocated.

The cross-strait relationship is "special" because it involves the national sentiment and cultural factors, which are present in no other relationships. Thus, an equal and normalized cross-strait relationship should be better and closer than other country-to-country relationships. Based on the foundation and the channels already established, and through constructive dialogue, institutionalized consultations, and orderly exchanges, we are willing to develop a framework for a peaceful, stable and long-term relationship that will enable both sides of the Strait and the region to benefit on reciprocal terms. We would like to call on the mainland authorities to face the cross-strait reality that has existed for many years and pragmatically work with us to usher in a new era of beneficial interaction between the two sides in the 21st century.

Senator THOMAS. That is consistent with what you are saying, but is it inconsistent with itself? Do you follow me, and is that statement—I mean, can you have both? Can you say that they are sort of distinguishing the democracy, they are distinguishing their desire to have reform prior to any unification, therefore to maintain the status quo at the same time as they say there has been no change or revision? Is that a change or a revision, or is that in effect what they have been saying all along?

Dr. GONG. As was just noted, there is in my view both continuity and change in the statements. That continuity and change reflects the fact that the outside realities have some continuity and some change.

Senator KERRY. Isn't that the reality always, though? Haven't we always faced that reality? I mean, in a sense, everybody has been dancing on eggshells about this issue for a long time, because nobody wants to offend anybody. Our own policy carries a purposeful ambiguity, and we always have, and the truth is that as you get down to the crunch, whether or not there is going to be a real series of talks, you cannot walk on eggshells any more. Am I wrong?

Dr. GONG. That is why I stress the framework which established the broad parameters for some of the ambiguities which I think have been creative and useful and perhaps politically necessary, and that is why I think the opportunity in the current situation is, as you are suggesting, not to focus overly on semantics, although semantics are important, but to recognize the broader opportunities to move forward.

And part of those opportunities are not getting wound around a specific term, but also recognizing that there are some differences of nuance in the way those terms are being used. It would be wrong to imply there was no change, but it would also be wrong to imply that that change means that everything that has been done so far has somehow been thrown out the window.

Senator KERRY. Did you want to also respond, Ambassador Lilley?

Ambassador LILLEY. I would say this pragmatic reference means that Taiwan has an independent army, independent judicial system, independent recognition by 29 countries. Taiwan is in effect a sovereign State.

Taiwan is saying now, this should be the basis for cross-strait discussion. Beijing is saying Taiwan is a province of China, and is part of our China. The United States recognizes the PRC as the sole legal Government of China. Now both sides come at each other.

If I can suggest something on this, what we really want to do is to get them both to pull back from this verbal confrontation and change the subject, because otherwise we are going to get bogged down in an endless Chinese slanging match on these kinds of verbal issues.

But I do not believe that turning the screws on Taiwan, using arms sales, is going to get us anywhere on this one, and can be a dangerous tactic. As I said, we really are changing the balance of power and inviting military adventurism. We are being drawn into this now, we are getting pushed, around by China, and then we tend to push around the smaller element Taiwan. It is much easier to push around Taiwan than to push around China, believe me, I know. They become the easy way out.

But Lee Teng-hui has set out what he considers to be the three elements of unification. The first is contact, and he says, I want contact with China.

Second, let us reach agreements on a whole series of understandings dealing with trade, dealing with illegal immigration, dealing with notaries. Let us work these things out together.

And third, when we get these two stages done, we will start talking unification on the basis of democracy, and free market, and rising standards of living.

Again, the Chinese claim that is insincere. Lee is just postponing the issue. The Chinese want the Americans to get involved and pull Lee back.

My own sense is that both sides may be working this out right now in a very Chinese way, and we ought to step back and let them do it, but then, as Gerrit Gong says, lay down our principles. You will not use force, you will not declare independence, and you will keep talking to each other.

Senator THOMAS. Thank you. The chairman of the full committee and the ranking member have been gracious enough, and so we will just go by arrival.

Senator COVERDELL.

Senator COVERDELL. Ambassador Lilley, would you expand—you said, expand on pulling back. Expand on what you are saying the United States should do there, and then you said the two parties

need to come together, and they need to effect a change. Elaborate on that.

Ambassador LILLEY. I think, Senator, the temptation for the United States, when we see a crisis brewing, is to become involved because we are the world's greatest problem-solvers. You have probably seen these various proposals that have been floated by certain people at Harvard and various other universities suggesting a way that we should solve this Chinese problem, and how the two Chinese sides should cooperate to work themselves through it. My own sense is, back away from that.

As Gerrit said, we have got our national interest involved, we protect those interests, and we ought to lay out what those interests are, but we are not going to get involved in twisting arms as we seem to be doing now in Taiwan, or, probably more dangerous, buying off goodwill in Beijing by taking it out of Taiwan's hide. We have to be very careful with, so that is what I am basically saying.

Senator COVERDELL. OK. Now, move on to affecting change. You said they have to step back.

Ambassador LILLEY. Well, right now they are rushing to the brink, and Beijing used this kind of unfortunate terminology to Taiwan—pull yourself back from the brink before you go over it. Then PRC followed up with the announcement about the neutron bomb, and made lots of other threatening noises.

This is not helpful at all. That kind of threat is not going to get them any substantial progress with Taiwan.

In terms of Taiwan, the formula that I have seen work, and I go back to the eighties, when I was involved in this process, and maybe this is even blowing our own horn, is that then we developed a strong relationship with Taiwan and Taiwan had a lot of confidence in us. We also opened up our relationships with China constructively. Then the two sides moved closer together. There was the great breakthroughs that came in 1987 which changed the whole situation across the Taiwan Strait, and the United States played, a positive role. Support Taiwan, engagement with Beijing, and let them work out their own arrangements, which they can do very effectively.

So we also have a role to play because we are involved. The Taiwan Relations Act, the recognition of China, provide a legal basis for our involvement. But there is a way our involvement can be handled skillfully and not clumsily. What has happened recently is we have reacted rather erratically.

Senator COVERDELL. You mentioned that we have a tendency to—and that is our problem-solving mode in operation, engage quickly. In fact, a number of the articles I have read over the last several days actually augment that. They are suggesting that, if anything, we have not been engaged enough, and we are allowing the situation to deteriorate because we are not properly engaged.

If the course that we pursue is not what you are recommending, sort of step back, adhere to central principles but basically push toward a Chinese resolution of it, what do you foresee happening if we do not take your advice and we in fact pursue the advice that is sort of contemporary thought, and that is, rush in?

Ambassador LILLEY. Well, I think you used one adverb that I would like to support, properly engaged. We are engaged all right. It is whether we are properly engaged or not.

My sense is that in the past, we have acted boldly and suddenly, as we did in March 1996 when we sent the aircraft carriers in and China fired the nuclear capable missiles and had live fire exercises. Both sides then backed off and tried to arrange a relationship with China, as you recall, which became a constructive strategic partnership. That was to be the new basis.

Now we have got to move decisively and quickly on World Trade Organization entry. This is crucial to China. It is important in their own internal struggles, and it is a good deal for the United States as well. Analysts tell us that it is. It is here where we want to focus our energies. This is not a sovereignty issue. This is all about money, economy, liberalization, opening markets, breaking down barriers to trade, and eliminating nontariff barriers. This is where we have to spend our energy, and as Gerrit said, we are starting to move in that direction.

If important people going over to China—David Aaron of Commerce is going over there, Roth, Lieberthal, hopefully are beginning to focus on dealing with the real issue of Asia, including China's economic stability and prosperity. These are the real issue now, and we have not been paying enough attention to it.

Senator COVERDELL. I thank the chairman.

Senator THOMAS. Senator Biden.

Senator BIDEN. I would yield to the Senator from New Jersey.

Senator THOMAS. Senator Torricelli.

Senator TORRICELLI. I now feel the enormous compulsion to say something extraordinary.

Senator BIDEN. You can say it about us.

Senator TORRICELLI. Only a week ago in Beijing I expressed how helpful I thought it was that Taiwan had not become an impediment on the World Trade Organization membership for the PRC, at the relatively benign transfer of power in Hong Kong, and expressed my own hopes that the missile deployments in the Strait of Taiwan might be reconsidered.

It appeared to me that things were moving along amicably, as best as could be expected, and then these statements, this apparent verbal revision of policy. It is still hard, and I know you have been approached on this question several times, for me to understand why, from the Taipei perspective, this was a moment for these statements, and what could be achieved.

After all, there is a great deal in this for Taiwan as well, for investment in the mainland is going very well, their continued travel, the cultural and social intercourse that is taking place. It is hard for me to imagine that on whatever ledger in Taipei was being constructed, taking this moment to make these statements made a lot of sense for anybody.

Could you revisit that again?

Dr. GONG. Senator, it seems that there are three arenas which are being operated in at the same time, and it is not surprising for us. Everyone has domestic politics, everyone has some, in the Taiwan-PRC case, cross-strait relationship to be concerned about, and

everyone has to be interested in what is happening in the international environment.

I myself believe that it is primarily the first two areas, domestic politics and the cross-strait relationship discussions, dialog that was coming up, that were the prime motivating factors for the timing of the statement.

If you look at it in terms of international factors, clearly it is not a very opportune time, as we have all said, and therefore one has to look to more a domestic focus. It seems to me that is also our opportunity. We have things said in our domestic campaigns that sometimes are reflective of concerns that we have in more local circumstances that we ask others to take with a certain grain of salt, because they reflect certain concerns that we have internally.

The Chinese have those concerns, the Japanese, everybody has those concerns, and one of the aspects of maturity in international politics is, you understand sometimes that things are done in a local context.

This has, of course, an added dimension. The added dimension is that those statements made by President Lee also potentially affect the relationship across the strait, and it was in that context, as well as the international context, that Beijing had to react, had to restate its positions, and then I think following President Clinton's phone call with President Jiang, understood there was a limit to how far, whatever the statements were, the reaction needed to be.

Our opportunity is whatever the statements, not to react to them at this point and to, as it were, put them into the appropriate context, and I think that is why your question is so important.

Senator TORRICELLI. But like a lot of problems, there are opportunities here for everybody. I have joined with Senator Helms in a commitment to ensure the defensive capabilities of Taiwan, in my belief that the people of Taiwan should be able to make a dispassionate judgment about their future and enter into discussions with the PRC without the threat of intimidation.

That is still my position, and I feel it very strongly, that if Taiwan is to have the benefit of a relationship with the United States that assures freedom from intimidation, it also requires an action with responsibility.

There is an opportunity now for President Lee to recommit himself to that level of responsibility. I also think there is an opportunity here for the PRC that they are attempting to demonstrate with Hong Kong and now Macao they can demonstrate by reacting to events in Taiwan with restraint, and thereby demonstrate, again, the level of political maturity and commitment to a future of integration on a peaceful basis.

Dr. GONG. I could not agree more. That was the essence of my prepared statement.

Ambassador LILLEY. I would just like to add one thing, Senator. There is a human factor in all of this. The German correspondent asked Lee Teng-hui a very provocative question, are you a renegade province of China, and you could just see Lee's blood boiling. There is a certain amount of impulsiveness in Lee, as we have detected in the past, and then there was also a desire, as we know very well in our own society, for his underlings to protect and ex-

plain the boss. They had to protect him on this issue but in fact initially they compounded the problem.

What I have read recently is more of a discernible but subtle move to recapture the original arrangements on one China of 1997 prior to Singapore. Having upped the ante by both sides and laid it on the table, they are now hopefully beginning to move, let us say, from a negative to a more positive cross-strait thinking, and I think that is moving in the right direction.

Senator TORRICELLI. Something good could still emerge from a very unfortunate set of circumstances.

Dr. GONG. That is my thinking. There is an opportunity. It comes from a clear statement of U.S. principles and interests.

Senator TORRICELLI. Thank you.

[The prepared statement of Senator Torricelli follows:]

PREPARED STATEMENT OF SENATOR ROBERT G. TORRICELLI

For years, Congress has strongly supported Taiwan's emergence onto the international arena. As Taiwan's democratic process and economy flourished, China grew hostile towards its new international standing. The 1996 Taiwan Strait crisis demonstrated that we must maintain a delicate balance in preserving regional security and stability. That is why President Lee's statements last week that China must deal with Taiwan on a state-to-state basis caused concern.

For several reasons, I believe that the statements were unnecessary and poorly timed. First, we all recognize that Taiwan is a thriving democracy of 22 million people. The citizens of Taiwan have the right to select their own leaders, practice their religion, and speak freely. As a leader in technology and international trade, Taiwan is our 7th largest trading partner, and the 19th largest economy in the world.

Second, the accidental bombing of the Chinese Embassy has strained U.S.-China relations, and WTO negotiations remain on hold pending the resolution of this issue. Hardliners in China may try to use these issues to undermine relations with the U.S. Taiwan would not be served by these developments. Third, China reportedly undertook military exercises in response to President Lee's statements. I firmly believe that China should refrain from military threats and exercises that force a response from the U.S. No one will benefit from a repeat of the 1996 crisis. At a minimum, it could harm Taiwan's economy. At worst, it could provoke military conflict.

Finally, we all recognize that the peaceful resolution of Taiwan's status is important to the people of Taiwan, the U.S., and China. The people of Taiwan have a right to determine their own future by peaceful means, but the only way to achieve this goal is through continued dialogue between China and Taiwan. High-level talks resumed last year after a 5-year hiatus, and the October talks in Taiwan between Wang Daohan and Koo Chenfu must take place. Statements by any party, which inject uncertainty into the U.S.-China-Taiwan relationship, have the potential to destabilize the region and setback diplomatic efforts on several fronts.

However poorly timed, the statements cannot detract from the U.S., and my, fundamental and strong support for the people of Taiwan. Like members of a family, allies will engage in disagreements, but no one should interpret differences of opinion as the weakening of longstanding friendships and alliances. In light of China's hostile response, it is critical that the U.S. reaffirm its commitment to Taiwan. We should encourage dialogue between Taiwan and China and continue to uphold our commitments under the Taiwan Relations Act. The Act recognizes the right of the Taiwanese people to determine their own future by peaceful means, and affirms our commitment to preserve and enhance the human rights of the Taiwanese people. It commits us to protect Taiwan's security through the sale of defensive means, and oppose its exclusion from membership in any international organization. This year, I joined several of my colleagues in co-sponsoring resolutions which recognized these commitments.

Consistent with my long-standing support for upholding Taiwan's security, I co-sponsored the Taiwan Security Enhancement Act with Senator Helms. This bill requires the President to take steps to enhance military cooperation between the U.S. and Taiwan, and address Taiwan's defense needs. I remain firmly committed to the principles in the bill. Since 1949, when the United States first officially recognized the Taiwanese Government, we have enjoyed a close bond that has survived for almost 50 years. Now is the time to reaffirm our relationship with Taiwan and concurrently pursue greater regional security.

Senator THOMAS. Mr. Chairman.

The CHAIRMAN. You know, I stopped by here to pay my respects to all three of you, and thank you for coming, and I still do that.

What puzzles me is that everybody backs away from the one central problem, and that is all of that nuclear information that China received from us. I think they have got their chest poked out and they are saying, "I dare you to hit me."

Now, you talk about a rogue nation. I cannot think of anything worse than what has been done to Tibet, and what has been done to China's own citizens, those who dare to object to what is going on in their country, and I think these people just are determined, perhaps to rule that entire part of the world.

Now, I do not think anybody has suggested that Taiwan has ever been or wanted to be a military threat to mainland China. If that has happened, it certainly escaped me. What China does not like is that Taiwan has been such a success in business and free enterprise and all the rest of it, and they are mad about that.

Now, if they had not gotten that information about our nuclear capabilities, the secrets, if you want to call them that, I doubt that there would be any real ruckus going on today.

But the "one-China" aspect, I am glad that kind of attitude did not exist when the United States pulled away from Great Britain. I could hear the House of Commons talk about "one England," or whatever.

I think Taiwan deserves to be free, and it is going to take some belt-tightening, and maybe it will frighten some people, but I am one who thinks we ought to stand loyally behind Taiwan, who has done harm to nobody that I know about, and Mr. Chairman, thank you for letting me come, and I ask that a statement that I had prepared be included in the record.

Senator THOMAS. Without objection.

[The prepared statement of Senator Helms follows:]

PREPARED STATEMENT OF SENATOR JESSE HELMS

Mr. Chairman, President Lee and Taiwan's government have been exceedingly helpful to those of us who support the people on Taiwan by clearing away some of the uncertainty that has surrounded Taiwan's status for years.

By having the courage to state the obvious—that the Republic of China on Taiwan is a de facto sovereign state, the distinguished President Lee has created an opportunity to break free from the anachronistic, Beijing-inspired "one-China" policy which has imprisoned U.S. policy toward China and Taiwan for years.

The "one-China" notion that crept into existence in 1972 has always been a puzzling fiction. But even if one accepted its Cold War strategic rationale, the end of the Cold War surely should have diminished the notion that it was somehow essential to bow and scrape to Red China by parroting Beijing's concocted diplomatic construction.

Developments in Taiwan demonstrate that the "one-China" gambit is even more than an insensible departure from reality. In 1991, the Republic of China on Taiwan abandoned its claims to sovereignty over all of China, providing unmistakable implications that there are two Chinese governmental entities.

Moreover, during Taiwan's years of stunning democratic development, a model for the future of Chinese civilization has made crystal clear the fact that the 21 million people of Taiwan do not consider themselves part of the People's Republic of China.

Despite all of this, the Clinton Administration did everything it could to drive the United States even deeper into the "one-China" hole—a good example is the Clinton Administration's caving into Beijing's "3 Noes" demand last summer.

Now, in response to President Lee's remarks and Beijing's threatening bluster, the Clinton Administration has, once again, tilted nervously toward Beijing—first by trotting out the banal "one-China" language, then repeating Red China's "3-Noes"

dictum—twice! Not until this past Thursday, after days of prodding, did the administration finally bring itself back to a degree of common sense by restating U.S. defense commitments to Taiwan under the Taiwan Relations Act.

At a time when the United States should be seizing every opportunity to break free of Beijing's definition of "one-China" (not to mention making pointed reminders to Beijing regarding our long-standing defense obligations to Taiwan) the Clinton Administration is paralyzed by its own anachronistic policy, better known as appeasement.

Mr. Chairman, I am among the growing number of Americans who are weary of watching our good friends on Taiwan left twisting in the wind by the Clinton strategists for surrender. Now is the time to support President Lee and the people of Taiwan for their moral courage in standing up for themselves in the face of Red China's bullying.

Senator THOMAS. Thank you very much, sir. We appreciate your coming.

Ambassador Lilley, we sort of narrow in on the relationship issue between across the strait, but we have lots of issues with the PRC, don't we? We are talking about WTO, we are talking about North Korea, we are talking about trade, we are talking about lots of things, so I guess I am just concerned that we focus entirely on the Taiwan thing. It sort of detracts us from the other things we are seeking to do.

How do you react to that?

Ambassador LILLEY. Well, Senator, I think you are absolutely right, there are deadly serious issues in Asia, and you mentioned probably most deadly is North Korea, an awful country up there. What it is doing to us is frightening. We have got to deal with that, and we have got to deal with it now, and we have got to get the Chinese on board.

The engagement with China, on these intricate issues, for instance World Trade Organization entry, is crucial. We have got a time limit on WTO entry. It has got to be done quickly, and it has got to be voted on by the Congress. We have got to get it all through before the Seattle meeting in November. There are a couple of meetings, one APEC, one ASEAN taking place, which will give us an opportunity to push WTO entry, and that has to be a major thrust of what we do.

The difficulty we have with China, is that on the one side we have some basic principles that are involved in Taiwan, and these are essentially, we will not see a democracy overthrown by force when we have the ability to do something about it

The second is that we do believe in the free market system, and we believe in the prosperity and the stability of Asia. These are our principles. On their side, they have made big noises about the dominance of sovereignty and unity. That to them trumps everything.

These two principles have come into play now both in Kosovo and Taiwan. They do not have to be confrontational. We can have our principles, they can have theirs, and there is a huge middle ground between the two where you can deal with one another, and that is where we should be working right now.

But if you do read this article which I have put into the record, you will see that we have a big problem with them, and there is no way we can ignore it. It is a serious problem involving basic conceptual view of rules of the road of the world. So we cannot downgrade this propaganda.

We did try to do this in 1997 and 1998, in sort of hyped summitry, which tried to take these differences and push them aside, and bring up instead the human rights business, but unfortunately nothing changed in China. In fact, the situation probably got worse, but this became a centerpiece of our accomplishments in China while the real issues were sitting there bubbling up underneath us.

A focus on those is essential. We really cannot be drawn into this endless argument over names and who changed them and who is responsible, and how can we influence the outcome?

Things may have started to turn around. As we know, we are sending delegates to China to talk about other subjects. We see the stock market going up in Taipei and we see the beginnings of a pulling out of this quagmire of words and threats. The key issue to watch is whether Wang Daohan of the PRC goes through with his meeting in Taipei in September or October. We have been pushing hard for it. It is symbolic, but it is important, too.

Senator THOMAS. Senator Coverdell.

Senator COVERDELL. I want to keep going back. Elaborate on—you tied Kosovo to attitudes in Taiwan, Ambassador Lilley. Expand on that. I mean, I understand the fundamental concepts you were outlining, but I am a little taken aback that that could have been enlarged to the degree you are talking about, or at least that is the inference in Taiwan.

Ambassador LILLEY. Well, Senator, I am putting in the record a long statement the Chinese made on 22 June, which explained their position on Kosovo and their attitude toward us, which helps to understand their position they are taking on Taiwan.

I mentioned earlier that this is a central issue to them, and they believe that the United States is trying to change the face of the world, including them, by introducing military force into a sovereign nation in favor of an ethnic minority. This is to them the issue. The emotional part following with the accidental bombing of their embassy.

They then see Lee Teng-hui in their view taking advantage of this by pushing the envelope on state-to-state relations. It is a combination of things which that they see as spinning out of their control.

It is what happened in March 1996, when they tried these live fire exercises. They saw the situation slipping away from them. President Lee Teng-hui had had a successful trip to the United States, Japan wanted him next, France wanted him after that, there was the movement toward trying to get Taiwan into the United Nations, trying to get into the World Bank.

They sensed that the situation was building up to their disadvantage, and they had to act dramatically to halt what they thought was a momentum that was against their interests.

Dr. GONG. May I give maybe a kind of folk illustration, I think, of the fundamental perceptual difference that might exist that underlies some of these concerns?

If one starts with the bombing of the PRC Embassy in Belgrade and looks at it from the United States perspective, we have all read carefully the statements that indicate how through a series of very unfortunate mistakes we ended up bombing a PRC Embassy.

If one looks at that from a different perspective and assumes it was done intentionally for any number of different reasons, then you have, as it were, the very famous picture that we all know of the old woman and the younger woman. Recall that picture. You look at the picture, and depending upon which way you look at it, it can be an older woman or a younger woman.

There was something that caught my attention, and maybe you saw the same thing, that illustrates this on the very practical level. We watched, as many people did, the women's soccer final a couple of weeks ago on Saturday, and here was the largest women's sporting event ever to be assembled. The President of the United States attended. We had 90,000 people, plus a television viewing audience here, 100 million potential viewers in China. There were two teams that were fairly evenly matched, on 22 different occasions. The United States had won 11 times, had lost 5 times. This was going to be a great match.

Do you recall how the visual image began for that match? It began with a televised formation of F-18 fighter jets overflying the Rose Bowl in Pasadena, and for most Americans, that would be a very innocent, almost natural sign of our exuberant national pride.

But imagine if you were a Chinese person watching this in China, and you had a series of concerns about the bombing. What if you had told your team this was a chance to kind of make up for things.

And then the Americans, seemingly in your face, fly a set of fighter planes over the stadium. I would dare say almost no one here would have thought of this as a threatening and provocative gesture. In fact, I would say it was not. It was a very natural thing. The President was there. This is the way we show respect to our leaders. And yet that same visual image could communicate something very, very different.

I am not say that we walk around on eggshells, always apologizing for the way we do things, but I am saying that we do need to be very careful in the way that we phrase things and think of things, and that we also on occasion think somebody else may have a very different lens through which they are viewing the picture.

It may be the wrong lens, but it is useful for us to have in perspective both of those things. I think that is the underlying question we are addressing. It is specific issues, but more importantly, the fundamental structures by which we interpret them, and that is where we need to have some forward progress in Sino-U.S. and also in Sino-U.S.-Taiwan relations.

Senator THOMAS. Senator Torricelli.

Senator TORRICELLI. I will confess, the issue of the planes did not occur to me. Did you actually see that in the Chinese press?

Dr. GONG. To tell you the truth, I do not know if the feed was the same, but I was struck, as I watched the game strictly from a sports perspective on that.

I had, as you may have known, felt that it was important prior to that match that there be a visible symbol gesture of goodwill and cooperation, and my institution had volunteered to send a set of red rose bouquets so that Team USA could give them visibly to Team China, in hopes that Team China would also reciprocate, so that regardless of what happened on the playing field, there was

a visual image that sports could be sports and politics be something else, and so while I do not know, Senator, specifically whether that feed was taken—

Senator TORRICELLI. Well, given the sensitivities on the bombing of the embassy in Belgrade, in retrospect it was not a good thing to do.

Dr. GONG. We did it innocently.

Senator TORRICELLI. I know it was innocent, but it was regrettable if it was so misinterpreted.

With the return of Macao, would it be any of your expectations that Beijing may now intend to set some timetable or deadline formally to deal with the issue of Taiwan? In my visits to Beijing, the return of Macao seemed to loom larger in the mind than I had imagined, and all conversations were centered on almost building momentum of Hong Kong, to Macao, to Taiwan. Does a framework exist, after this Macao deadline passes, that should concern us?

Mr. YATES. Senator, if I may, there has been kind of a natural progression in the attitudes and attention of the people moving in the direction you suggest.

I, in my own view though, as I listen to what is said from Beijing about Taiwan, I do not sense a desire to place a timetable on reunification. In my view, regrettably, I think there has been too little substantive thought on the process of reunification. I think their top priority is trying to kill the independence movement, as they perceive it, and then once they have thoroughly destroyed the independence movement in their mind, then they will begin to change to the mode of reunification.

So if there is a timetable in place on reunification, I do not believe that they are even thinking about that right now, though I do agree with your initial point that attention, once Macao reunifies, something I do not think is going to be terribly controversial, then you do have Taiwan left, what they consider to be the last part of their country to be unified.

But if I could, to also return for a moment to your previous question about, why now, and what were some of the motivations on Taipei's part for making a statement on this right now, I would say that there have been a few international events that had been indicating to them that keeping the status quo as it had been evolving was going to be terribly to their disadvantage.

Ambassador Lilley mentioned the human part of it. In my earlier statement I tried to make that same point, that while China has a sense of a century of humiliation and wanting to stand up and command some kind of respect and dignity, many people in Taiwan want to as well, and I do not think any government in Taiwan is going to last very long if they do not respect the desire of their people to try to get this kind of dignity and recognition.

The most open example of that is membership in international organizations. Beijing and now the United States have taken the position that we will not support their membership in State-based organizations, so that rules out the United Nations.

I think that there had kind of been a subtle change about the World Trade Organization, something that is not State-based. I think the solution and the problem here are linked at least in this way. In order to build confidence in Taiwan about Beijing's good-

will, it could go a long way by endorsing Taiwan's membership in the World Trade Organization, not just saying it does not oppose it, not just talking about order. This is not a State-based organization. It should meet all the criteria. If they are serious about reunification, if they are serious about communicating goodwill to the people of Taiwan, there is an opportunity.

What I think is the fundamental origin of this frustration is the feeling of being squeezed out unfairly, and that by allowing Beijing's definition of one China to be the rule internationally, that they would ultimately be squeezed out completely.

They felt this way on the President's statement in Shanghai, on the three no's, they felt that there was going to be outside interference on the Papua-New Guinea recognition, when Australia spoke very strongly trying to undermine the switch in diplomatic recognition, there was just a sense that they were losing control of their destiny in these international organizations, and I think any government has to try to push for this dignity.

Senator TORRICELLI. But in fact, if there is ever reason to believe on the World Trade Organization that for Taiwan things were going to work out quite well, if there is a complication added, it was added by these statements.

Mr. YATES. The complication I saw in the World Trade Organization was after the embassy bombing Beijing had gone a long way to undermining the delinkage of politics from trade that had taken place in this country for about 10 years, and that by linking so strongly the WTO negotiations with the political explanation of the embassy bombing, it was delaying that process.

And if there is this assumption that seems to be at play that Beijing must go first, the longer we delay resolution of Beijing's status, the longer we delay Taiwan, and since the timetable is so short on even Beijing's, implicitly this is pushing Taiwan into the next round of negotiations.

Ambassador LILLEY. May I add something to that, Senator? I think on the timetable business this is always used by the Chinese as a leverage. They have changed course on this issue.

Chairman Mao originally said 100 years in the 1970's. It did not make that much difference. When a leading American politician asked Jiang Zemin if that policy had changed, apparently Jiang Zemin said no, there is now only 87 years.

But they tend, when the military heavies get involved in the national security and foreign policy area, to bring up this subject. They are playing to the American audience to try to get us excited enough to make concessions to them on this or they might turn to military means.

This is what they are working on. It is important for the United States in this game to discredit those elements that adopt these extreme positions. We did this in March 1996, when we gave them a black eye on their war games in the Taiwan Strait. We sent the carriers in, and they disengaged. They claimed a victory, but everybody knew that they had lost.

By making economics the priority despite this hard line group in China, you can establish ascendancy over them. The people working the economic problem are not as enthusiastic as the hard line dinosaurs are on Taiwan, they see that it is more important than

establishing timetables for unification is getting along with Taiwan economically.

Investment in Taiwan has fallen off in the first 5 months of this year. China wants to get it back. They want to start these three contacts going. There are a lot of issues the Chinese want to accomplish within the framework that exists now.

But there are always going to be threats on timetable, and they will unfortunately be repeated by Chinese apologists in the United States.

Dr. GONG. May I just underscore, Senator, the opportunity which is inherent in your question. In part, what you are asking, I believe, is how do we establish a structure—that was your word—so that we maximize the chance that people will indeed focus on peace, prosperity, and that which they have in common.

It would be unfortunate if in overreacting to a concern about potential statements on state-to-state relations that lead toward independence, the pendulum swung too much in the other direction and said, in order to avoid that it is a problem, we have to establish some timetable for unification, particularly after December 20 of this year, when Macao reverts to PRC sovereignty.

The opportunity, therefore, is to say that neither timetable, if it is imposed, nor unilateral statements on independence are acceptable, and by establishing that as part of the same process, we in essence provide a framework which I think keeps us focused on the principles and interests which are key to us.

Senator TORRICELLI. Thank you.

Senator THOMAS. I just have one other observation. Do you think President Lee would have made those statements if he did not believe that the U.S. would be right there behind him, as they were in 1996?

In other words, do we sometimes provide for a little extra antagonism on the part of the Taiwanese because we have committed to their defense?

Mr. YATES. Perhaps President Lee feels an increase in courage in making those statements, but I think that this is what Lee Teng-hui believes, and I think that someone of his life experience understands the stakes in this.

No president, past or future, is going to have the mandate President Lee has. He is the first native Taiwan-born President, the first democratically elected President. He has got his place in history. This is to put his mark on mainland affairs for his successors, and I think he understands that lives are at stake, fortunes are at stake, and I am one who believes he probably would have said something like this even if the United States were not around.

Dr. GONG. I had the privilege and pleasure of being invited to President Lee's inauguration, and had the opportunity to be in Taipei during that rather momentous occasion, and I think there is no doubt that this is a man of principle, and it is also a man who understands power, and it is that combination which I think has resulted in his putting together domestic issues, cross-strait issues, and the international environment issues, in a way that reflects his understanding of where the U.S. is, but also the limits to that, and as we said, there is a core principle which is involved here.

Ambassador LILLEY. And there is another element, Mr. Chairman, and that is an emotional element, and Beijing has an unfortunate practice of putting out the most venomous propaganda. The hard liners have run that propaganda department. They have poured this venom all over Lee Teng-hui, just as they did with the Dalai Lama and Chris Patton, and on some people around this room.

They really denigrate Lee, and he is a proud man. They have called him everything from a traitor, to a splittist, to a running dog. There are welts all over him. Words, as the Chinese say, are part of reality and when they are used in extremis there can be a cost to pay.

I remember once, Lee said to me back in 1984, when we took a long trip around the island together, just ourselves and our wives, and Lee said, even before the opening to China in 1987, I have no problems in bringing the Chinese over here in trade, culture, sports. This was well before it was policy and in fact at that time, it was almost subversive.

But he said, there is one thing that I, for my people, I am concerned about. I do not want them controlling Taiwan because my people would never stand for it.

He said, given their track record, it could not work. We went through the agonies of the the February 1947 incident, thousands of our people killed. Taiwan watched the Great Leap Forward, and millions died in China. Then Taiwan watched the madness of the Cultural Revolution and later Taiwan saw Tiananmen.

There is persuasive factor that China can use and it is very Chinese. It goes back to the core of their idea of humanity namely, that you attract people to you not by threatening but by offering them inducements to join you. China has not crossed that barrier yet, and I hope that perhaps that this incident, watching a democratic election take place in Taiwan, discussing the issue of unification, would be helpful for China to try to understand the process.

Senator THOMAS. I hope so, too. Thank you.

Senator Coverdell.

Senator COVERDELL. I am finished.

Senator THOMAS. Well, gentlemen, thank you. Obviously we are faced with a very important issue. We are committed, and I am glad we are, to this being a peaceful settlement, and we are committed to Taiwan to the extent that that will happen. I think we are committed to improve our relationship with the People's Republic. Obviously that is good for all of us.

So it will be a difficult task, but we appreciate your time, appreciate your input, and we thank you very much for being here.

[Whereupon, at 11:25 a.m., the subcommittee adjourned.]