

Dixie Mission II: The Legality of a Proposed U.S. Military Observer Group to Taiwan

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I. INTRODUCTION

The relationship between the United States and the Republic of China (“Taiwan” or “ROC”) has been a complicated issue since the U.S. terminated formal governmental relations with Taiwan and established formal relations with the People’s Republic of China (“PRC”) in 1979.¹ Currently, the U.S. maintains informal relations with Taiwan through the American Institute in Taiwan (“AIT”).² Although there are arguments on whether Taiwan should be recognized as an independent country or merged with the People’s Republic of China, this Article focuses on the feasibility and legality of a hypothetical U.S. military observer group (“Dixie Mission II”) deployed to Taiwan.³ The objectives of the Dixie Mission II would be to liaise with Taiwan’s military to assess whether Taiwan’s military capabilities are purely self-defensive and to coordinate future responses to humanitarian concerns, such as natural disasters and warships and military aircraft in distress.⁴

This Article analyzes historical and legal arguments that would justify the deployment of a U.S. Military Observer Group to Taiwan (“Dixie Mission II”). The Article explores possible operations of the Dixie Mission II, which will focus on humanitarian relief and observation of Taiwan’s military. It will be argued that a U.S. military presence permanently maintained in Taiwan will be beneficial for U.S.-Taiwan relations in the long run.⁵

The Article discusses potential legal counterarguments that the PRC and others might raise, besides the typical “One-China Policy” argument, through an interpretation of U.S. laws and regulations that pertain to current

¹ See SUSAN V. LAWRENCE & WAYNE M. MORRISON, CONG. RSCH. SERV., R44996, TAIWAN: ISSUES FOR CONGRESS 1–2 (2017).

² *Id.* at 15.

³ See, e.g., Christopher J. Carolan, Note, *The “Republic of Taiwan”: A Legal-Historical Justification for a Taiwanese Declaration of Independence*, 75 N.Y.U. L. REV. 429 (2000); Kristine Yeh Koopman, Note, *Taiwan’s Path to Independence: Resolving the “One China” Dispute*, 18 CARDOZO J. CONFLICT RESOL. 221 (2016); Jianming Shen, Critical Essay, *Sovereignty, Statehood, Self-determination, and the Issue of Taiwan*, 15 AM. U. INT’L L. REV. 1101 (2000).

⁴ See United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397 [hereinafter UNCLOS]; International Civil Aviation Organization [ICAO], Convention on International Civil Aviation, ICAO Doc. 7300/9 (9th ed. 2006), https://www.icao.int/publications/Documents/7300_cons.pdf. [hereinafter Chicago Convention].

⁵ See Press Release, President Joseph R. Biden, Jr., Interim National Security Strategic Guidance 21 (Mar. 3, 2021) (on file with author) [hereinafter Press Release, Interim National Security Strategic Guidance].

U.S.-Taiwan relations.⁶ Notwithstanding Taiwan's political status, the PRC could assert counterarguments anchored in international laws and regulations by referring to the letter of the United Nations Convention on the Law of the Sea ("UNCLOS")⁷ and International Convention on Civil Aviation ("Chicago Convention").⁸ It could also assert practical humanitarian arguments.⁹

Part II introduces the history of U.S. and Taiwan defense relations after the Chinese Civil War in 1949, then reviews the defense relations after the U.S. terminated its formal relations with Taiwan and withdrew its military presence. Part III delves into historical and legal arguments under U.S. law that would justify the Dixie Mission II, which includes hypothetical operations. International laws and regulations regarding humanitarian relief and assistance to foreign ships and aircraft in distress will serve as persuasive authority. This will also be supplemented by historical examples. Part IV analyzes the potential historical and legal counterarguments the PRC could use to protest the legality of the Dixie Mission II. Part V outlines other concerns, including the widening technological gap between Taiwan and the PRC's militaries¹⁰ and how the PRC will retaliate should the Dixie Mission II be created. These concerns are based on the PRC's history and most recent actions towards Taiwan and other countries that have displeased the PRC.

Finally, the Article concludes by acknowledging that while an observer group will not alter the political and military balance between Taiwan and the PRC, the U.S. should still deploy an observer group to strengthen U.S.-Taiwan ties.

II. BACKGROUND OF U.S.-TAIWAN RELATIONS

A. U.S.-Taiwan Defense Relations Post-World War II to 1979

The U.S. maintained formal diplomatic relations with the Kuomintang ("KMT"), also known as the Chinese Nationalists, even after

⁶ The "One-China Policy" is the diplomatic acknowledgement of the PRC's position that there is only one Chinese government. *What is the 'One China' Policy?*, BRITISH BROAD. CORP. (Feb. 10, 2017), <https://www.bbc.com/news/world-asia-china-38285354>. The "One-China Policy" is based on the Three Joint Communiques, which will be discussed later.

⁷ UNCLOS, *supra* note 4.

⁸ Chicago Convention, *supra* note 4.

⁹ See DEP'T OF DEF., *infra* note 280, at 32.

¹⁰ See Chien Chung, *A Review of the ROC's Military Reform: A Case Study of the Taiwanese Navy*, in DEFENDING TAIWAN: THE FUTURE VISION OF TAIWAN'S DEFENCE POLICY AND MILITARY STRATEGY 114, 123-25 (Martin Edmonds & Michael M. Tsai eds., 2003).

the KMT retreated to Taiwan at the end of the Chinese Civil War in 1949.¹¹ When the Korean War erupted on June 25, 1950, Taiwan was the first nation to offer ground troops but they were refused for political reasons.¹² Nonetheless, the U.S. Seventh Fleet¹³ patrolled the Taiwan Strait as a neutralization move to deter any PRC attempts to invade Taiwan.¹⁴ From 1951 to 1979, the U.S. Taiwan Defense Command (“USTDC”), as part of then-U.S. Pacific Command (“USPACOM”),¹⁵ was stationed in Taiwan to assist Taiwan’s defense.¹⁶ In 1954, the U.S. and Taiwan signed the Sino-U.S. Mutual Defense Treaty to formally commit the U.S. to defend Taiwan.¹⁷

As part of the USTDC, the U.S. created the Military Assistance Advisory Group in Taiwan (“MAAG/China-Taiwan”), which trained and rearmed the Chinese Nationalists.¹⁸ In addition, the U.S. Navy continued to patrol the Taiwan Strait.¹⁹ At its peak, the USTDC had 30,000 U.S. troops

¹¹ LAWRENCE & MORRISON, *supra* note 1, at 1.

¹² STANLEY SANDLER, *THE KOREAN WAR: NO VICTORS, NO VANQUISHED* 155 (1999). The U.S. feared the PRC would enter the conflict (months before the PRC’s counteroffensive) and thought that the Kuomintang had not done well against the Communists because otherwise they would not have found themselves barricaded on Taiwan in the first place. *Id.*

¹³ The U.S. Seventh Fleet is the largest forward deployed unit and is part of the U.S. Indo-Pacific Command (“USINDOPACOM”). *History*, COMMANDER, U.S. 7TH FLEET, <https://www.c7f.navy.mil/Subs-and-Squadrons/> (last visited Mar. 31, 2019). USINDOPACOM is one of six geographic combatant commands established by the U.S. Department of Defense (“DoD”). U.S. INDO-PACIFIC COMMAND, USPACOM AREA OF RESPONSIBILITY (2021), <https://www.pacom.mil/About-USINDOPACOM/USPACOM-Area-of-Responsibility/>. As a geographic combatant command, USINDOPACOM is in charge of using and integrating U.S. Army, Navy, Air Force, and Marine Corps forces within the Asia-Pacific Region. *Id.*

¹⁴ SANDLER, *supra* note 12, at 52; JONATHAN D. SPENCE, *THE SEARCH FOR MODERN CHINA* 473 (3d ed. 2013).

¹⁵ The U.S. Pacific Command (“USPACOM”) was renamed the U.S. Indo-Pacific Command (“USINDOPACOM”) in 2018. *U.S. Indo-Pacific Command Hold Change of Command Ceremony*, U.S. PAC. COMMAND (May 30, 2018), <https://www.pacom.mil/Media/News/News-Article-View/Article/1535776/us-indo-pacific-command-holds-change-of-command-ceremony/>.

¹⁶ Chung, *supra* note 10, at 115–19.

¹⁷ Under Articles V and VII, both Taiwan and the U.S. were obligated to respond to any outside attack against their respective territories. Mutual Defense Treaty Between the United States and the Republic of China, arts. V, VII, Taiwan-U.S., Dec. 2, 1954, 6 U.S.T. 433.

¹⁸ Chung, *supra* note 10, at 115–17.

¹⁹ *Id.*

stationed in Taiwan to supplement Taiwan's defense.²⁰ The U.S. also deployed Matador surface-to-surface tactical missiles²¹ in Taiwan, which could easily deliver nuclear warheads hundreds of miles into PRC territory.²² Despite substantial military assistance, the U.S. discouraged the KMT from initiating any military action against the PRC, thus Chiang-Kai Shek's dream of retaking the mainland by force was shattered.²³ As Taiwan's sole arms supplier, the U.S. restricted the number and type of warships in the ROC Navy ("ROCN").²⁴ The bulk of the equipment given to Taiwan's military was either surplus from World War II or second-hand.²⁵ As relations between the U.S. and the PRC began to thaw in the 1970s, the U.S. slowly began to withdraw its military presence from Taiwan.²⁶

When the U.S. terminated formal diplomatic relations with Taiwan in 1979, it also unilaterally invalidated the Sino-U.S. Mutual Defense Treaty.²⁷ As a result, the MAAG/China-Taiwan was disbanded and the U.S. withdrew all its remaining troops from Taiwan on May 1, 1979.²⁸ Before the USTDC and the U.S. MAAG/China-Taiwan disbanded, the U.S. transferred additional equipment and ships to Taiwan's military so that Taiwan could withstand a PRC invasion for at least a month without effective outside support.²⁹ Regardless of the additional equipment, Taiwan was no longer under the protection of the U.S. military.³⁰

²⁰ Phillip Orchard, *Will U.S. Troops Return to Taiwan?*, REAL CLEAR WORLD (Oct. 26, 2020), https://www.realclearworld.com/articles/2020/10/26/will_us_troops_return_to_taiwan_582062.html.

²¹ The Martin TM-61A Matador Missile was based on the design of the German V-1 "buzz bomb" of World War II. The Matador could carry either a conventional or nuclear warhead. *Martin TM-61A Matador*, NAT'L MUSEUM U.S. AIR FORCE (May 29, 2015), <https://www.nationalmuseum.af.mil/Visit/Museum-Exhibits/Fact-Sheets/Display/Article/196743/martin-tm-61a-matador/>.

²² SPENCE, *supra* note 14, at 515–17.

²³ Chung, *supra* note 10, at 116.

²⁴ *Id.*

²⁵ *See id.* at 114–19.

²⁶ *Id.* at 119.

²⁷ *Id.*

²⁸ *Id.* It was a severe blow to the morale of the Taiwanese citizens when the U.S. Navy ceased its patrols. *Id.*

²⁹ *Id.* The strategy was to buy time so Congress could establish that Taiwan would need outside military assistance. *Id.*

³⁰ *Id.* at 119–20.

B. United States – Taiwan Relations Since 1979

Despite the withdrawal of U.S. forces and the termination of the Sino-American Mutual Defense Treaty, Congress quickly passed the Taiwan Relations Act (“TRA”) in 1979 to maintain informal relations with Taiwan.³¹ Under the TRA, Congress created the American Institute in Taiwan (“AIT”), which remains active as a non-profit organization funded by the U.S. government, to serve as the *de facto*³² representative to Taiwan.³³ The AIT has a Washington headquarters, a Taipei main office, and branch offices in Kaohsiung and Taichung.³⁴ Because AIT Taipei is not an embassy, U.S. government personnel have titles different from what they would have in embassies.³⁵ The head of AIT Taipei, the most senior U.S. representative in Taiwan, for example, has the title of “Director,” instead of “Ambassador.”³⁶ The senior military representative at AIT Taipei is “Chief, Liaison Affairs Section,” rather than “Defense Attaché.”³⁷

The AIT officially encourages commercial, cultural, and other relations between the U.S. and Taiwan.³⁸ It also serves as a *de facto* embassy and offers American citizens in Taiwan consular services.³⁹ Until Congress passed legislation in 2003, only retired or temporary inactive U.S. government personnel staffed the AIT to maintain unofficial diplomatic relations.⁴⁰ Under Section 326 of the Foreign Relations Authorization Act, the AIT may employ current government employees, which includes active-

³¹ See LAWRENCE & MORRISON, *supra* note 1, at 9.

³² Latin “point in fact;” actual; existing in fact; having effect even though not formally or legally recognized. *De facto*, BLACK’S LAW DICTIONARY (2d Pocket ed. 2001).

³³ Taiwan Relations Act (TRA), Pub. L. No. 96-8, 93 Stat. 14, 17 (1979) (codified as amended in 22 U.S.C. §§ 3301–3316 (2011)).

³⁴ LAWRENCE & MORRISON, *supra* note 1, at 15. The AIT’s Washington headquarters is overseen by a six-person board of trustees; AIT Taipei has a staff of over 120 Americans, nearly 300 local staff, and a few dozen family members and contractors; and AIT Kaohsiung has a staff of nearly forty, including over a dozen Americans. *Id.*

³⁵ *Id.* at 16.

³⁶ *Id.*

³⁷ *Id.*

³⁸ TRA, Pub. L. No. 96-8, 93 Stat. 14 (1979) (codified as amended in 22 U.S.C. § 3301 (2011)).

³⁹ LAWRENCE & MORRISON, *supra* note 1, at 15–16.

⁴⁰ *Id.* at 16. Prior to 2003, the U.S. government required that AIT employees could not be U.S. government employees, so Foreign Service officers left government service temporarily to serve at AIT, while defense-related positions were filled by contractors. *Id.*

duty military personnel.⁴¹ In 2005, the *de facto* defense attaché⁴² was replaced by an active-duty military officer similar to military attachés assigned to Hong Kong.⁴³

Although the U.S. continued to sell defense articles to Taiwan, the bulk of these defense articles were spare parts for Taiwan's aging equipment.⁴⁴ In 1982, the Reagan Administration informed Congress of the Six Assurances: semiformal guidelines used to conduct relations between the U.S. and Taiwan.⁴⁵ Under the TRA and Six Assurances, the U.S. has continued to sell arms to Taiwan to maintain security and stability in the region.⁴⁶

With the withdrawal of U.S. military advisors and its own booming economy due to investments in consumer electronics and semiconductor industries in the 1980s,⁴⁷ Taiwan was no longer constrained to rely solely on the U.S. to supply arms.⁴⁸ Taiwan initially sought, and acquired, modern arms from European suppliers.⁴⁹ Despite strong protests from the PRC and the U.S. government,⁵⁰ the ROCN was able to acquire several European-manufactured ships.⁵¹ Additionally, Taiwan developed its domestic shipbuilding industry to overhaul ex-U.S. landing ships and build new amphibious landing ships to replace the older ships in the ROCN.⁵² To reduce the growing European influence on Taiwan's military, the U.S. government endeavored to discourage its European allies from selling more

⁴¹ *Id.*

⁴² The Defense Attaché is the primary military advisor to the Ambassador and Country Team on military issues and developments within the host country. See DEP'T OF STATE, DEF. ATTACHÉ OFF. (DAO) (2021), <https://de.usembassy.gov/embassy-consulates/government-agencies/the-defense-attache-office-dao/>.

⁴³ SHIRLEY A. KAN, CONG. RSCH. SERV., RL30957, TAIWAN: MAJOR ARMS SALES SINCE 1990, at 5 (2014).

⁴⁴ Chung, *supra* note 10, at 120–21.

⁴⁵ LAWRENCE & MORRISON, *supra* note 1, at 10.

⁴⁶ 22 U.S.C. § 3301.

⁴⁷ Chen Been-Ion, *Inside the Taiwan Miracle*, TAIWAN TODAY (June 1, 2011), <https://taiwantoday.tw/news.php?post=13965&unit=8,8,29,32,32,45>.

⁴⁸ Chung, *supra* note 10, at 121.

⁴⁹ *Id.*

⁵⁰ The U.S. was concerned that Taiwan may acquire arms that could threaten the stability of the region and that being Taiwan's sole arms supplier would maintain the *status quo*. See *Ide*, *infra* note 458.

⁵¹ Chung, *supra* note 10, at 121. The ROCN acquired two *Zwaardvis*-Class diesel submarines from the Netherlands, six *Lafayette*-Class frigates from France, four *MWV-50*-Class mine hunters (minesweepers) from Germany, and one *Alliance*-Class survey ship from Italy. *Id.*

⁵² *Id.*

warships to Taiwan and encouraged Taiwan to approach the U.S. for whatever naval equipment Taiwan needed.⁵³

In 1982, Taiwan started to develop an indigenous fighter aircraft to replace the Taiwan Air Force's ("ROCAF") aging F-5 Tiger⁵⁴ and F-104 Starfighter⁵⁵ planes after the U.S. placed an embargo on the sale of the F-20 Tigershark⁵⁶ and other comparable aircraft to Taiwan.⁵⁷ However, the same restrictions were not placed on technical assistance.⁵⁸ As a result, U.S. aerospace companies provided technical assistance for Taiwan's development of the AIDC-FCK-1 Ching-Kuo fighter⁵⁹ for the ROCAF.⁶⁰ In the 1990s, the U.S. and Taiwan cooperated to build *Cheng Kung*-Class frigates⁶¹ based on the design of the venerable U.S. *Oliver Hazard Perry*-Class frigates.⁶² Although the *Oliver Hazard Perry*-Class frigates are no longer in active service in the U.S. Navy, several decommissioned frigates may be sold as Excess Defense Articles ("EDA")⁶³ to other navies such as

⁵³ *Id.* at 122.

⁵⁴ The Northrop F-5 Tiger is a lightweight fighter with both air-to-air and air-to-ground capabilities and has been in the ROCAF service since 1973. THE ENCYCLOPEDIA OF WORLD MILITARY AIRCRAFT, 336–39 (David Donald & Jon Lake eds., 2000).

⁵⁵ The Lockheed F-104 Starfighter was developed in the early 1950s and was eventually retired from the ROCAF in the late 1990s. *Id.* at 244–45.

⁵⁶ The Northrop F-20 Tigershark was a proposed evolution of the F-5 Tiger with upgraded capabilities. *Id.* at 25, 337.

⁵⁷ *Id.* at 25.

⁵⁸ *Id.*

⁵⁹ The AIDC-FCK-1 Ching-Kuo fighter incorporates a variety of U.S. and Taiwanese domestic technology. *Id.* at 25–26. About 130 fighters were built and have been in service since 1993. *Id.*

⁶⁰ *Id.*

⁶¹ Chung, *supra* note 10, at 122.

⁶² *Id.* The *Oliver Hazard Perry* (FFG 7) Class frigates were designed to have reduced anti-submarine warfare ("ASW") and anti-aircraft warfare ("AAW") capabilities with a correspondingly reduced price. DAVID MILLER & CHRIS MILLER, MODERN NAVAL COMBAT 136–37 (1986). This allowed the U.S. Navy to procure a large number of frigates. *Id.* The frigates were intended to balance the more expensive and specialized ASW and AAW ships. *Id.*

⁶³ Excess Defense Articles are U.S. Department of Defense and U.S. Coast Guard-owned articles no longer needed and declared as excess by the U.S. Armed Forces. *Excess Defense Articles Program*, BUREAU INDUS. & SEC., <https://www.bis.doc.gov/index.php/other-areas/strategic-industries-and-economic-security-sies/excess-defense-articles-program> (citing *Excess Defense Articles (EDA)*, DEF. SEC. COOP. AGENCY, <https://www.dsca.mil/programs/excess-defense-articles-eda>). The EDA may be offered at reduced or no cost to eligible foreign recipients on an "as is, where is" basis. *Id.*

the ROCN.⁶⁴ In the 1990s, France sold Taiwan sixty Mirage 2000-5⁶⁵ fighters.⁶⁶ In response, the U.S. then sold 150 F-16A/B Falcon⁶⁷ fighters to Taiwan.⁶⁸ At that time, the U.S. Air Force had 1,055 F-16A/B fighters and, in theory, the ROCAF would effectively have an unlimited surplus of the same aircraft on a one-lost-one-transferred basis, without extensive pilot training required.⁶⁹ Between 2005 and 2006, the ROCN received all four *Kidd*-Class destroyers⁷⁰ from the U.S.⁷¹ The destroyers currently constitute the largest surface combatant ships of the ROCN.⁷²

Nonetheless, there were several instances when Taiwan's requests to the U.S. to purchase the latest defense technology were deferred or denied.⁷³ Particularly, requests for destroyers equipped with the Aegis Combat System,⁷⁴ AH-64D Apache Longbow attack helicopters,⁷⁵ new F-

⁶⁴ Sam LaGrone, *Last Oliver Hazard Perry Frigate USS Simpson Leaves Service, Marked for Foreign Sale*, U.S. NAVAL INST. (Sept. 29, 2015), <https://news.usni.org/2015/09/29/last-oliver-hazard-perry-frigate-uss-simpson-leaves-service-marked-for-foreign-sale>; Chung, *supra* note 10, at 122.

⁶⁵ The Dassault Mirage 2000-5 is an enhanced version of the Dassault Mirage 2000 with upgraded electronics. THE ENCYCLOPEDIA OF WORLD MILITARY AIRCRAFT, *supra* note 54, at 137.

⁶⁶ Chung, *supra* note 10, at 122.

⁶⁷ The Lockheed/General Dynamics F-16A/B Fighting Falcon (F-16A is a single-seat and F-16B is two-seat) are initial production variants of the Lockheed (General Dynamics) F-16 Fighting Falcon. See THE ENCYCLOPEDIA OF WORLD MILITARY AIRCRAFT, *supra* note 54, at 237–43. The F-16 Fighting Falcon is still a versatile and effective multirole fighter and is gradually being replaced by upgraded F-16 variants. See *id.*

⁶⁸ Chung, *supra* note 10, at 122.

⁶⁹ *Id.*

⁷⁰ The *Kidd*-Class destroyers were originally built for Iran before the Iranian Revolution in 1979. MILLER & MILLER, *supra* note 62, at 154–55. The U.S. Navy used the destroyers until they were transferred to Taiwan. *DDG-993 KIDD-Class*, FED’N AM. SCIENTISTS (Feb. 14, 2000), <https://fas.org/man/dod-101/sys/ship/ddg-993.htm>.

⁷¹ KAN, *supra* note 43, at 8, 10–11.

⁷² *Id.* at 10–11.

⁷³ *Id.* at 8–12.

⁷⁴ The Aegis Combat System is an advanced combat and ballistic missile defense system that can simultaneously attack land targets, submarines, and surface ships while automatically protecting the fleet against aircraft and cruise and ballistic missiles. *Aegis Combat System*, LOCKHEED MARTIN, <https://www.lockheedmartin.com/en-us/products/aegis-combat-system.html> (last visited Mar. 27, 2019).

⁷⁵ The Boeing/McDonnell Douglas AH-64D Longbow Apache attack helicopter is an advanced model of the venerable AH-64 Apache attack helicopter. The AH-64D incorporates improved electronics and operating performance. THE ENCYCLOPEDIA OF WORLD MILITARY AIRCRAFT, *supra* note 54, at 287.

16C/D fighters,⁷⁶ Joint Direct Attack Munitions (“JDAM”),⁷⁷ High-speed Anti-Radiation Missiles (“HARM”),⁷⁸ M1A2 Abrams tanks,⁷⁹ and research and development of diesel-electric submarines were either denied or deferred in 2001 during the Bush Administration.⁸⁰ The U.S. Government also rejected the idea of selling F-35 Lightning II Joint Strike Fighters⁸¹ to Taiwan.⁸² Eventually, Taiwan acquired thirty AH-64D Apache Longbow attack helicopters and JDAMs for its F-16A/B fighters.⁸³

⁷⁶ The Lockheed/General Dynamics F-16C/D Fighting Falcon is an upgraded version of the venerable F-16 Falcon with a greater accent on “smart,” precision-guided weapons. *Id.* at 242–43.

⁷⁷ The JDAM is a guidance kit that converts unguided, free-fall “dumb” bombs into precision-guided “smart” munitions and improves the accuracy of unguided bombs in any weather conditions. *GBU-31/32 Joint Direct Attack Munitions (JDAM)*, NAT’L MUSEUM U.S. AIR FORCE (May 29, 2015), <https://www.nationalmuseum.af.mil/Visit/Museum-Exhibits/Fact-Sheets/Display/Article/197589/gbu-3132-joint-direct-attack-munitions-jdam/>.

⁷⁸ HARMs are designed to target radar-equipped air defense systems. KAN, *supra* note 43, at 8.

⁷⁹ The M1A2 Abrams Main Battle Tank (“MBT”) is an upgraded version of the M1 Abrams MBT. The M1A2 entered service in the 1990s and has been constantly upgraded. TOM CLANCY & JOHN GRESHAM, *ARMORED CAV: A GUIDED TOUR OF AN ARMORED CAVALRY REGIMENT 62–71* (1994); *M1A1/2 Abrams Main Battle Tank*, ARMY TECH., <https://www.army-technology.com/projects/m1a1-2-abrams-main-battle-tank/> (last visited Apr. 6, 2019).

⁸⁰ KAN, *supra* note 43, at 11. The U.S. Navy does not have any diesel-electric submarines, and the U.S. no longer manufactures them. *Id.*

⁸¹ The Lockheed F-35 Lightning II Joint Strike Fighter is a fifth-generation stealth fighter that is relatively affordable and is being procured in three different versions for the U.S. Air Force, Marine Corps, and Navy. JEREMIAH GERTLER, CONG. RSCH. SERV., RL30563, *F-35 JOINT STRIKE FIGHTER (JSF) PROGRAM 1–2* (2018). It is also being exported to at least twelve countries, which include Japan and South Korea. *Id.* at 26.

⁸² Some of the concerns included Taiwan’s defense budget, PRC spies, and politics. Ralph Jennings, *F-35s Unlikely, Taiwan Upgrades F-16s Fighters to Counter China*, VOA (Jan. 11, 2019), <https://www.voanews.com/a/f-35s-unlikely-taiwan-upgrades-f-16s-fighters-to-counter-china/4738485.html>.

⁸³ KAN, *supra* note 43, at 8–10, 59.

In 2003, Congress established that Taiwan was to be designated as if it were a Major Non-NATO⁸⁴ Ally (“MNNA”)⁸⁵ to streamline the arms sales process for Taiwan.⁸⁶ In October 2018, Congress approved a \$330 million arms package that consisted of spare parts for F-16 fighters, other aircraft, and related elements of logistics and program support.⁸⁷ In November 2018, Taiwan formally received two decommissioned *Oliver Perry Hazard*-Class frigates from the U.S.⁸⁸ In July and August 2019, the U.S. announced the approval of the sale of 108 M1A2T Abrams tanks, 66 F-16V Vipers,⁸⁹ and 250 FIM-92 Stinger missiles,⁹⁰ with expected deliveries in 2023 and 2026.⁹¹ As of November 2020, Congress was notified

⁸⁴ North Atlantic Treaty Organization—an international military alliance established in 1949. NATO, *NATO – Declassified: A Short History of NATO*, https://www.nato.int/cps/en/natohq/declassified_139339.htm (last visited Mar. 24, 2021). The U.S. became a member of NATO on July 25, 1949. NATO, *NATO – Declassified: The United States and NATO*, https://www.nato.int/cps/en/natohq/declassified_162350.htm, (last visited Mar. 5, 2021).

⁸⁵ The MNNA status is a designation that provides foreign partners with certain benefits in the areas of defense trade and security cooperation. 22 U.S.C. § 2751; DEP’T OF STATE, MAJOR NON-NATO ALLY STATUS – FACT SHEET, <https://www.state.gov/major-non-nato-ally-status/#footnote> (last visited Mar. 5, 2021). Taiwan was to be treated as an MNNA without a formal designation. Pub. L. 107-228, 116 Stat. 1428 (codified as amended in 22 U.S.C. 2321k)

⁸⁶ LAWRENCE & MORRISON, *supra* note 1, at 34.

⁸⁷ DEF. SEC. COOP. AGENCY, NEWS RELEASE: TAIPEI ECONOMIC AND CULTURAL REPRESENTATIVE OFFICE IN THE UNITED STATES (TECRO) – FOREIGN MILITARY SALES ORDER (FMSO) II CASE (2018), https://www.dsca.mil/sites/default/files/mas/tecro_18-09_0.pdf; Mohammad Zargham et al., *U.S. Approval of \$330 Million Military Sale to Taiwan Draws China’s Ire*, REUTERS (Sept. 24, 2018), <https://www.reuters.com/article/us-usa-taiwan-military/u-s-approval-of-330-million-military-sale-to-taiwan-draws-chinas-ire-idUSKCN1M42J9>.

⁸⁸ Taiwan Relations Act Affirmation and Naval Vessel Transfer Act of 2014, H.R. 3470, 113th Cong. (2014); *Taiwan Commissions Two U.S. Perry-Class Frigates*, AMERICAN INST. TAIWAN (Nov. 8, 2018), <https://www.ait.org.tw/85aiwan-commissions-two-u-s-perry-class-frigates/>.

⁸⁹ The F-16V Viper is the latest upgraded variant of the venerable F-16 Falcon. *Meet the F-16V: The Most Technologically Advanced 4th Generation Fighter in the World*, LOCKHEED MARTIN, <https://www.lockheedmartin.com/en-us/news/features/2016/meet-the-f-16v—the-most-technologically-advanced-4th-generation.html> (last visited Mar. 21, 2019).

⁹⁰ The FIM-92 Stinger is a Man-Portable Air-Defense System (“MANPADS”) that operates as an infrared homing surface-to-air missile (“SAM”). CLANCY & GRESHAM, *supra* note 67, at 160–62; TOM CLANCY, *AIRBORNE: A GUIDED TOUR OF AN AIRBORNE TASK FORCE 123–25* (1997).

⁹¹ DEF. SEC. COOP. AGENCY, NEWS RELEASE: TAIPEI ECONOMIC AND CULTURAL REPRESENTATIVE OFFICE IN THE UNITED STATES (TECRO) – F-16C/D BLOCK 70 AIRCRAFT AND RELATED EQUIPMENT AND SUPPORT (2019),

that the State Department approved of the proposed sale of advanced torpedoes;⁹² repair and recertification of Patriot Advanced Capability-3 missiles;⁹³ 100 RGM 84L-4 Harpoon Surface Launched Block II Missiles for coastal defense;⁹⁴ 11 High Mobility Artillery Rocket Systems

https://www.dsca.mil/sites/default/files/mas/tecro_19-50.pdf; DEF. SEC. COOP. AGENCY, NEWS RELEASE: TAIPEI ECONOMIC AND CULTURAL REPRESENTATIVE OFFICE IN THE UNITED STATES (TECRO) – M1A2 ABRAMS TANKS AND RELATED EQUIPMENT AND SUPPORT (2019), https://www.dsca.mil/sites/default/files/mas/tecro_19-22_0.pdf; DEF. SEC. COOP. AGENCY, NEWS RELEASE: TAIPEI ECONOMIC AND CULTURAL REPRESENTATIVE OFFICE IN THE UNITED STATES (TECRO) – STINGER MISSILES AND RELATED EQUIPMENT AND SUPPORT (2019), https://www.dsca.mil/sites/default/files/mas/tecro_19-21.pdf; Ryan Browne, *US Approves Major Arms Sale to Taiwan amid Trade Tensions with Beijing*, CNN (July 8, 2019), <https://www.cnn.com/2019/07/08/politics/us-arms-sale-taiwan/index.html>; Sally Jensen, *66 New Fighter Jets to Arrive in Taiwan by 2026*, TAIWAN NEWS (Nov. 12, 2019), <https://www.taiwannews.com.tw/en/news/3815244>; Matthew Strong, *Taiwan Army to Receive First M1A2T Tanks from U.S. in 2022*, TAIWAN NEWS (Sept. 25, 2019), <https://www.taiwannews.com.tw/en/news/3783933>; Edward Wong, *Trump Administration Approves F-16 Fight Jet Sales to Taiwan*, N.Y. Times (Aug., 16, 2019), <https://www.nytimes.com/2019/08/16/world/asia/taiwan-f16.html>.

⁹² DEF. SEC. COOP. AGENCY, NEWS RELEASE: TAIPEI ECONOMIC AND CULTURAL REPRESENTATIVE OFFICE IN THE UNITED STATES (TECRO) – MK 48 MOD 6 ADVANCED TECHNOLOGY (AT) HEAVY WEIGHT TORPEDO (HWT) (2020), https://www.dsca.mil/sites/default/files/mas/_20-07_0.pdf [hereinafter MK 48 MOD 6 AT HWT]; *U.S. to Sell Taiwan \$180 Million of Torpedoes, Angering China*, REUTERS (May 20, 2020), <https://www.reuters.com/article/us-taiwan-usa-security/u-s-to-sell-taiwan-180-million-of-torpedoes-angering-china-idUSKBN22X01N>. The MK 48 Mod 6 Advanced Technology (“AT”) is a heavyweight torpedo designed for optimum effectiveness against all targets, in both littoral and deep-water environments. It is capable of autonomous operation or control via wire link. *MK 48 Mod 6 Advanced Technology*, RAYTHEON TECHS., <https://www.raytheon.com/capabilities/products/mk48> (last visited Nov. 11, 2020).

⁹³ The Patriot Advanced Capability-3 (“PAC-3”) Missile is designed to intercept incoming threats, including tactical ballistic missiles, cruise missiles, and aircraft. *PAC-3 Missile Segment Enhancement*, LOCKHEED MARTIN, <https://www.lockheedmartin.com/en-us/products/pac3-mse.html> (last visited Nov. 11, 2020); DEF. SEC. COOP. AGENCY, NEWS RELEASE: TAIPEI ECONOMIC AND CULTURAL REPRESENTATIVE OFFICE IN THE UNITED STATES (TECRO) – REPAIR AND RECERTIFICATION OF PATRIOT ADVANCED CAPABILITY-3 MISSILES (2020), https://www.dsca.mil/sites/default/files/mas/taiwan_20-24.pdf.

⁹⁴ The RGM 84L-4 Harpoon Surface Launched Block II Missile is an upgraded version of the venerable Harpoon missile that incorporates key guidance technologies from two other weapons programs—the low-cost, integrated global positioning system/inertial navigation system (“GPS/INS”) from the Joint Direct Attack Munition and the software, mission computer, GPS antenna and receiver from the SLAM-ER. *AGM/RGM/UGM-84 Harpoon Missile*, BOEING, <https://www.boeing.com/history/products/agm-84d-harpoon-missile.page> (last visited Nov. 11, 2020); DEF. SEC. COOP. AGENCY, NEWS RELEASE: TAIPEI ECONOMIC AND CULTURAL REPRESENTATIVE OFFICE IN THE UNITED STATES (TECRO) – RGM-84L-4 HARPOON SURFACE LAUNCHED BLOCK II MISSILES (2020),

(“HIMARS”);⁹⁵ 135 AGM-84H Standoff Land Attack Missile-Expanded Response (“SLAM-ER”) Missiles;⁹⁶ 6 MS-110 RECCE Pods;⁹⁷ and 4 MQ-9B Sea Guardian Unmanned Aerial Vehicles (“UAV”).⁹⁸

Overall, the current U.S.-Taiwan defense relationship consists largely of arms sales and a handful of U.S. senior officers sent to observe

https://www.dsca.mil/sites/default/files/mas/Taiwan_20-68.pdf [hereinafter RGM-84L-4 HARPOON SURFACE LAUNCHED BLOCK II MISSILES].

⁹⁵ The M142 HIMARS is a light multiple rocket launcher mounted on a medium tactical truck. The HIMARS is designed to provide twenty-four-hour, all-weather, lethal, close- and long-ranger precision rocket and missile fire support. *High Mobility Artillery Rocket Systems (HIMARS) – M142*, U.S. ARMY, <https://asc.army.mil/web/portfolio-item/ms-himars-m142/>; DEF. SEC. COOP. AGENCY, NEWS RELEASE: TAIPEI ECONOMIC AND CULTURAL REPRESENTATIVE OFFICE IN THE UNITED STATES (TECRO) – HIMARS, SUPPORT, AND EQUIPMENT (2020), https://www.dsca.mil/sites/default/files/mas/Taiwan_20-77.pdf [hereinafter HIMARS, SUPPORT, AND EQUIPMENT].

⁹⁶ The AGM-84H Standoff Land Attack Missile-Expanded Response (“SLAM-ER”) is an air-launched, day/night, adverse-weather, over-the-horizon, precision strike missile. The SLAM-ER is an upgraded variant of the venerable Harpoon anti-ship missile. *SLAM-ER*, NAVAL AIR SYS. COMMAND, <https://www.navair.navy.mil/product/SLAM-ER>; DEF. SEC. COOP. AGENCY, NEWS RELEASE: TAIPEI ECONOMIC AND CULTURAL REPRESENTATIVE OFFICE IN THE UNITED STATES (TECRO) – AGM-84H STANDOFF LAND ATTACK MISSILE-EXPANDED RESPONSE (SLAM-ER) MISSILES (2020), https://www.dsca.mil/sites/default/files/mas/Taiwan_20-69.pdf [hereinafter AGM-84H SLAM-ER MISSILES].

⁹⁷ The MS-110 RECCE Pod is a long-range reconnaissance pod that can take enhanced images at night and in poor weather conditions from a long distance. The pod can be attached to F-16 Falcons or UAVs. *MS-110 Multispectral Airborne Reconnaissance System*, COLLINS AEROSPACE, https://www.collinsaerospace.com/-/media/project/collinsaerospace/collinsaerospace-website/product-assets/marketing/a/airborne-reconnaissance/19-1311-01_ms-110_f16-ds-job-7047_low-res.pdf?rev=4b28706a896f441a90de2311ae313989 (last visited Nov. 11, 2020); DEF. SEC. COOP. AGENCY, NEWS RELEASE: TAIPEI ECONOMIC AND CULTURAL REPRESENTATIVE OFFICE IN THE UNITED STATES (TECRO) – MS-110 RECCE POD SYSTEM (2020), https://www.dsca.mil/sites/default/files/mas/Taiwan_20-75.pdf [hereinafter MS-110 RECCE POD SYSTEM]; see Matthew Strong, *Taiwan’s Defense Ministry Seeking Recon Pods for Nighttime Photography of Chinese Navy*, TAIWAN NEWS (Sept. 2, 2020), <https://www.taiwannews.com.tw/en/news/4000220>.

⁹⁸ The MQ-9B SeaGuardian is an upgraded variant of the venerable MQ-9 Reaper UAV. Although Taiwan has its own UAV fleet, the MQ-9B SeaGuardian has a longer range and endurance. Eric Chang, *Taiwan in Talks with US to Purchase Advanced Drones*, TAIWAN NEWS (Aug. 7, 2020), <https://www.taiwannews.com.tw/en/news/3982421>; *MQ-9BskyGuardian/SeaGuardian*, GENERAL ATOMICS AERONAUTICAL, <https://www.ga-asi.com/remotely-piloted-aircraft/mq-9b> (last visited Nov. 11, 2020); DEF. SEC. COOP. AGENCY, NEWS RELEASE: TAIPEI ECONOMIC AND CULTURAL REPRESENTATIVE OFFICE IN THE UNITED STATES (TECRO) – MQ-9B REMOTELY PILOTED AIRCRAFT (2020), https://www.dsca.mil/sites/default/files/mas/taiwan_20-74_cn.pdf [hereinafter MQ-9B REMOTELY PILOTED AIRCRAFT].

Taiwan's military exercises.⁹⁹ In addition, each year, about 400 of Taiwan's military personnel receive training and education at U.S. military academies, colleges, and other institutions or units.¹⁰⁰ For example, ROCAF F-16 pilots have been trained at Luke Air Force Base¹⁰¹ in Arizona since 1997.¹⁰² In August 2020, uniformed Taiwanese soldiers visited the AIT office in Taipei to virtually meet with officers from the U.S. Army's 25th Combat Aviation Brigade for the first time.¹⁰³ The U.S. Navy and U.S. Air Force also conduct occasional Freedom of Navigation Operations or Patrols¹⁰⁴ as part of the Freedom of Navigation Program¹⁰⁵ through the Taiwan Strait or in the vicinity of Taiwan, triggering protests from Beijing.¹⁰⁶ Thus, the current U.S.-Taiwan defense relations have been reduced drastically since 1979.

The next section first analyzes an important historical precedent: the original Dixie Mission. It will also analyze U.S. laws that pertain to U.S.-Taiwan relations to justify a strengthened defense relationship. Further analysis of international laws, regulations, and guidelines will justify the humanitarian relief aspect of the Dixie Mission II.

⁹⁹ See KAN, *supra* note 43, at 5–7; LAWRENCE & MORRISON, *supra* note 1, at 26.

¹⁰⁰ LAWRENCE & MORRISON, *supra* note 1, at 26.

¹⁰¹ Since 1941, Luke Air Force Base has trained fighter pilots from other countries. *Luke AFB Fact Sheet*, U.S. AIR FORCE (Feb. 25, 2019), <https://www.luke.af.mil/Facts/Fact-Sheets/Article/1665984/luke-afb-fact-sheet/>.

¹⁰² KAN, *supra* note 43, at 22.

¹⁰³ *Taiwanese Soldiers Visit AIT in Uniform for First Time*, TAIWAN NEWS (Aug. 28, 2020), <https://www.taiwannews.com.tw/en/news/3996950>.

¹⁰⁴ The Freedom of Navigation Operations or Patrols deploys U.S. forces from each branch of the military, including the U.S. Coast Guard to challenge excessive maritime claims by all coastal nations around the world. DEP'T OF DEF., U.S. DEPARTMENT OF DEFENSE FREEDOM OF NAVIGATION PROGRAM FACT SHEET 2 (2015), [https://policy.defense.gov/Portals/11/Documents/gsa/cwmd/DoD%20FON%20Program%20--%20Fact%20Sheet%20\(March%202015\).pdf](https://policy.defense.gov/Portals/11/Documents/gsa/cwmd/DoD%20FON%20Program%20--%20Fact%20Sheet%20(March%202015).pdf).

¹⁰⁵ The Freedom of Navigation (“FON”) Program is a U.S. policy that involves diplomatic representations by the U.S. State Department and operational assertions conducted by the DoD to challenge excessive claims asserted by other nations. *Id.*

¹⁰⁶ *E.g.*, Ryan Browne, *US Navy Sails Ships Through Taiwan Strait*, CNN (Nov. 29, 2018), <https://www.cnn.com/2018/11/29/politics/us-navy-taiwan-strait/index.html>; Ryan Browne, *US Sails Two Ships Through Taiwan Strait Ahead of Trade Talks in Beijing*, CNN (Mar. 24, 2019), <https://www.cnn.com/2019/03/24/politics/taiwan-strait-us-destroyer-intl/index.html>; Keoni Everington, *US Guided-Missile Destroyer Steams Through Taiwan Strait*, TAIWAN NEWS (Oct. 15, 2020), <https://www.taiwannews.com.tw/en/news/4030529>; *Taiwan Says U.S. Flies Bombers Near Island After China's drills*, REUTERS, <https://www.reuters.com/article/us-taiwan-china-usa-idUSKBN2060UO> (last visited Feb. 20, 2021).

III. ANALYSIS THAT SUPPORTS THE DIXIE MISSION II

A. *Historical Precedent: The First Dixie Mission*

During the Second-Sino Japanese War,¹⁰⁷ China was divided into two primary political factions: the Kuomintang under the leadership of Chiang-Kai Shek and the Chinese Communist Party (“CCP”) under the leadership of Mao Zedong.¹⁰⁸ Both factions had fought for control of China since the start of the Chinese Civil War in 1927 while also resisting Japan’s occupation after 1937.¹⁰⁹ In March 1941, the U.S. enacted the Lend-Lease Act, which “loaned” defense articles to countries whose defense the President deemed vital to the defense of the United States.¹¹⁰ Although the Lend-Lease Act was primarily for Great Britain, the program was extended to China in April 1941.¹¹¹ As a result, the KMT received significant military and financial support from the U.S. while the CCP was forced to become self-sufficient in order to continue its resistance.¹¹² While the U.S. recognized Chiang-Kai Shek and the KMT as the legitimate government of China,¹¹³ the U.S. found Chiang-kai Shek to be an uncooperative ally on many occasions.¹¹⁴

Disagreements between the Americans and the KMT increased on every government level, particularly when Chiang Kai-Shek disagreed with General Joseph “Vinegar Joe” Stilwell¹¹⁵ on the military strategy in the China-Burma-India (“CBI”) Theatre.¹¹⁶ Ultimately, President Roosevelt replaced General Stilwell with General Albert Wedemeyer in October

¹⁰⁷ The Second Sino-Japanese War is part of World War II. *See Second Sino-Japanese War*, ENCYCLOPEDIA BRITANNICA (2020).

¹⁰⁸ *See* CAROLLE J. CARTER, *MISSION TO YENAN: AMERICAN LIAISON WITH THE CHINESE COMMUNISTS 1–5* (1997).

¹⁰⁹ *See id.* at 1–6.

¹¹⁰ An Act to Promote the Defense of the United States (Lend-Lease Act), Pub. L. No. 77-11, 55 Stat. 31 (1941).

¹¹¹ ALBERT L. WEEKS, *RUSSIA’S LIFE-SAVER LEND-LEASE AID TO THE U.S.S.R. IN WORLD WAR II* 24 (2004).

¹¹² *See* WESLEY M. BAGBY, *THE EAGLE-DRAGON ALLIANCE: AMERICA’S RELATIONS WITH CHINA IN WORLD WAR II* 106 (1992); JOHN COLLING, *THE SPIRIT OF YENAN A WARTIME CHAPTER OF SINO-AMERICAN FRIENDSHIP* 72 (1991); Louis Jones, *The “Dixie Mission” to the Communist Chinese*, 40TH BOMB GROUP ASS’N MEMORIES 1 (1987), <http://www.40thbombgroup.org/memories/Memories14.pdf>.

¹¹³ SPENCE, *supra* note 14, at 392; Jones, *supra* note 112, at 2.

¹¹⁴ BAGBY, *supra* note 112, at 106–10; CARTER, *supra* note 108, at 8–9, 106.

¹¹⁵ General Stilwell was appointed by President Franklin D. Roosevelt to serve as Chiang-Kai Shek’s Chief of Staff and as the U.S. commander of the U.S. forces in the CBI Theatre. BAGBY, *supra* note 112, at 28; CARTER, *supra* note 108, at 6.

¹¹⁶ BAGBY, *supra* note 112, at 28; CARTER, *supra* note 108, at 6.

1944.¹¹⁷ Despite moderate progress in the modernization and re-equipment of the Nationalist Army, foreign correspondents and American military advisors witnessed widespread corruption within the government and military and the violence that accompanied enforced conscription of Chinese men.¹¹⁸ It is estimated that of the 1.67 million men drafted for active service in 1943, 44 percent deserted or died on the way to join their units.¹¹⁹ The draftees who died before they saw combat between 1937 and 1945 numbered 1.4 million, approximately one in ten of all men drafted.¹²⁰ In addition, corrupt officials, who continued to strain relations between the KMT and the local Chinese populace, constantly embezzled U.S. funds and Lend-Lease material.¹²¹ Half-hearted KMT attempts to curb the violence and widespread corruption, which included public executions,¹²² substantially decreased American confidence in the KMT's ability to govern a post-World War II China.¹²³ On the other hand, U.S. officials began to learn about the CCP's organized resistance from journalists who visited the CCP's headquarters in Yan'an.¹²⁴

Although weakened and isolated in the first years of the Second Sino-Japanese War, the CCP had established its headquarters in Yan'an¹²⁵ and continued to resist Japanese occupation in China's northern regions.¹²⁶ Instead of pitched battles against the Japanese forces, the Communists employed guerilla warfare from a network of bases behind Japanese lines.¹²⁷ The CCP also implemented policies that supported the "poor peasants" to strengthen its popular support in the countryside.¹²⁸ The CCP reduced rents and interest rates; made taxes moderately progressive; promoted women's rights and popular education; and aided peasants in their

¹¹⁷ CARTER, *supra* note 108, at 112, 114.

¹¹⁸ See SPENCE, *supra* note 14, at 421, 427.

¹¹⁹ *Id.* at 427.

¹²⁰ *Id.*

¹²¹ *Id.* at 426–27.

¹²² *Id.* at 427.

¹²³ BAGBY, *supra* note 112, at 111–12.

¹²⁴ *Id.* at 104–05; CARTER, *supra* note 108, at 102.

¹²⁵ Yan'an has also been spelled as "Yenan." *Yan'an*, ENCYCLOPEDIA BRITANNICA (2016).

¹²⁶ COLLING, *supra* note 112, at 98–99; see SPENCE, *supra* note 14, at 392, 411–12.

¹²⁷ SPENCE, *supra* note 14, at 392.

¹²⁸ COLLING, *supra* note 112, at 98; SPENCE, *supra* note 14, at 392, 411–13, 428–30.

farm work.¹²⁹ As a result, membership in the CCP increased to about 1.2 million members and 900,000 troops.¹³⁰ Although the KMT still outnumbered the CCP in military strength,¹³¹ the CCP's organized resistance in Northern China caught the attention of the U.S. Government—who wanted to end World War II as quickly as possible, even if it meant dealing with political enemies such as the Chinese Communists.¹³²

John P. Davies, a U.S. Foreign Service Officer (“FSO”) stationed in China, voiced concern in a memorandum that no American had set foot in Communist-held territory since 1938.¹³³ Nevertheless, he advocated for the deployment of an observation group to Yan’an because the region the Communists controlled was important.¹³⁴ Yan’an had a CCP base of military operations in and near Japan’s largest military concentration in China.¹³⁵ Davies reasoned that the very limited intelligence the U.S. had received about the CCP was second-hand and likely exaggerated by the KMT.¹³⁶ Thus, the observation group could gather intelligence about the Japanese forces nearby while also assessing the CCP.¹³⁷ Impressed by Davies’ memorandum, General Stilwell, with the concurrence of then-U.S. ambassador to China, Clarence E. Gauss,¹³⁸ informed Acting Secretary of State Edward R. Stettinius, Jr. that a military and political detachment in Yan’an would be invaluable.¹³⁹ The unit could organize search and rescue missions for American airmen forced to bail out over Communist-controlled areas and evaluate the performance of the CCP guerillas.¹⁴⁰

After considerable pressure from Vice-President Henry Wallace, who was sent to China by President Roosevelt, Chiang Kai-Shek permitted the deployment of an American observation group to Yan’an in July 1944.¹⁴¹ Although the unit’s official name was the U.S. Army “Yenan” Observer

¹²⁹ BAGBY, *supra* note 112, at 116; COLLING, *supra* note 1127, at 98–99; SPENCE, *supra* note 14, at 411–13.

¹³⁰ SPENCE, *supra* note 14, at 430.

¹³¹ See COLLING, *supra* note 112, at 5; SPENCE, *supra* note 14, at 410, 430.

¹³² See CARTER, *supra* note 108, at 8–9.

¹³³ *Id.* at 9–10.

¹³⁴ *Id.* at 10, 16.

¹³⁵ *Id.*

¹³⁶ *Id.* at 10.

¹³⁷ See *id.* at 10–13.

¹³⁸ Gauss resigned as Ambassador to China shortly after General Stilwell was relieved of his command. BAGBY, *supra* note 112, at 153.

¹³⁹ CARTER, *supra* note 108, at 19–20.

¹⁴⁰ *Id.*

¹⁴¹ *Id.* at 28.

Group, the unit became known as the “Dixie Mission” because the unit was stationed in “rebel” or Communist territory.¹⁴²

The primary objectives of the Yan’an Observer Group were to gather military intelligence and meteorological data, to evaluate the Chinese Communist troops, and to coordinate the recovery of downed American airmen.¹⁴³ The American observation group initially consisted of eighteen Americans under the command of Colonel David D. Barrett and was deployed to Yan’an on July 22, 1944.¹⁴⁴ The unit’s size fluctuated between seventeen to forty five members.¹⁴⁵ Members consisted of signal corps (communications) personnel, infantry officers, naval officers, medical personnel, weather observers, two Office of Strategic Service (“O.S.S.”)¹⁴⁶ officers, two State Department officials, and two Japanese-Americans as interpreters for Japanese prisoners of war (“POW”).¹⁴⁷ The unit also supported Operation Matterhorn, a U.S. bombing campaign against Japan with the new B-29 Superfortress bombers¹⁴⁸ from air bases in China and India.¹⁴⁹ The CCP eagerly offered its services to support the American delegation despite the American emphasis that all U.S. bombers were based in Nationalist China and the fact that the U.S. recognized the KMT as the legal government of China.¹⁵⁰ The Americans in the observer group developed a high regard for the CCP’s capabilities in guerilla warfare, infrastructure, and the recovery of downed American airmen in northern China.¹⁵¹

¹⁴² DAVID D. BARRETT, *DIXIE MISSION: THE UNITED STATES ARMY OBSERVER GROUP IN YENAN, 1944 23–24* (1970); CARTER, *supra* note 108, at 11.

¹⁴³ BARRETT, *supra* note 142, at 27–28; CARTER, *supra* note 108, at 27–28, 35, 74; COLLING, *supra* note 112, at 75–77.

¹⁴⁴ BARRETT, *supra* note 142, at 27; CARTER, *supra* note 108, at 28, 30–31.

¹⁴⁵ CARTER, *supra* note 108, at 11.

¹⁴⁶ The OSS was a wartime intelligence agency of the U.S. during World War II and a predecessor to the Central Intelligence Agency (“CIA”). BARRETT, *supra* note 142, at 34.

¹⁴⁷ Jones, *supra* note 112, at 1.

¹⁴⁸ The Boeing B-29 Superfortress is a long-range four-engine bomber that was used to bomb Japan from bases in China until 1944, where they flew from the islands of Saipan, Guam, and Tinian. See *Boeing B-29 Superfortress*, NAT’L MUSEUM US AIR FORCE (Apr. 14, 2015), <https://www.nationalmuseum.af.mil/Visit/Museum-Exhibits/Fact-Sheets/Display/Article/196252/boeing-b-29-superfortress/>.

¹⁴⁹ See John T. Correll, *The Matterhorn Missions*, AIR FORCE MAG. (Mar. 1, 2009), <https://www.airforcemag.com/article/0309matterhorn/>.

¹⁵⁰ SPENCE, *supra* note 14, at 392; Jones, *supra* note 112, at 1–2.

¹⁵¹ See BAGBY, *supra* note 112, at 114, 119–21; COLLING, *supra* note 112, at 75–78.

When the aircrews of B-29 Superfortress bombers crashed in Communist-controlled areas, the local militias and Chinese near the crash site fed and sheltered the American airmen and notified the CCP.¹⁵² Whenever a downed American landed in Communist-controlled areas, entire villages and districts mobilized once the local Chinese learned that Americans were still missing or captured by the Japanese.¹⁵³ Armed escorts, composed of village militias or regular CCP Army units, would lead the rescued airmen to a nearby location suitable for a stripped-down B-25 Mitchell¹⁵⁴ bomber arranged by the Dixie Mission to land to extract the Americans.¹⁵⁵ U.S. airmen were encouraged to carry items like watches, knives, sidearms, and other trinkets to give as gifts of gratitude because the local people refused payment and the national government currency was of no value to them.¹⁵⁶ The Dixie Mission also bestowed special gifts, such as sheepskin-lined parkas and fountain pens, to show their gratitude to the CCP.¹⁵⁷ Approximately 300 American airmen were rescued in this way.¹⁵⁸ To express his appreciation to the CCP for its efforts in the recovery of downed U.S. airmen, General Curtis LeMay, commander of the B-29 bombers, sent a plane loaded with medical supplies to Yan'an.¹⁵⁹

Though there was a clear prohibition on providing munitions and weapons to the CCP, the Dixie Mission was able to provide critically needed medical supplies to treat the local population for diseases that were normally untreatable in China.¹⁶⁰ In late 1944, Chou Enlai, the second-ranking CCP leader, sent an urgent appeal to General Wedemeyer for medical supplies to relieve a meningitis epidemic.¹⁶¹ General Wedemeyer promptly sent eleven tons of Red Cross medical supplies, which included sulfa drugs, microscopes, X-ray equipment, and surgical instruments.¹⁶² In October

¹⁵² CARTER, *supra* note 108, at 75–78; Jones, *supra* note 112, at 2.

¹⁵³ CARTER, *supra* note 108, at 75–81.

¹⁵⁴ The North American B-25 Mitchell medium bomber is famous for its use by General James “Jimmy” Doolittle for the Tokyo Raid on April 18, 1942. *See North American B-25B Mitchell*, NAT’L MUSEUM US AIR FORCE (Apr. 14, 2015), <https://www.nationalmuseum.af.mil/Visit/Museum-Exhibits/Fact-Sheets/Display/Article/196310/north-american-b-25b-mitchell/>.

¹⁵⁵ Jones, *supra* note 112, at 3.

¹⁵⁶ CARTER, *supra* note 108, at 80.

¹⁵⁷ *Id.* at 82.

¹⁵⁸ COLLING, *supra* note 112, at 76.

¹⁵⁹ Jones, *supra* note 112, at 5.

¹⁶⁰ *See id.*

¹⁶¹ BAGBY, *supra* note 112, at 201; CARTER, *supra* note 108, at 214.

¹⁶² BAGBY, *supra* note 112, at 201; CARTER, *supra* note 108, at 214.

1945, the Americans also delivered diphtheria serum to Yan'an to relieve an epidemic in a Chinese nursery.¹⁶³

When an epidemic of spinal meningitis broke out in [Yan'an] in January 1946, Major Clifford Fai Young¹⁶⁴ administered sulfadiazine¹⁶⁵ and requested a million units of penicillin. He also put all the Americans on the base under quarantine because there had been eighteen cases of the disease among the Chinese and two deaths. Major Young's appeal for American medicine to help the Communists was not considered unusual. Red Cross medical supplies were frequently flown in on [U.S.] planes.¹⁶⁶

Unlike the American teams that assisted the Nationalist Army,¹⁶⁷ the Dixie Mission was not permitted to provide military training to CCP units.¹⁶⁸ Instead, the Dixie Mission observed the CCP's military exercises and guerilla tactics,¹⁶⁹ inspected its facilities, and interacted with key

¹⁶³ CARTER, *supra* note 108, at 82.

¹⁶⁴ Major Clifford Fai Young is the author's great-uncle on his father's side. He was the only Chinese-American to command the Dixie Mission. When he was temporarily one of the few Americans in Yan'an, he was given command of a detachment of CCP soldiers. He passed away in 2010. Michael C.M. Louis, *A Forgotten Ally of World War II: China's Role and America's Contribution* (Dec. 15, 2013) (unpublished B.A. thesis, Xavier University) (on file with author); CARTER, *supra* note 108, at 191–92, 195–97.

¹⁶⁵ Sulfadiazine is an antibiotic that is used to treat many different types of infection such as urinary tract infections, ear infections, meningitis, and malaria. Cerner Multum, *Sulfadiazine*, DRUGS.COM (May 18, 2020), <https://www.drugs.com/mtm/sulfadiazine.html>.

¹⁶⁶ CARTER, *supra* note 108, at 58.

¹⁶⁷ The American teams assigned to liaise with the Chinese Nationalist Army acted as advisors to KMT commanders and conducted a series of schools within each KMT army for both officers and enlisted men. *Id.* at 34. Classes and training were held for four or five months in subjects such as weapons handling and maintenance. *Id.* When the unit was deemed by the Americans to be combat ready, the American teams accompanied the soldiers and assisted them in operational and logistical matters. *Id.*

¹⁶⁸ *Id.* at 34–35.

¹⁶⁹ Some of the tactics the CCP's military units demonstrated to the Dixie Mission's members were the same tactics used in the Korean War and the Vietnam War by Communist guerilla and regular forces. Barrett, *supra* note 142, at 37–38; CARTER, *supra* note 108, at 46–48; Colling, *supra* note 112, at 69–72, 124–25. This included tunnel warfare, improvised explosive devices that evaded mine detection equipment, “bouncing” anti-personnel mines, and additional guerilla tactics that inflicted heavy casualties on the Japanese troops. BARRETT, *supra* note 142, at 37–38; CARTER, *supra* note 108, at 46–48; COLLING, *supra* note 112, at 69–72, 124–25.

members of the CCP.¹⁷⁰ When the Americans accompanied the CCP into battle, they did so to observe.¹⁷¹ A few U.S. specialists, such as Captain John Colling, demonstrated demolition techniques and new guerilla warfare tactics using American-manufactured equipment.¹⁷² However, because the Dixie Mission was prohibited from providing arms to the CCP,¹⁷³ the CCP improvised with handmade weapons, recycled ammunition, and captured Japanese weapons.¹⁷⁴

The Dixie Mission also facilitated the Hurley¹⁷⁵ and Marshall¹⁷⁶ Missions in attempts to arrange a ceasefire and form a unified government with both the KMT and CCP to end the Chinese Civil War, which continued after World War II ended in September 1945.¹⁷⁷ Unfortunately, both Missions failed to arrange a peaceful settlement between the two factions and the Chinese Civil War raged on until the KMT was forced to evacuate to present-day Taiwan in December 1949.¹⁷⁸ As a result, the last members of the Dixie Mission were withdrawn on March 11, 1947.¹⁷⁹

Unfortunately, due to the Red Scare and McCarthyism, many members of the Dixie Mission were accused of being communists and subjected to loyalty investigations.¹⁸⁰ For example, Colonel Barrett, the first commanding officer of the Dixie Mission, was denied a promotion to

¹⁷⁰ BAGBY, *supra* note 112, at 113; *see* BARRETT, *supra* note 142, at 33–34; CARTER, *supra* note 108, at 40–42, 196–97; COLLING, *supra* note 112, at 59–64, 69; Jones, *supra* note 112, at 4.

¹⁷¹ CARTER, *supra* note 108, at 35.

¹⁷² COLLING, *supra* note 112, at 69–70, 72–75; SPENCE, *supra* note 14, at 392.

¹⁷³ *See* BARRETT, *supra* note 142, at 43; CARTER, *supra* note 108, at 82; COLLING, *supra* note 112, at 69–72.

¹⁷⁴ COLLING, *supra* note 112, at 69–70, 72–75; SPENCE, *supra* note 14, at 392.

¹⁷⁵ The Hurley Mission was led by General Patrick Hurley and attempted to promote harmonious relations between the KMT and CCP in late 1944. The Mission failed due to disagreements between Chiang-Kai Shek and Mao Zedong and ended in late 1945 when General Hurley resigned as ambassador to China. *See* CARTER, *supra* note 108, at 106–33; COLLING, *supra* note 112, at 106–10, 114.

¹⁷⁶ The Marshall Mission was led by General George C. Marshall, who was instructed by President Harry S. Truman to unify China peaceably and democratically and to end the Chinese Civil War, which started after World War II ended. Sadly, the Marshall Mission also failed to reach a peaceful settlement between the KMT and the CCP. The Marshall Mission existed from December 1945 to January 1947. *See* CARTER, *supra* note 108, at 177–91.

¹⁷⁷ *See id.* at 178.

¹⁷⁸ *See id.* at 106–33, 177–91; COLLING, *supra* note 112, at 106–10, 114; LAWRENCE & MORRISON, *supra* note 1, at 3.

¹⁷⁹ CARTER, *supra* note 108, at 198.

¹⁸⁰ BARRETT, *supra* note 142, at 91–92; CARTER, *supra* note 108, at 215–16; COLLING, *supra* note 112, at 124.

Brigadier General¹⁸¹ after being vilified by former Ambassador Patrick Hurley.¹⁸² Hurley claimed that the Dixie Mission “betrayed” him and “sabotaged” his progress toward reconciling the CCP and the KMT.¹⁸³ Similarly, John P. Davies was subjected to Senator Joseph McCarthy’s investigations and was eventually fired by Secretary of State John Dulles.¹⁸⁴ John Service, another FSO assigned to the Dixie Mission, was also subjected to Senator McCarthy’s investigations because of his glowing reports of the CCP.¹⁸⁵ Despite being cleared by a congressional investigation, Secretary of State Dulles fired him.¹⁸⁶ Other Dixie Mission members suffered similar fates: forced into early retirement, denied promotions, or faced unemployment.¹⁸⁷ Sadly, the Dixie Mission was almost entirely forgotten until relations between the U.S. and the PRC thawed in the 1970s.¹⁸⁸

Although the Dixie Mission was primarily an American military unit that established an American presence in Yan’an and developed relations with the CCP, the U.S. did not recognize the CCP as a legitimate political faction during World War II, notwithstanding the Dixie Mission’s reports detailing the CCP’s combat prowess while winning the hearts and minds of the people.¹⁸⁹ Instead, the U.S. continued to recognize Chiang-Kai Shek and the KMT as the legitimate government of China until 1979.¹⁹⁰

Like the Dixie Mission, the observer group proposed by this Article will not change America’s position on Taiwan’s political status; it will have

¹⁸¹ A brigadier general is a commissioned officer in the army, air force, or marine corps who ranks above a colonel and whose insignia is one star. *Brigadier general*, WEBSTER’S NINTH NEW COLLEGIATE DICTIONARY (9th ed. 1990).

¹⁸² CARTER, *supra* note 108, at 143, 210–11.

¹⁸³ *Id.* at 210. Hurley believed that the Dixie Mission schemed to have U.S. forces cooperate with the CCP. This supposedly gave the CCP the assumption they could get U.S. support without complying with the terms of the cease-fire agreement that Hurley was negotiating. *Id.*

¹⁸⁴ *Id.* at 216. The State Department eventually reexamined his case in 1969 and reinstated Davies. *Id.*

¹⁸⁵ *Id.* at 215.

¹⁸⁶ *Id.* Service fought for years and ultimately brought his case before the U.S. Supreme Court in *Service v. Dulles*, 354 U.S. 363 (1957). The Supreme Court unanimously voted in his favor and Service was reinstated in the State Department until he retired in 1962. *Id.*

¹⁸⁷ *Id.* at 224.

¹⁸⁸ *Id.* at 15, 225.

¹⁸⁹ COLLING, *supra* note 112, at 98; BAGBY, *supra* note 112, at 116; COLLING, *supra* note 112, at 98–99.

¹⁹⁰ LAWRENCE & MORRISON, *supra* note 1, at 2–3, 7.

objectives similar to those of the first Dixie Mission.¹⁹¹ The primary objectives of the Dixie Mission II would be to assess Taiwan's military and humanitarian capabilities.¹⁹² If necessary, the Dixie Mission II would also coordinate with Taiwan to respond to future humanitarian situations, including natural disasters and U.S. ships and aircraft in distress.¹⁹³ Thus, the Dixie Mission II would strengthen the current unofficial relationship between the U.S. and Taiwan under the Taiwan Relations Act and the Six Assurances.¹⁹⁴

B. *Taiwan Relations Act and the Six Assurances*

The Taiwan Relations Act ("TRA") was enacted in April 1979 to authorize informal relations with Taiwan shortly after the U.S. terminated formal relations.¹⁹⁵ Under the TRA, the U.S. may continue to sell Taiwan military hardware of a defensive nature.¹⁹⁶ The U.S. also concluded three joint communiques with the PRC in 1972, 1978, and 1982—all containing key provisions related to Taiwan.¹⁹⁷ The first two communiques paved the way for the establishment of formal diplomatic relations between the U.S. and the PRC.¹⁹⁸ However, the third communique hinted at the gradual reduction of U.S. arms sales to Taiwan.¹⁹⁹ The Communique provided, "the United States Government understands and appreciates the Chinese policy of striving for a peaceful resolution of the Taiwan question."²⁰⁰ In that context, the communique stated that the U.S.:

[D]oes not seek to carry out a long-term policy of arms sales to Taiwan, that is arms sales to Taiwan will not exceed, either in qualitative or in quantitative terms, the level of those supplied in recent years since the establishment of diplomatic relations between the U.S. and the PRC, and that

¹⁹¹ See CARTER, *supra* note 108, at 10–13.

¹⁹² See BARRETT, *supra* note 142, at 27–28; CARTER, *supra* note 108, at 27–28, 35, 74; COLLING, *supra* note 112, at 75–77.

¹⁹³ See Randall Schriver, *The Case for US Ship Visits to Taiwan*, DIPLOMAT (May 19, 2016), <https://thediplomat.com/2016/05/the-case-for-us-ship-visits-to-taiwan/>.

¹⁹⁴ See TRA, Pub. L. 96-8, 93 Stat. 14, 17 (codified as amended in 22 U.S.C. §§ 3301–3316 (2011)).

¹⁹⁵ LAWRENCE & MORRISON, *supra* note 1, at 1, 9.

¹⁹⁶ TRA, Pub. L. 96-8, 93 Stat. 14, 17 (codified as amended in 22 U.S.C. §§ 3301–3316 (2011)).

¹⁹⁷ LAWRENCE & MORRISON, *supra* note 1, at 8.

¹⁹⁸ *Id.*

¹⁹⁹ See *id.* at 8–9.

²⁰⁰ *Id.* at 8.

it intends gradually to reduce its sale of arms to Taiwan, leading, over a period of time, to a final resolution.²⁰¹

The PRC has argued that by agreeing to the language in the Three Joint Communiques, the U.S. agreed that Taiwan is part of the PRC—the basis of the PRC’s “One-China Policy.”²⁰² Many U.S. commentators assert, however, that the U.S. merely acknowledged the PRC’s position that Taiwan is part of China.²⁰³ In doing so, the U.S. did not commit to a position, which left the U.S. position on Taiwan strategically ambiguous.²⁰⁴ As executive decrees, the Three Joint Communiques are not binding.²⁰⁵

In 1982, a month before the release of the third joint communique with the PRC, President Ronald Reagan communicated to Taiwan’s then-President Chiang Ching-Kuo what is now known as the “Six Assurances.”²⁰⁶ The Six Assurances, introduced by the Reagan Administration before the House of Representatives and the Senate immediately after the issuance of the third joint communique, were as follows:

1. We did not agree to set a date certain for ending arms sales to Taiwan;
2. We see no mediation role for the United States between Taiwan and the PRC;
3. Nor will we attempt to exert pressure on Taiwan to enter into negotiations with the PRC;
4. There has been no change in our longstanding position on the issue of sovereignty over Taiwan;
5. We have no plans to seek revisions to the Taiwan Relations Act; and
6. The August 17 [, 1982] Communique, should not be read to imply that we have agreed to engage in prior consultations with Beijing on arms sales to Taiwan.²⁰⁷

²⁰¹ *Id.* at 8–9.

²⁰² *Id.* at 9.

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ *Id.* at 8.

²⁰⁶ *Id.* at 10.

²⁰⁷ *Id.* at 10–11.

Although technically non-binding, the Six Assurances continue to serve as guidelines for U.S. relations with Taiwan.²⁰⁸ Thus, the U.S. may continue to sell arms to Taiwan indefinitely.²⁰⁹ Congress has also regularly reaffirmed the TRA and the Six Assurances.²¹⁰

Through the TRA²¹¹ and Six Assurances, Taiwan has been a recipient of the U.S. Foreign Military Sales (“FMS”) Program,²¹² which is regulated by the International Traffic in Arms Regulations (“ITAR”).²¹³ Although the U.S. will make available to Taiwan defense articles and services necessary for Taiwan’s self-defense, the President and Congress have the discretion to determine the nature and quantity of the requested articles and consider the recommendations of the military authorities.²¹⁴ In 2005, the Defense Security Cooperation Agency (“DSCA”)²¹⁵ contracted with AIT to employ military and civilian personnel.²¹⁶ The Pentagon²¹⁷ also deployed assessment teams to Taiwan from 1997 to early 2004 to assess Taiwan’s defense capabilities.²¹⁸

²⁰⁸ SUSAN V. LAWRENCE, CONG. RESCH. SERV., IF10275, TAIWAN: SELECT POLITICAL AND SECURITY ISSUES 1 (2018).

²⁰⁹ See LAWRENCE & MORRISON, *supra* note 1, at 10–11.

²¹⁰ See, e.g., National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 115-91 § 1259, 131 Stat. 1685 (2017).

²¹¹ TRA, Pub. L. 96-8, 93 Stat. 14-15 (codified as amended in 22 U.S.C. §§ 3301-3302).

²¹² The FMS is the U.S. Government’s program to transfer defense articles, services, and training to international partners and international organizations. The program is funded by administrative charges to foreign purchasers and is operated at no cost to taxpayers. *Foreign Military Sales FAQ*, DEF. SEC. COOP. AGENCY, <https://www.dscamilitary.com/resources/faq> (last visited Apr. 6, 2019).

²¹³ International Traffic in Arms Regulations (“ITAR”), 22 C.F.R. §§ 120–30 (2016). The ITAR implements the AECA and is regularly updated to reflect changes in the international political and security climate as well as technological development. DIRECTORATE OF DEF. TRADE CONTROLS, *infra* note 464.

²¹⁴ TRA, Pub. L. 96-8, 93 Stat. 15 (codified as amended in 22 U.S.C. § 3302).

²¹⁵ The DSCA administers security cooperation programs with foreign partners that support U.S. policy interests and objectives identified by the White House, Department of Defense, and Department of State. *Mission, Vision, and Values*, DEF. SEC. COOP. AGENCY, <https://www.dscamilitary.com/about-us/mission-vision-values> (last visited Jan. 25, 2019).

²¹⁶ KAN, *supra* note 43, at 5–6 n.31.

²¹⁷ The Pentagon is the headquarters of the U.S. Department of Defense. DEP’T DEF., PENTAGON FACTS 4 (2021), <https://pentagontours.osd.mil/Tours/#page4>.

²¹⁸ KAN, *supra* note 43, at 3–4. In February and May 1999, the Pentagon submitted reports on theater missile defense options of Taiwan. In September 1999, Taiwan’s air defense capability was assessed and in September 2000, the Pentagon reportedly conducted a classified assessment of Taiwan’s naval defense needs. In January

The U.S. has also assisted Taiwan in assessing its military capabilities.²¹⁹ In 2007-2009, Taiwan's Ministry of National Defense²²⁰ conducted a Joint Defense Capabilities Assessment with U.S. assistance to determine needs for Taiwan's joint defense.²²¹ It also assessed Taiwan's air defense forces in 2010.²²² The report concluded that the PRC's ballistic and cruise missiles as well as fighters have diminished Taiwan's ability to deny PRC air superiority in a conflict.²²³ Despite having almost 400 combat aircraft, most of them were at the end of their service lives; required frequent, expensive maintenance; or were not capable of participating in a sustained conflict.²²⁴ The Pentagon also submitted a classified report to the Senate Armed Services Committee assessing the capabilities and readiness of the ROCAF in early 2014.²²⁵ However, Congressional requests to assess Taiwan's military have been sporadic since 2015.²²⁶ In light of the dismal reports, Taiwan has launched an effort to modernize its military while also developing a robust domestic defense industry.²²⁷

2001, a team reportedly examined Taiwan's command and control, air force equipment, and air defense against a first strike. In September 2001, Taiwan's Army ("ROCA") was evaluated and in August of the same year, another team assessed Taiwan's Marine Corps and security at ports and harbors. In November 2003, a team rated Taiwan's anti-submarine warfare ("ASW") capability as poor. *Id.*

²¹⁹ *Id.*

²²⁰ Taiwan's Ministry of National Defense is equivalent to the U.S. Department of Defense. *See* 50 U.S.C. ch. 15 § 401; MINISTRY OF NATIONAL DEFENSE R.O.C., ABOUT MND (2021), <https://www.mnd.gov.tw/english/Publish.aspx?p=74731&title=About%20MND>.

²²¹ KAN, *supra* note 43, at 3-4.

²²² *Id.*

²²³ *Id.* at 4.

²²⁴ *Id.*

²²⁵ *Id.* at 3.

²²⁶ *See* Howard P. "Buck" McKeon National Defense Authorization Act for Fiscal Year 2015, Pub. L. No. 113-291, § 1256I(2), 128 Stat. 3292, 3574 (2014); National Defense Authorization Act for Fiscal Year 2016, Pub. L. No. 114-92, §§ 1261-63, 129 Stat. 726, 1073-75 (2015); National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, § 1284, 130 Stat. 2544 (2016); National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 115-91 §§ 1259-1259A, 131 Stat. 1685 (2017); John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232 §§ 1257-58, 132 Stat. 1649 (2019); William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-29 § 1260, H.R. 6395 (2020-2021).

²²⁷ Wendell Minnick, *Taiwan Moves on \$14.7B Indigenous Shipbuilding Upgrade Projects*, DEF. NEWS (June 23, 2016), <https://www.defensenews.com/naval/2016/06/23/taiwan-moves-on-14-7b-indigenous-shipbuilding-upgrade-projects/>.

In June 2016, Taiwan's Ministry of National Defense announced twelve new shipbuilding and force modernization programs projected across a twenty-three year period.²²⁸ It is part of an overall plan to wean Taiwan from expensive and politically troublesome U.S. defense acquisitions and to develop a robust domestic defense industry.²²⁹ In late 2020, Taiwan announced that the ROCN's first indigenous submarine will be completed in January 2024.²³⁰ Additionally, the ROCN launched a ship that will function as a test platform for new domestically produced naval weapons²³¹ as well as a corvette designed to counter the PRC's aircraft carriers.²³² In April 2021, Taiwan christened a new amphibious warfare ship designed to support amphibious assault and disaster relief operations.²³³ For the ROCA, Taiwan will design its own vehicles to replace its aged High Mobility Multipurpose Wheeled Vehicle ("HMMWV" or "Humvee")²³⁴ with production to start in 2024 instead of purchasing Joint Light Tactical

²²⁸ *Id.*

²²⁹ *Id.*

²³⁰ Production of the submarine started after the submarine shipyard was completed in November 2020. Kelvin Chen, *Taiwan Navy Announces Submarine Production Will Begin This Month*, TAIWAN NEWS (Nov. 3, 2020), <https://www.taiwannews.com.tw/en/news/4044102>; Kelvin Chen, *Taiwan to Begin Construction of Domestic Submarine on Nov. 3*, TAIWAN NEWS (Sept. 29, 2020), <https://www.taiwannews.com.tw/en/news/4019505>; Duncan DeAeth, *CSBC Chairman: Taiwan's Indigenous Submarine to Be Ready by Jan. 2024*, TAIWAN NEWS (Feb. 25, 2019), <https://www.taiwannews.com.tw/en/news/3645705>; Brad Lendon, *Taiwan's Planned Submarine Fleet Could Forestall a Potential Chinese Invasion for Decades*, CNN (Dec. 20, 2020), <https://www.cnn.com/2020/12/19/asia/taiwan-submarine-fleet-analysis-intl-hnk-ml/index.html>.

²³¹ Matthew Strong, *Taiwan Launches Military Test Ship*, TAIWAN NEWS (Mar. 16, 2019), <https://www.taiwannews.com.tw/en/news/3659564>.

²³² Keoni Everington, *Taiwan Launches "Aircraft Carrier Killer" Corvette*, TAIWAN NEWS (Dec. 15, 2020), <https://www.taiwannews.com.tw/en/news/4078391>.

²³³ Jonathan Chin & Lo Tien-pin, *Navy to Christen New Domestically Built Ship the 'Yushan' on Tuesday*, TAIPEI TIMES (Apr. 11, 2021), <https://www.taipetimes.com/News/taiwan/archives/2021/04/11/2003755483>; *Taiwan Bolsters Navy with Unveiling of New Amphibious Warfare Ship*, REUTERS (Apr. 12, 2021), <https://www.reuters.com/business/aerospace-defense/taiwan-bolsters-navy-with-unveiling-new-amphibious-warfare-ship-2021-04-13/>.

²³⁴ The HMMWV is a tactical vehicle that replaced the M151 Jeep in the 1980s and has over fifteen different configurations such as troop carriers and ambulances. CLANCY & GRESHAM, *supra* note 79, at 87–89; *HMMWV (Humvee) High-Mobility Multipurpose Wheeled Vehicle*, ARMY TECH., <https://www.army-technology.com/projects/hmmv/> (last visited Apr. 6, 2019).

Vehicles (“JLTV”),²³⁵ which were deemed too expensive.²³⁶ The ROCA will also upgrade or replace half of Taiwan’s Army’s outdated equipment.²³⁷ The ROCAF is in the process of developing its own drone,²³⁸ has unveiled a domestically developed advanced jet trainer;²³⁹ and has inaugurated a F-16 maintenance facility in Taichung, which is the first and only repair facility in the Asia-Pacific Region that is capable of servicing the F-16.²⁴⁰ The costly alternative is to ship the F-16s to the U.S. for repair.²⁴¹ Taiwan has also announced its intention to accelerate plans to mass-produce domestically-developed missiles.²⁴² There are doubts about Taiwan’s ability to fund the modernization programs due to fluctuating defense budgets²⁴³ and whether Taiwan has sufficient expertise for research and development

²³⁵ The JLTV is to replace the aging HMMWVs in the U.S. Military and is designed for patrol and combat operations. *Joint Light Tactical Vehicle (JLTV) Support Vehicle*, ARMY TECH., <https://www.army-technology.com/projects/jltv/> (last visited Mar. 27, 2019).

²³⁶ Matthew Strong, *Taiwan Military to Build Own Vehicle to Replace Humvees*, TAIWAN NEWS (Feb. 9, 2019), <https://www.taiwannews.com.tw/en/news/3634626>.

²³⁷ Matthew Strong, *Taiwan Army to Replace or Upgrade Half of Outdated Equipment by 2035*, TAIWAN NEWS (Nov. 4, 2020), <https://www.taiwannews.com.tw/en/news/4045296>.

²³⁸ The drone, codenamed Teng Yun (Cloud Rider) resembles the U.S. MQ-1 Predator UAV and is currently being developed. *Taiwan’s Development of ‘Teng Yun’ Drone on Schedule*, TAIWAN NEWS (Aug. 7, 2020), <https://www.taiwannews.com.tw/en/news/3982660>; *MQ-1B Predator*, U.S. AIR FORCE (Sept. 23, 2015), <https://www.af.mil/About-Us/Fact-Sheets/Display/Article/104469/mq-1b-predator/>.

²³⁹ The jet trainer, codenamed Brave Eagle, is intended to replace the aging training aircraft in the ROCAF. Kelvin Chen, *Taiwan’s Aging F-5E Aircraft to Be Replaced by Brave Eagle Trainer Jets*, TAIWAN NEWS (Nov. 3, 2020), <https://www.taiwannews.com.tw/en/news/4044287>; Keoni Everington, *Video Shows Taiwan’s Brave Eagle Soar for First Time*, TAIWAN NEWS (June 11, 2020), <https://www.taiwannews.com.tw/en/news/3945891>; Teng Pei-ju, *President Tsai Unveils Prototype for Taiwan’s Advanced Jet Trainers*, TAIWAN NEWS (Sept. 24, 2019), <https://www.taiwannews.com.tw/en/news/3783129>.

²⁴⁰ Kelvin Chen, *Taiwan Inaugurates F-16 Maintenance Center*, TAIWAN NEWS (Aug. 8, 2020), <https://www.taiwannews.com.tw/en/news/399699>.

²⁴¹ Chen, *supra* note 240; Matthew Strong, *Taiwan President to Inaugurate First F-16 Repair Center in Asia Pacific*, TAIWAN NEWS (Aug. 22, 2020), <https://www.taiwannews.com.tw/en/news/3992755>.

²⁴² Duncan DeAeth, *President Tsai Orders Rapid Production of Taiwan Indigenous Missiles*, TAIWAN NEWS (Jan. 25, 2019), <https://www.taiwannews.com.tw/en/news/3625517>.

²⁴³ See KAN, *supra* note 43, at 32–38; LAWRENCE & MORRISON, *supra* note 1, at 62–64.

without relying on foreign technical assistance.²⁴⁴ Regular observations of Taiwan's efforts to address its shortcomings will assist the Department of Defense ("DoD") and Congress in evaluating Taiwan's future arms sales requests.²⁴⁵

The Dixie Mission II would be able to provide independent, updated reports and recommendations to the DoD and Congress about Taiwan's military and humanitarian capabilities on an ongoing basis.²⁴⁶ The reports could also encompass Taiwan's ambitious modernization programs by monitoring Taiwan's progress.²⁴⁷ However, whether the reports will influence Congress's approval to sell the latest defense technology or defense articles to Taiwan is a separate issue.²⁴⁸

C. *Taiwan Travel Act*

From 1979 to 2016, only six Cabinet-level U.S. officials visited Taiwan.²⁴⁹ In 2014, then-U.S. Environmental Protection Agency Administrator Gina McCarthy was the first Cabinet-level U.S. official to visit Taiwan since the Clinton Administration.²⁵⁰ Although the U.S. dispatched active and retired admirals and generals to Taiwan to observe Taiwan's annual Han Kuang²⁵¹ military exercises, the visits were

²⁴⁴ Minnick, *supra* note 227; Ching-Tse Cheng, *US Says Taiwan's Defense Budget Spending 'Insufficient' Against Chinese Threat*, TAIWAN NEWS (Oct. 7, 2020), <https://www.taiwannews.com.tw/en/news/4024855>.

²⁴⁵ See KAN, *supra* note 43, at 3–5.

²⁴⁶ See *id.* at 3–4; Holshek, *infra* note 267, at 2–6.

²⁴⁷ Minnick, *supra* note 227; Cheng, *supra* note 244.

²⁴⁸ See Arms Export Control Act ("AECA"), 22 U.S.C. § 2778 (2014).

²⁴⁹ LAWRENCE & MORRISON, *supra* note 1, at 21.

²⁵⁰ Remarks by Administrator Gina McCarthy of the U.S. Environmental Protection Administration, AM. INST. TAIWAN (Apr. 14, 2014), <https://www.ait.org.tw/remarks-administrator-gina-mccarthy-u-s-environmental-protection-administration/> (highlighting Taiwan's role as a leader in environmental cooperation, particularly initiatives to reduce electronic waste); Megha Rajagopalan, *China Angered by U.S. Environment Chief's Visit to Taiwan*, REUTERS (Apr. 15, 2014), <https://www.reuters.com/article/us-china-usa-taiwan/china-angered-by-u-s-environment-chiefs-visit-to-taiwan-idUSBREA3E0N220140415>.

²⁵¹ The Han Kuang military exercises are Taiwan's main annual military exercises, which involve all military branches to demonstrate Taiwan's determination to defend against a PRC invasion while also enhancing Taiwan's defenses. See Brian Sung, *Han Kuang Showcases Progress*, TAIPEI TIMES (Aug. 6, 2020), <https://www.taipeitimes.com/News/editorials/archives/2020/08/06/2003741193>; Adela Suliman, *Taiwan Conducts Major Annual Military Exercise amid Rising China Tensions*, NBC NEWS (July 16, 2020), <https://www.nbcnews.com/news/world/103taiwan-conducts-major-annual-military-exercise-amid-rising-china-tensions-n1234023>.

sporadic.²⁵² Thus, Congress concluded that relations between the U.S. and Taiwan have suffered from insufficient high-level communication due to the self-imposed restrictions on high-level visits with Taiwan.²⁵³

The Taiwan Travel Act of 2018 (“TTA”) encourages visits between the United States and Taiwan at all government levels.²⁵⁴ The TTA’s policy is to encourage visits between the U.S. and Taiwan at all levels; Cabinet-level national security officials, general officers, and other executive branch officials are allowed to travel to Taiwan to meet their Taiwanese counterparts.²⁵⁵ Additionally, the Taipei Economic and Cultural Representative Office, and any other instrumentality established by Taiwan are encouraged to conduct business in the U.S.²⁵⁶

As a result of the TTA, more high level visits and exchanges have occurred.²⁵⁷ On August 9, 2020, then-Health and Human Services Secretary Alex Azar visited Taiwan to discuss relations between Taiwan and the U.S. while also highlighting Taiwan’s exemplary response to the ongoing COVID-19 pandemic.²⁵⁸ On September 17, 2020, Keith Krach, then-Under Secretary of State for Economic Growth, Energy, and the Environment, visited Taiwan to represent the U.S. at the memorial service for former Taiwan President Lee Teng-hui, Taiwan’s first democratically elected president.²⁵⁹ On January 20, 2021, Hsiao Bi-khim, Taiwan’s *de facto* ambassador to the U.S., was formally invited to attend President Joseph R.

²⁵² See KAN, *supra* note 43, at 5–7; LAWRENCE & MORRISON, *supra* note 1, at 26.

²⁵³ Taiwan Travel Act (“TTA”) § 2, Pub. L. No. 115-135, 132 Stat. 341 (2018) [hereinafter TTA].

²⁵⁴ *Id.* § 3(a).

²⁵⁵ *Id.* §§ 3(a)–(b)(1).

²⁵⁶ *Id.* § 3(b)(3).

²⁵⁷ *E.g.*, DEP’T OF HEALTH AND HUM. SERVS., NEWS RELEASE: HHS SECRETARY AZAR MEETS WITH PRESIDENT TSAI OF TAIWAN AND PRAISES TAIWAN’S TRANSPARENT COVID-19 RESPONSE, *infra* note 258; Berlinger, *infra* note 258; Westcott, *infra* note 259; Tiezzi, *infra* note 260.

²⁵⁸ DEP’T OF HEALTH AND HUM. SERVS., NEWS RELEASE: HHS SECRETARY AZAR MEETS WITH PRESIDENT TSAI OF TAIWAN AND PRAISES TAIWAN’S TRANSPARENT COVID-19 RESPONSE (Aug. 10, 2020), <https://www.hhs.gov/about/news/2020/08/10/hhs-secretary-azar-meets-with-president-tsai-of-taiwan-and-praises-taiwans-transparent-covid-19-response.html>; Joshua Berlinger, *Taiwan Just Went 200 Days Without a Locally Transmitted Covid-19 Case. Here’s How They Did It*, CNN (Oct. 30, 2020), <https://www.cnn.com/2020/10/29/asia/taiwan-covid-19-intl-hnk/index.html>; Paula Hancocks, *Azar Arrives in Taiwan, Marking the Most Senior US Visit in Decades*, CNN (Aug. 9, 2020), <https://www.cnn.com/2020/08/09/politics/alex-azar-taiwan/index.html>.

²⁵⁹ Ben Westcott, *US Holds its Second High-Profile Visit to Taiwan in Two Months as Beijing Escalates Military Pressure*, CNN (Sept. 18, 2020), <https://www.cnn.com/2020/09/17/asia/taiwan-us-china-keith-krach-intl-hnk/index.html>.

Biden's inauguration.²⁶⁰ She was the first representative of Taiwan to receive an official invitation to a U.S. presidential inauguration.²⁶¹ Since 1979, previous Taiwanese representatives attended U.S. presidential inauguration ceremonies through the courtesy of U.S. legislators.²⁶² In January 2021, the U.S. State Department lifted restrictions on contacts between U.S. officials and their Taiwanese counterparts in other countries.²⁶³

The deployment of a military observer group to Taiwan is permitted under the TTA because officials of the U.S. government are allowed to travel to Taiwan to meet their Taiwanese counterparts.²⁶⁴ The composition of the Dixie Mission II would be similar to the composition of the original Dixie Mission.²⁶⁵ Therefore, the Dixie Mission II would consist of officers no higher than Colonel, and these officers, along with other members of the observer group, could be expected to meet and work with their Taiwanese counterparts.²⁶⁶ An observer group would be able to evaluate Taiwan's military and humanitarian operations extensively in the field.²⁶⁷

²⁶⁰ Ben Blanchard, *Taiwan-Biden Ties off to Strong Start with Invite for Top Diplomat*, REUTERS (Jan. 20, 2021), <https://www.reuters.com/article/us-usa-biden-taiwan/taiwan-biden-ties-off-to-strong-start-with-invite-for-top-diplomat-idUSKBN29Q01N>; Shannon Tiezzi, *Biden Administration Makes Early Outreach to Taiwan*, DIPLOMAT (Jan. 21, 2021), <https://thediplomat.com/2021/01/biden-administration-makes-early-outreach-to-taiwan/>.

²⁶¹ Blanchard, *supra* note 260; Tiezzi, *supra* note 260.

²⁶² Blanchard, *supra* note 260; Tiezzi, *supra* note 260.

²⁶³ See Idrees Ali & David Brunnstrom, *Pompeo Lifts Restrictions on U.S.-Taiwan Relationship as Clock Runs Out on Trump Administration*, REUTERS (Jan. 9, 2021), <https://www.reuters.com/article/us-usa-taiwan-diplomacy-on-u-s-taiwan-relationship-as-clock-runs-out-on-trump-administration-idUSKBN29E0Q6>; Ben Blanchard, *U.S. Hosts Taiwan in Netherlands in First Visit since Restrictions Lifted*, REUTERS (Jan. 11, 2021), <https://www.reuters.com/article/us-taiwan-usa/u-s-hosts-taiwan-in-netherlands-in-first-visit-since-restrictions-lifted-idUSKBN29H04C>; *Taiwan, US Diplomats Meet After Official Contact Ban Lifted*, TAIWAN NEWS (Jan. 17, 2021), <https://www.taiwannews.com.tw/en/news/4104160>.

²⁶⁴ TTA §§ 3(a)–(b)(1), Pub. L. No. 115-135, 132 Stat. 341 (2018).

²⁶⁵ CARTER, *supra* note 108, at 11.

²⁶⁶ See TTA § 3(b)(1), Pub. L. No. 115-135, 132 Stat. 342 (2018).

²⁶⁷ See Christopher Holshek, *U.S. Military Observers and Comprehensive Engagement*, SMALL WARS J. 2–6 (2011), <https://smallwarsjournal.com/blog/journal/docs-temp/673-holshek.pdf>.

D. Recent U.S. Legislation Regarding Taiwan

Congress has demonstrated its intention to strengthen defense relations with Taiwan.²⁶⁸ In 2018, Congress approved legislation conducting regular arms transfers, invited Taiwanese to participate in U.S. military exercises,²⁶⁹ increased exchanges of military personnel and bilateral naval exercises, and considered the feasibility of reestablishing port of call exchanges between the U.S. Navy and the ROCN.²⁷⁰ In 2019, Congress passed legislation to increase the scope of U.S.-Taiwan relations and encouraged other nations and international organizations to strengthen relations with Taiwan.²⁷¹ The final decision as to whether to invite Taiwan's military to participate in U.S. military exercises and reestablish port of call exchanges is up to the President of the United States.²⁷²

Should the U.S. President decide to strengthen defense relations with Taiwan and invite Taiwan to participate in U.S. military or humanitarian relief exercises, the Dixie Mission II would be available to

²⁶⁸ *E.g.*, Normalizing the Transfer of Defense Articles and Defense Services to Taiwan, Pub. L. 115-91, § 1259A, 131 Stat. 1685 (2017); LAWRENCE & MORRISON, *supra* note 1, at 28.

²⁶⁹ One military exercise that may include Taiwan in the future is the Rim of the Pacific ("RIMPAC") Exercise. See Wyatt Olson, *Senate Version of Defense Bill Paves Way for Taiwan to Attend RIMPAC in Future Years*, STARS & STRIPES (June 29, 2020), <https://www.stripes.com/news/pacific/senate-version-of-defense-bill-paves-way-for-taiwan-to-attend-rimpac-in-future-years-1.635651>. RIMPAC is a U.S.-led, multilateral naval exercise in the Pacific held every two years, involving naval forces from more than two dozen countries. RONALD O'ROURKE, CONG. RSCH. SERV., R42784, U.S.-CHINA STRATEGIC COMPETITION IN SOUTH AND EAST CHINA SEAS 29 (2021).

²⁷⁰ National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 115-91 § 1259, 131 Stat. 1685 (2017); see LAWRENCE & MORRISON, *supra* note 1, at 26–28.

²⁷¹ Taiwan Allies International Protection and Enhancement Initiative Act (TAIPEI Act), Pub. L. No. 116-135, 134 Stat. 278-80 (2020); TRA, Pub. L. No. 96-8, 93 Stat. 14, 17 (1979) (codified as amended in 22 U.S.C. §§ 3301–3316 (2011))

²⁷² See U.S. CONST. art. II, § 2, cl. 1.

assist in organizing such future exercises or enhanced defense cooperation²⁷³ between the U.S. and Taiwan.²⁷⁴

E. *Dixie Mission II's Composition*

The Dixie Mission II would be similar to the first Dixie Mission.²⁷⁵ The unit would be commanded by a Colonel (O-6) and would have no more than forty-five members drawn from various military branches.²⁷⁶ Similar to the first Dixie Mission, personnel should have the following qualifications for operational security:²⁷⁷ (1) be fluent or proficient in Mandarin or local dialects²⁷⁸ of Taiwan;²⁷⁹ and (2) have a minimal social media footprint to mitigate the risk of being personally compromised by the PRC's sophisticated cyber warfare capability.²⁸⁰

An observer group would be able to lay the foundation to fulfill Congress's intention to strengthen U.S.-Taiwan's defense relationship without committing significant military resources.²⁸¹ The Dixie Mission II would also re-establish and maintain a minimal but active U.S. military

²⁷³ Although there are articles advocating stationing U.S. troops or re-establishing U.S. bases in Taiwan, there are too many unknown variables to factor besides the political fallout between the U.S. and the PRC. *See, e.g.*, Walker D. Mills, *Detering the Dragon: Returning U.S. Forces to Taiwan*, MIL. REV. (Sept.–Oct. 2020); Eric Setzekorn, *Taiwan and the U.S. Army: New Opportunities amid Increasing Threats*, MIL. REV. (Sept.–Oct. 2020). Some of the variables include logistical requirements for U.S. troops, cooperation from Taiwan, and approval by the U.S. Government. *Cf.* EMMA CHANLETT-AVERY & IAN E. RINEHART, CONG. RSCH. SERV., R42645, THE U.S. MILITARY PRESENCE IN OKINAWA AND THE FUTENMA BASE CONTROVERSY 1–14 (2016); Kylie Atwood, Nicole Gaouette & Oren Liebermann, *US and South Korea Nearing Agreement on Cost Sharing for American Troops*, CNN (Feb. 10, 2021), <https://www.cnn.com/2021/02/10/politics/us-south-korea-cost-sharing-troops/index.html>.

²⁷⁴ *See* Holshek, *supra* note 267, at 1–4.

²⁷⁵ CARTER, *supra* note 108, at 31–35; Jones, *supra* note 112, at 1.

²⁷⁶ CARTER, *supra* note 108, at 31–35; Jones, *supra* note 112, at 1.

²⁷⁷ DEF. SEC. COUNTERINTEL. & SEC. AGENCY, *Operations Security*, CTR. DEV. SEC. EXCELLENCE (2021), <https://www.cdse.edu/catalog/operations-security.html>. Operations Security, or OPSEC, is the process to protect critical information and prevent adversaries' access to information and actions that may compromise an operation. *Id.*

²⁷⁸ *East Asia/Southeast Asia: Taiwan*, WORLD FACTBOOK – CIA, <https://www.cia.gov/library/publications/the-world-factbook/geos/tw.html> (last visited Mar. 21, 2019) [hereinafter *East Asia/Southeast Asia: Taiwan*].

²⁷⁹ CARTER, *supra* note 108, at 35.

²⁸⁰ DEP'T OF DEF., MILITARY AND SECURITY DEVELOPMENTS INVOLVING THE PEOPLE'S REPUBLIC OF CHINA 2020, 81–84 (2020), <https://media.defense.gov/2020/Sep/01/2002488689/-1/-1/1/2020-DOD-CHINA-MILITARY-POWER-REPORT-FINAL.PDF>.

²⁸¹ Holshek, *supra* note 267, at 6.

presence in Taiwan.²⁸² Additionally, international laws and regulations that pertain to humanitarian relief for natural disasters and ships and aircraft in distress serve as persuasive authority to justify the humanitarian aspect of the Dixie Mission II.²⁸³

F. *International Laws and Regulations as Persuasive Authority*

Although Taiwan is currently not a member of the United Nations General Assembly,²⁸⁴ Taiwan ratified the Charter of the United Nations and other international treaties in Article 141 of its Constitution.²⁸⁵ Due to political pressure from the PRC, Taiwan is not a party to many international organizations, such as the World Health Organization (“WHO”), and agreements, such as UNCLOS, that require statehood for membership.²⁸⁶ However, despite its status as a *de facto* state,²⁸⁷ Taiwan has shown its willingness to adhere to certain international laws and obligations.²⁸⁸ For example, in September 2017, Taiwan voluntarily suspended trade with the Democratic People’s Republic of Korea (“North Korea”),²⁸⁹ even though Taiwan is not technically required to implement U.N. Security Council resolutions.²⁹⁰ Thus, the international laws, regulations, and guidelines

²⁸² *Id.*

²⁸³ See UNCLOS, *supra* note 4; Chicago Convention, *supra* note 4; *Introduction to the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance*, IFRC 14-15, 17 (May 12, 2017), <https://media.ifrc.org/ifrc/wp-content/uploads/2017/12/1205600-IDRL-Guidelines-EN-LR.pdf> [hereinafter *Introduction to the Guidelines*].

²⁸⁴ LAWRENCE & MORRISON, *supra* note 1, at 56. The United Nations General Assembly occupies a central position as the chief deliberative, policymaking, and representative organ of the United Nations with representatives from 193 member countries. *Functions and Powers of the General Assembly*, UNITED NATIONS <https://www.un.org/en/ga/about/background.shtml>, (last visited Mar. 4, 2021).

²⁸⁵ MINGUO XIANFA art. 141 (2005) (Taiwan).

²⁸⁶ LAWRENCE & MORRISON, *supra* note 1, at 12, 58.

²⁸⁷ *Taiwan*, UNREPRESENTED NATIONS & PEOPLES ORG. (UNPO) (July 19, 2018), <https://unpo.org/members/7908>.

²⁸⁸ See LAWRENCE & MORRISON, *supra* note 1, at 12, 58.

²⁸⁹ A few years ago, North Korea approached and offered to sell technology for diesel submarines to Taiwan. However, Taiwan declined the offer out of concern that it would violate U.N. sanctions against North Korea. LAWRENCE & MORRISON, *supra* note 1, at 55; Sophia Yang, *North Korea Pitched State-of-the-Art Submarine System to Taiwan Military: Report*, TAIWAN NEWS (Apr. 5, 2019), <https://www.taiwannews.com.tw/en/news/3673918>.

²⁹⁰ S.C. Res. 1874, ¶¶ 9–10 (June 12, 2009) (calling on Member States to expand their enforcement of previous security resolutions against North Korea to include financial transactions, technical training, advice, services, or assistance related to the manufacture, maintenance, and use of arms or material); S.C. Res. 1718, ¶ 8(a)(i)–(ii)

referenced serve only as persuasive authority to justify the Dixie Mission II's humanitarian assistance objective.

1. International Laws and Regulations Regarding Natural Disasters

Unlike armed conflicts in which states are bound by the Geneva Convention²⁹¹ regarding the treatment of civilians, there are no legally binding regulations regarding humanitarian relief for natural disasters.²⁹² The International Federation of Red Cross and Red Crescent Societies ("IFRC")²⁹³ developed the International Disaster Response Law ("IDRL") in November 2007.²⁹⁴ The IDRL serves as a persuasive, non-binding legal framework regarding humanitarian relief for natural disasters.²⁹⁵

The IDRL recognizes that States may use military assets to send humanitarian relief to other countries.²⁹⁶ The IDRL suggests that military assets should be deployed for disaster relief or initial recovery assistance only at the request or with the express consent of the affected State after having considered comparable civilian alternatives.²⁹⁷ Prior to any such deployment, terms and conditions (including issues such as the duration of deployment, armed or unarmed status of military personnel, the use of national uniforms, and mechanisms for cooperation with civilian actors) are to be agreed upon by the affected and assisting States.²⁹⁸

The President of the United States may direct the Secretary of Defense to provide disaster assistance using the military outside of the U.S.

(Oct. 14, 2006) (calling on Member States to prevent the direct or indirect supply, sale, or transfer of arms or related material, including technology, with North Korea).

²⁹¹ The Geneva Convention is a set of international treaties that protect people who do not take part in the fighting (i.e., civilians, medics, and aid workers) and those who can no longer fight (wounded, sick and shipwrecked troops, and prisoners of war). *See Geneva Conventions of 1949 and Their Additional Protocols*, INT'L COMM. RED CROSS (Jan. 1, 2014), <https://www.icrc.org/en/document/geneva-conventions-1949-additional-protocols>.

²⁹² *Introduction to the Guidelines*, *supra* note 283, at 13.

²⁹³ The IFRC is a global humanitarian organization established in 1919, which coordinates and directs international assistance following natural and man-made disasters in non-conflict situations. *Our Vision and Mission*, IFRC (Apr. 24, 2021), <https://www.ifrc.org/en/who-we-are/vision-and-mission/>; *The International Federation of Red Cross and Red Crescent Societies (IFRC)*, IFRC (Apr. 24, 2021), <https://www.ifrc.org/en/who-we-are/the-movement/ifrc/>.

²⁹⁴ *Introduction to the Guidelines*, *supra* note 283, at 3.

²⁹⁵ *See id.* at 13.

²⁹⁶ *Id.* at 17.

²⁹⁷ *Id.*

²⁹⁸ *Id.*

to respond to manmade or natural disasters.²⁹⁹ In the past, the U.S. deployed the military to provide humanitarian assistance and disaster relief to countries in the Asia-Pacific Region, including India, Japan, and the Philippines.³⁰⁰

Taiwan has been subjected to natural disasters, especially typhoons and earthquakes.³⁰¹ Despite the lack of official diplomatic relations with Taiwan, the U.S. military has provided disaster relief in Taiwan upon request by Taiwan's government.³⁰² For example, the U.S. military provided disaster relief after the earthquake on September 21, 1999 and Typhoon Aere in 2004.³⁰³ When Taiwan requested foreign humanitarian relief after Typhoon Morakat in 2009, the U.S. dispatched two KC-130 Hercules aircraft³⁰⁴ from Okinawa, the amphibious transport ship *U.S.S. Denver*,³⁰⁵

²⁹⁹ Foreign Disaster Assistance, 10 U.S.C. § 404.

³⁰⁰ See, e.g., *Tsunami Aid: Who's Giving What*, BBC (Jan. 27, 2005), <http://news.bbc.co.uk/2/hi/asia-pacific/4145259.stm> (describing how the U.S. Military dispatched 12,600 personnel, 21 ships, 14 cargo planes, and more than 90 helicopters in the aftermath of the 2004 Indian Ocean earthquake); ANDREW FEICKERT & EMMA CHANLETT-AVERY, CONG. RSCH. SERV., R41690, JAPAN 2011 EARTHQUAKE: U.S. DEPARTMENT OF DEFENSE (DOD) RESPONSE 1, 4 (2011) (describing how in the aftermath of a devastating earthquake and a subsequent tsunami that struck Japan in March 2011, the DoD's substantial relief, designated Operation Tomodachi, was composed of approximately 24,000 personnel, 189 aircraft, and 24 naval vessels including the *U.S.S. Ronald Reagan* Carrier Strike Group, which is stationed in Japan); THOMAS LUM & RHODA MARGESSON, CONG. RESCH. SERV., R43309, TYPHOON HAIYAN (YOLANDA): U.S. AND INTERNATIONAL RESPONSE TO PHILIPPINES DISASTER 8 (2014) (describing how in the aftermath of Typhoon Haiyan that struck the Philippines in 2013, the U.S. military relief efforts included more than 13,400 personnel, 66 aircraft, and 12 naval vessels which delivered more than 2,495 tons of relief supplies and evacuated over 21,000 people); MILLER & MILLER, *supra* note 62, at 130–31 (stating that the *Nimitz*-Class aircraft carriers are nuclear-powered and can carry 90 aircraft whose capabilities range from nuclear strike, through interception and ground-attack to close-in-anti-submarine protection); *USS Ronald Reagan CVN 76 – About*, U.S. NAVY, <https://www.reagan.navy.mil/about.html> (last visited Apr. 7, 2019) (stating that the *U.S.S. Ronald Reagan*, named in honor of President Ronald W. Reagan, is the ninth *Nimitz*-Class aircraft carrier).

³⁰¹ Mignonne Chan, *Risk Management for Disasters in Taiwan*, JAPAN SPOTLIGHT 10 (Sept./Oct. 2012), https://www.jef.or.jp/journal/pdf/185th_cover03.pdf.

³⁰² KAN, *supra* note 43, at 7–8.

³⁰³ *Id.*

³⁰⁴ The Lockheed KC-130 Hercules is a tactical transport while doubling as an in-flight-refueling tanker and is used by the U.S. Marine Corps. It is a version of the venerable Lockheed C-130 Hercules. THE ENCYCLOPEDIA OF WORLD MILITARY AIRCRAFT, *supra* note 54, at 233.

³⁰⁵ The *U.S.S. Denver* was an *Austin*-Class amphibious transport dock ship, which supports amphibious warfare operations. She served in the U.S. Navy from 1968 to 2014. *Naval Vessel Register – DENVER (LPD 9)*, U.S. NAVY (Dec. 12, 2017), https://www.nvr.navy.mil/SHIPDETAILS/SHIPSDETAIL_LPD_9.HTML.

and two MH-53 Sea Dragon³⁰⁶ and two MH-60 Seahawk³⁰⁷ helicopters to assist in relief efforts.³⁰⁸

In addition, Taiwan has participated in U.S.-hosted workshops on disaster response.³⁰⁹ The Dixie Mission II would be able to observe Taiwan's disaster relief exercises and actual operations.³¹⁰ If necessary, the Dixie Mission II would be able to provide immediate assistance in future disaster relief efforts should Taiwan request U.S. assistance.³¹¹ Additionally, the Dixie Mission II would be able to coordinate with Taiwan to assist U.S. warships and military aircraft in distress in the area.³¹²

2. UN Convention on Law of the Sea

The United Nations Convention on the Law of the Sea ("UNCLOS") is an international treaty that outlines a legal framework regarding territorial waters, the high seas, and marine and maritime activities.³¹³ Although the U.S. signed UNCLOS in 1994, it has never been ratified by the U.S. Senate.³¹⁴ Nonetheless, the U.S. adheres to the principles of UNCLOS³¹⁵ and the PRC is a signatory to UNCLOS.³¹⁶ Under UNCLOS, every State is required to render assistance to any person or ship in distress.³¹⁷ Every coastal State must maintain an effective search and rescue service and

³⁰⁶ The Sikorsky MH-53 Sea Dragon is an upgraded version of the Sikorsky CH-53 Sea Stallion. THE ENCYCLOPEDIA OF WORLD MILITARY AIRCRAFT, *supra* note 54, at 387–89.

³⁰⁷ The Sikorsky MH-60 Seahawk is the naval variant of the venerable Sikorsky UH-60 Blackhawk. *Id.* at 392–94.

³⁰⁸ KAN, *supra* note 43, at 7–8.

³⁰⁹ APCSS Editor, *U.S., Taiwan Lead Multilateral Workshop on Private, Civil and Public Disaster Response*, DANIEL K. INOUE ASIA-PAC. CTR. SEC. STUD. (Jan. 4, 2019), <https://apcss.org/us-taiwan-lead-multilateral-workshop-on-private-civil-and-public-disaster-response-cooperation/>.

³¹⁰ See Holshek, *supra* note 267, at 1–6.

³¹¹ KAN, *supra* note 43, at 7–8; APCSS Editor, *supra* note 309.

³¹² See Schriver, *supra* note 193.

³¹³ INT'L UNION FOR CONSERVATION OF NATURE, UNCLOS, (2021), <https://www.iucn.org/theme/marine-and-polar/our-work/international-ocean-governance/unclos>.

³¹⁴ United States Ocean Policy, Statement by President Ronald Reagan, 22 I.L.M. 464 (Mar. 10, 1983).

³¹⁵ *Id.*

³¹⁶ United Nations Div. for Ocean Affs. & the Law of the Sea, *Chronological Lists of Ratifications of, Accessions and Successions to the Convention and the Related Agreements* (Apr. 3, 2018), https://www.un.org/Depts/los/reference_files/chronological_lists_of_ratifications.htm.

³¹⁷ UNCLOS, *supra* note 4, art. 98(1)(a)–(b).

cooperate with neighboring states.³¹⁸ Although UNCLOS Articles 18 and 98 do not explicitly require States to give refuge to persons, ships, or aircraft in distress, it has been a time-honored custom and customary international law.³¹⁹

In light of humanitarian considerations, it is customary international law that any foreign vessel in distress has a right of entry to any port.³²⁰ In 2012, for example, the U.S. government allowed a Russian intelligence-gathering ship to dock in Jacksonville, Florida to avoid Hurricane Sandy even though that location was close to the Kings Bay Naval Submarine Base, which is the U.S. Atlantic Fleet's homeport for its ballistic missile nuclear submarines.³²¹ As another example, in 2017, the U.S. Navy suffered two grievous collisions that involved two *Arleigh Burke*-Class Missile Guided Destroyers ("DDG")³²² in the Asia-Pacific Region and required foreign assistance.³²³

The first collision occurred on June 17, 2017, when the *U.S.S. Fitzgerald* collided with the *MV ACX Crystal*, a Philippine-flagged container ship, about fifty-six nautical miles southwest of Yokosuka, Japan, which killed seven sailors.³²⁴ The *U.S.S. Fitzgerald* was able to return to the Yokosuka Naval Base under her own power where the damage was assessed before the destroyer returned to the U.S. for repairs.³²⁵ The second collision

³¹⁸ UNCLOS, *supra* note 4, art. 98(2).

³¹⁹ Schriver, *supra* note 193.

³²⁰ Yoshifumi Tanaka, *Key Elements in International Law Governing Places of Refuge for Ships: Protection of Human Life, State Interests, and Marine Environment*, 45 J. MAR. L. & COM. 157, 157 n.1 (2014).

³²¹ Bill Gertz, *Russian Sub Skirts Coast*, WASH. FREE BEACON (Nov. 5, 2012), <http://freebeacon.com/russian-subs-skirt-coast/>; *Naval Submarine Base Kings Bay History*, COMMANDER, NAVAL INSTALLATIONS COMMAND, https://www.cnrc.navy.mil/regions/cnrse/installations/navsubbase_kings_bay/about/history.html (last visited Feb. 15, 2019).

³²² The *Arleigh Burke*-Class Missile Guided Destroyers are warships that provide multi-mission offensive and defensive capabilities in ASW, AAW, and Anti-Surface Warfare ("ASUW"). MILLER & MILLER, *supra* note 62, at 88–89; U.S. Navy, *The US Navy Arleigh Burke Class Destroyer*, <https://www.public.navy.mil/surfor/Pages/Arleigh-Burke-Destroyer.aspx> (last visited Apr. 8, 2019).

³²³ DEP'T OF THE NAVY, COLLISION REPORT FOR USS FITZGERALD AND USS JOHN S. MCCAIN COLLISIONS 4, 43 (2017), <https://www.secnav.navy.mil/foia/readingroom/HotTopics/CNO%20USS%20Fitzgerald%20and%20USS%20John%20S%20McCain%20Response/CNO%20USS%20Fitzgerald%20and%20USS%20John%20S%20McCain%20Response.pdf>.

³²⁴ *Id.* at 4, 6.

³²⁵ DEP'T OF THE NAVY, *supra* note 323, at 18–19 (stating that as of February 2020, the destroyer is undergoing tests before she can rejoin the fleet); Sam LaGrone,

occurred on August 21, 2017, only two months later, when the *U.S.S. John S. McCain* collided with the Liberian-flagged container ship *Alnic MC* off the coast of Singapore and Malaysia, which killed ten sailors.³²⁶ The destroyer's Captain requested tugboats and pilots from Singapore Harbor to assist the destroyer in reaching Changi Naval Base, Singapore.³²⁷ Aircraft and vessels from Australia, Malaysia, Singapore, and Indonesia also assisted in the search and rescue efforts.³²⁸ The destroyer was eventually transported to Yokosuka where repairs were completed in October 2019.³²⁹ Despite these examples of humanitarian gestures by countries to foreign warships in distress,³³⁰ the PRC has neither assisted foreign warships in distress nor in peacetime.³³¹

In November 2007, two U.S. Navy minesweepers that needed fuel and shelter from a storm were denied port of entry in Hong Kong.³³² Fortunately, the U.S. Navy was able to refuel the two minesweepers at sea.³³³ Two weeks later, the aircraft carrier *U.S.S. Kitty Hawk*³³⁴ and her escort ships were denied a scheduled port of visit to Hong Kong to celebrate

USS Fitzgerald Leaves Mississippi Drydock After More Than a Year of Repairs, U.S. NAVAL INST. (Feb. 3, 2020), <https://news.usni.org/2019/04/16/uss-fitzgerald-leaves-mississippi-drydock-after-more-than-a-year-of-repairs>.

³²⁶ DEP'T OF THE NAVY, *supra* note 323, at 43.

³²⁷ *Id.* at 49.

³²⁸ *Id.* at 57–58.

³²⁹ Stephen Carlson, *U.S.S. John S. McCain Transfers from Dry Dock to Pier Following Collision Repairs*, UNITED PRESS INT'L (Nov. 30, 2018), <https://www.upi.com/USS-John-S-McCain-transfers-from-dry-dock-to-pier-following-collision-repairs/1671543596165/>; Sam LaGrone, *USS John S. McCain Back to Sea After Completing Repairs from Fatal 2017 Collision*, U.S. NAVAL INST. (Oct. 28, 2019), <https://news.usni.org/2019/10/27/uss-john-s-mccain-back-to-sea-after-completing-repairs-from-fatal-2017-collision>.

³³⁰ Although the U.S. has mutual defense agreements with Singapore and Japan that allow the U.S. to utilize the facilities of Singapore and Japan, it is undeniable that other countries are willing to assist foreign warships in distress. *See* Treaty of Mutual Cooperation and Security Between the United States and Japan, U.S.-Japan, June 23, 1960, 11 U.S.T. 1632; EMMA CHANLETT-AVERY & BEN DOLVEN, CONG. RSCH. SERV., R44127, SINGAPORE: BACKGROUND AND U.S. RELATIONS 4–5 (2016).

³³¹ *See* KAN, *supra* note 43, at 44; Schriver, *supra* note 193.

³³² Thom Shanker, *China's Denial of Port Calls by U.S. Ships Worries Navy*, N.Y. TIMES (Nov. 28, 2007), <https://www.nytimes.com/2007/11/28/world/asia/28navy.html>; Schriver, *supra* note 193.

³³³ Shanker, *supra* note 332; Schriver, *supra* note 193.

³³⁴ The *U.S.S. Kitty Hawk* was a diesel-powered aircraft carrier and was decommissioned in 2009. Kitty Hawk Pub. Affs., *Navy Decommissions USS Kitty Hawk*, U.S. NAVY (May 12, 2009), https://www.navy.mil/submit/display.asp?story_id=45202.

Thanksgiving, which violated customary international law.³³⁵ The U.S. government formally protested to the PRC about both incidents.³³⁶ Despite PRC Foreign Minister Yang Jiechi's official statement that the incidents were simply a misunderstanding, the port of entry denials violated customary international law.³³⁷ Furthermore, this also seemed politically motivated because the Bush Administration notified Congress of arms sales to Taiwan in September and November 2007; and President George W. Bush awarded the Congressional Gold Medal to the Dalai Lama in October 2007.³³⁸

The PRC has monitored the U.S. Navy's Freedom of Navigation Patrols in the disputed South China Sea and Taiwan Strait.³³⁹ However, the PRC's military, particularly the People's Liberation Army Navy ("PLAN") have shadowed U.S. warships in an unsafe and/or unprofessional manner.³⁴⁰ This included harassing U.S. ships conducting ocean surveys in March 2001, September 2002, March 2009, and May 2009;³⁴¹ or forcing them to change course to avoid a collision.³⁴²

On September 30, 2018, a PLAN destroyer approached the *U.S.S. Decatur*, an *Arleigh Burke*-Class destroyer, and came within forty-five yards of the front of the destroyer.³⁴³ Fortunately, the U.S. destroyer was able to maneuver to prevent a collision.³⁴⁴ In November 2018, the Pentagon announced that since 2016, the U.S. Navy has had eighteen unsafe or unprofessional encounters with PRC military forces.³⁴⁵ In May 2020, the Pentagon reported that the U.S. military continued to have unsafe

³³⁵ Chris Fowler, *USS Kitty Hawk Crew Home from Disappointing Trip*, STARS & STRIPES (Nov. 29, 2007), <https://www.stripes.com/news/uss-kitty-hawk-crew-home-from-disappointing-trip-1.71739> (describing how the denial also burdened the families of the sailors who had traveled to Hong Kong to meet them.); Shanker, *supra* note 332.

³³⁶ Jamie McIntyre, *U.S. Protests China's Port Refusal*, CNN (Nov. 29, 2007), <http://www.cnn.com/2007/US/11/28/us.china/index.html>.

³³⁷ *See id.*

³³⁸ KAN, *supra* note 43, at 43; Bonnie S. Glaser, *China and the USS Kitty Hawk*, CTR. STRATEGIC & INT'L STUD. (Dec. 6, 2007), <https://www.csis.org/analysis/china-and-uss-kitty-hawk>.

³³⁹ O'ROURKE, *supra* note 269, at 36, 38, 40, 51.

³⁴⁰ *Id.* at 49–51.

³⁴¹ *Id.* at 49.

³⁴² *Id.*

³⁴³ *Id.* at 37–38, 51; Ryan Browne, Brad Lendon & Barbara Starr, *Chinese Warship in 'Unsafe' Encounter with U.S. Destroyer, amid Rising U.S.-China Tensions*, CNN (Oct. 1, 2018), <https://www.cnn.com/2018/10/01/politics/china-us-warship-unsafe-encounter/index.html>.

³⁴⁴ Browne, Lendon & Starr, *supra* note 343.

³⁴⁵ O'ROURKE, *supra* note 269, at 51.

encounters with the PRC military in the South China Sea during the COVID-19 pandemic.³⁴⁶ It seems only a matter of time before there is a collision in the South China Sea between a U.S. and a PLAN warship.³⁴⁷ When such a collision occurs, the PRC is likely to refuse to assist or might exploit the U.S. warship as it did in the Hainan Island Incident, which will be discussed in the next section.³⁴⁸

3. Convention on International Civil Aviation

The Convention on International Civil Aviation (“Chicago Convention”) outlines principles and arrangements so that international civil aviation may be developed in a safe and orderly manner, and that international air transport services may be established on the basis of equality of opportunity and operated soundly and economically.³⁴⁹ Under Article 3, the Chicago Convention applies only to civil aircraft and does not apply to state aircraft.³⁵⁰ State aircraft are aircraft used in military, customs, and police services.³⁵¹ However, some countries have rendered assistance to foreign military aircraft in distress, which has become customary international law.³⁵²

An example is the Gambell Incident.³⁵³ On February 27, 1974, a Soviet Antonov AN-24LR ice reconnaissance plane³⁵⁴ ran out of fuel and made an emergency landing at Gambell on St. Lawrence Island, Alaska.³⁵⁵ The Soviet Embassy contacted the U.S. State and Defense Departments and requested fuel for the stranded plane.³⁵⁶ A C-130 Hercules refueled the Soviet plane, which returned to the Soviet Union the next day.³⁵⁷ Another

³⁴⁶ *Id.* at 38.

³⁴⁷ *See id.* at 36, 38, 40, 51.

³⁴⁸ *See* KAN et al., *infra* note 369, at 28; O’ROURKE, *supra* note 269, at 49.

³⁴⁹ Chicago Convention, *supra* note 4, at 1.

³⁵⁰ *Id.* at 2.

³⁵¹ *Id.*

³⁵² *See* W. Allan Edmiston, III, Comment, *Showdown in the South China Sea: An International Incidents Analysis of the So-Called Spy Plane Crisis*, 16 EMORY INT’L L. REV. 639, 661 (2002).

³⁵³ *Remembering Our Heritage*, COMMEMORATIVE AIR FORCE, <http://www.alaskawingcaf.org/Alaska%20Heritage/February%2026-March%204.pdf> [<https://www.webcitation.org/6HP8gYWdi>] (last visited Mar. 21, 2019).

³⁵⁴ The Antonov AN-24 “Coke” is a twin-turboprop cargo plane that was used by the Soviet Union. Despite a high operating cost, it was robust in strength and take-off performance. THE ENCYCLOPEDIA OF WORLD MILITARY AIRCRAFT, *supra* note 54, at 34.

³⁵⁵ *Remembering Our Heritage*, COMMEMORATIVE AIR FORCE, *supra* note 353.

³⁵⁶ *Id.*

³⁵⁷ *Id.*

example took place during the Bosnia Conflict.³⁵⁸ A U.S. F-16 fighter was returning from a mission over Bosnia when its engine flamed out³⁵⁹ and it needed a place to land.³⁶⁰ The pilot declared an emergency and landed at an airfield in Slovenia.³⁶¹ Instead of impounding the fighter and the pilot, the Slovenian government assisted the pilot and allowed access to a repair crew, and the fighter was able to return to its base.³⁶² In contrast, despite customary international law of assisting foreign military aircraft in distress, the PRC has demonstrated that it will exploit a foreign military aircraft in distress.³⁶³

On April 1, 2001, a U.S. Navy EP-3 Orion³⁶⁴ collided with a PLAN J-8 fighter³⁶⁵ about seventy miles off Hainan Island³⁶⁶ and the EP-3 Orion made an emergency landing on Hainan Island.³⁶⁷ Despite extensive PRC search and rescue operations, the PRC pilot's remains were never recovered.³⁶⁸ The incident, known as the Hainan Island Incident, sparked a tense diplomatic situation between the PRC and the U.S.³⁶⁹ The PRC interned the U.S. crew for eleven days before allowing them to be repatriated.³⁷⁰ The return of the aircraft, however, was another issue:

³⁵⁸ Edmiston, III, *supra* note 352, at 661.

³⁵⁹ An engine flameout refers to any failure in a turbine engine. But its technical meaning is narrower: power loss not associated with a mechanical failure. Three ingredients are needed to keep a jet going: fuel, air, and the heat to make them burn. Removing any of the three can cause a flameout. Peter Garrison, *Flameout: Why the Fire in a Perfectly Healthy Jet Engine Can Die*, AIR & SPACE MAG. (Sept. 2006), <https://www.airspacemag.com/flight-today/flameout-9043856/>.

³⁶⁰ Edmiston, III, *supra* note 352, at 661.

³⁶¹ *Id.*

³⁶² *Id.*

³⁶³ KAN et al., *infra* note 369, at 28.

³⁶⁴ The Lockheed EP-3 Orion is an electronic intelligence-gathering variant of the venerable P-3 Orion (which was designed for ASW). THE ENCYCLOPEDIA OF WORLD MILITARY AIRCRAFT, *supra* note 54, at 252–53.

³⁶⁵ The Shenyang J-8 was developed in the 1960s and entered service in 1985. *Id.* at 382.

³⁶⁶ Hainan Island is located in the South China Sea. It is separated from Mainland China by a narrow strait. It is the southernmost, and smallest province of the [PRC]. Edmiston, III, *supra* note 352, at 640 n.6.

³⁶⁷ *Id.* at 640.

³⁶⁸ *Id.* at 641 n.10.

³⁶⁹ SHIRLEY A. KAN ET AL., CONG. RSCH. SERV., RL30946, CHINA-U.S. AIRCRAFT COLLISION INCIDENT OF APRIL 2001: ASSESSMENTS AND POLICY IMPLICATIONS 1 (2001).

³⁷⁰ *Id.*

Negotiations for the return of the plane continued until July 3, 2001, when the aircraft was disassembled and removed by a Russian cargo plane. This method of removal was the result of a carefully crafted compromise. Chinese officials feared public outcry if further flights by United States military aircraft were permitted through Chinese airspace. Therefore, they adamantly opposed the United States' suggestion that its personnel should repair the plane in China, before flying to its home airbase in Japan.³⁷¹

It is no secret that the PRC exploited the opportunity to examine the classified electronic surveillance equipment despite the U.S. crew's efforts to destroy it.³⁷² Although subsequent U.S. reconnaissance and surveillance flights in international airspace above the South China Sea have not resulted in a similar situation, PRC fighters have repeatedly harassed these unarmed flights in an unprofessional manner, such as flying extremely close or upside down directly above the U.S. aircraft.³⁷³ It probably is only a matter of time before another mid-air collision occurs and a U.S. military aircraft is in distress and needs to land.³⁷⁴ Therefore, the U.S. should implement the Dixie Mission II so that U.S. military aircraft in distress have a direct line of help in Taiwan instead of risking military secrets by landing in the PRC.³⁷⁵

4. Taiwan as an Emergency Stop for U.S. Warships and Aircraft in Distress

In the event that a U.S. warship or aircraft is in distress in the vicinity of Taiwan, the Dixie Mission II would be able to coordinate with Taiwan to provide immediate assistance or temporary refuge to the ship or aircraft.³⁷⁶ The Dixie Mission II would be able to coordinate search and rescue efforts with Taiwan, replenish supplies, arrange temporary accommodations and medical treatment with Taiwan's hospitals,³⁷⁷ secure any sensitive

³⁷¹ Edmiston, III, *supra* note 352, at 665.

³⁷² KAN ET AL., *supra* note 369, at 28.

³⁷³ Barbara Starr & Zachary Cohen, *Chinese Fighter Jets Conduct Unsafe Maneuver Near U.S. Aircraft*, CNN (May 28, 2017), <https://www.cnn.com/2017/05/26/politics/chinese-fighter-jets-unsafe-maneuver-us-aircraft/index.html>.

³⁷⁴ O'ROURKE, *supra* note 269, at 38; Schriver, *supra* note 193.

³⁷⁵ See Edmiston, III, *supra* note 352, at 665; Schriver, *supra* note 193.

³⁷⁶ Schriver, *supra* note 193.

³⁷⁷ Taiwan's care system has demonstrated to be of excellent quality and affordable. Keoni Everington, *American Without Health Insurance Lauds Low Medical Bill at Taiwanese ER*, TAIWAN NEWS (Feb. 27, 2019),

equipment, provide security, and offer temporary repairs if necessary.³⁷⁸ This would be similar to the first Dixie Mission's responsibility to coordinate the search and rescue of downed American airmen in CCP-controlled territories.³⁷⁹ The Dixie Mission II would be a better alternative than the slim hope that the PRC would provide shelter for U.S. warships and military aircraft in distress without military secrets being compromised and personnel being detained.³⁸⁰ Proponents have suggested the U.S. Navy resume port visits to Taiwan to familiarize itself with Taiwan's ports, which would be critically needed should a crippled U.S. warship seek shelter in Taiwan.³⁸¹

Congress has also encouraged the resumption of regular U.S. Navy port visits³⁸² to Taiwan.³⁸³ However, there is opposition to this idea, including from Chairman of the AIT James Moriarty, because a regular port visit would be seen as inconsistent with the unofficial U.S.-Taiwan relations.³⁸⁴ Again, the final decision is up to the President.³⁸⁵ That said, a warship or aircraft in distress seeking refuge with Taiwan is less controversial than a regular visit.³⁸⁶ Furthermore, Taiwan has demonstrated its willingness to assist foreign military aircraft in distress, which starkly contrasts with the PRC's attitude.³⁸⁷

<https://www.taiwannews.com.tw/en/news/3647228>. It should also be noted that Taiwan responded quickly to the Coronavirus (COVID-19) pandemic in its early stages. Taiwan's preliminary and proactive measures resulted in significantly fewer cases despite Johns Hopkins University's predictions that Taiwan would have the second highest number of COVID-19 cases. Robert H. Brook, Chun Y. Ng & C. Jason Wang, *Response to COVID-19 in Taiwan: Big Data Analytics, New Technology, and Proactive Testing*, [J]AMA (Mar. 3, 2020), <https://jamanetwork.com/journals/jama/fullarticle/2762689>; James Griffiths, *Taiwan's Coronavirus Response is Among the Best Globally*, CNN (Apr. 5, 2020), <https://www.cnn.com/2020/04/04/asia/taiwan-coronavirus-response-who-intl-hnk/index.html>.

³⁷⁸ See Schriver, *supra* note 193.

³⁷⁹ CARTER, *supra* note 108, at 75–78; Jones, *supra* note 112, at 2.

³⁸⁰ KAN ET AL., *supra* note 369, at 1–3, 35.

³⁸¹ See LAWRENCE & MORRISON, *supra* note 1, at 26–27; Schriver, *supra* note 193.

³⁸² Port visits provide rest and relaxation for sailors, bolster the host country's local economy, and strengthen relationships between the host nation and the U.S. See Jason W. Adams, *An Analysis of Port-Visit Costs of U.S. Navy Aircraft Carriers* (June 2008) (unpublished M.S. thesis, Naval Postgraduate School) (on file with the Naval Postgraduate School).

³⁸³ LAWRENCE & MORRISON, *supra* note 1, at 26–27.

³⁸⁴ *Id.* at 27.

³⁸⁵ U.S. CONST. art. II, § 2, cl. 1.

³⁸⁶ See Schriver, *supra* note 193.

³⁸⁷ *Id.*

For example, on April 1, 2015, two U.S. Marine Corps (“USMC”) F/A-18 Hornet³⁸⁸ fighters *en route* to Singapore made an emergency landing at Tainan Air Base in Taiwan after one of the F/A-18 Hornets experienced mechanical failure.³⁸⁹ The reception the pilots received on Taiwan was outstanding compared to the treatment of the EP-3 aircrew in the Hainan Island Incident.³⁹⁰ Where the PRC would have impounded or required the fighter to be disassembled and further required a third-party country to transport the fighter back for repair,³⁹¹ Taiwan allowed the U.S. to send a team of technicians to repair the fighter.³⁹² Naturally, the PRC voiced “concerns” to the U.S. about the incident.³⁹³ Although Taiwan has yet to assist a U.S. warship in distress, Taiwan’s reception of the two F/A-18 Hornets indicates that Taiwan would be happy to assist a U.S. warship in distress.³⁹⁴

Therefore, based on the first Dixie Mission’s operations, the Taiwan Relations Act, the Six Assurances, the Taiwan Travel Act, and persuasive international laws and regulations that concern humanitarian principles, a military observer group in Taiwan is justified.³⁹⁵ Such a group would strengthen U.S.-Taiwan relations and establish the foundation for future cooperation on humanitarian and defense relations.³⁹⁶ Naturally, the PRC

³⁸⁸ The McDonnell Douglas (now Boeing) F/A-18 Hornet is a multi-role fighter that has been used in the U.S. Navy and the USMC. THE ENCYCLOPEDIA OF WORLD MILITARY AIRCRAFT, *supra* note 54, at 277–82.

³⁸⁹ J. Michael Cole, *U.S. Marine F-18s Land at Taiwan Air Base, Beijing Protests*, DIPLOMAT (Apr. 2, 2015), <https://thediplomat.com/2015/04/us-marine-f-18s-land-at-taiwan-air-base-beijing-protests/> (stating that the F/A-18 Hornets were to participate in a joint exercise with Singapore’s Air Force.); Schriver, *supra* note 193.

³⁹⁰ Schriver, *supra* note 193; Jason Pan, *US F/A-18 Jets Leave Taiwan Airspace*, TAIPEI TIMES (Apr. 4, 2015), <http://www.taipeitimes.com/News/front/archives/2015/04/04/2003615114>.

³⁹¹ Edmiston, III, *supra* note 352, at 665; Cole, *supra* note 389; Schriver, *supra* note 193.

³⁹² Cole, *supra* note 389. Taiwan does not have F/A-18 Hornets in its military. *Id.*

³⁹³ *Id.*

³⁹⁴ See KAN ET AL., *supra* note 369, at 8. The U.S. will reimburse Taiwan for the services rendered to any warship or aircraft in distress. Unlike the PRC, Taiwan’s expenses will be reasonable. *Id.*

³⁹⁵ See TRA, Pub. L. 96-8, 93 Stat. 14-15 (codified as amended in 22 U.S.C. §§ 3301–3302); TTA, Pub. L. No. 115-135, 132 Stat. 341–42 (2018); UNCLOS, *supra* note 7, art. 98; Chicago Convention, *supra* note 8, at 2; *Introduction to the Guidelines*, *supra* note 283, at 17; LAWRENCE & MORRISON, *supra* note 1, at 10–11.

³⁹⁶ See Press Release, Interim National Security Strategic Guidance, *supra* note 5, at 20–22.

would strongly protest the Dixie Mission II and is likely to use counterarguments beyond its typical “One-China Policy” argument.³⁹⁷

IV. THE PEOPLE’S REPUBLIC OF CHINA’S COUNTERARGUMENTS

Since the United States dissolved formal diplomatic relations with Taiwan in 1979, the People’s Republic of China regularly protests even the most trivial interactions between Taiwan and the United States.³⁹⁸ For instance, when the U.S. research ship *RV Thomas G. Thompson* docked in Kaohsiung Harbor in October 2018 for four days to refuel as part of an international oceanic research project in the South China Sea, the PRC made a diplomatic protest³⁹⁹ to the U.S.⁴⁰⁰ Besides U.S. arms sales to Taiwan, the PRC has also protested any changes to the AIT such as the unveiling of a new \$255 million facility,⁴⁰¹ as well as AIT’s request to the DoD for a detachment of U.S. Marines⁴⁰² to be assigned as a permanent security force.⁴⁰³ Most recently, the PRC criticized a Taiwan-U.S. joint statement in which the two parties agreed to step up their cooperation on the development of drugs and vaccines to battle the ongoing Coronavirus

³⁹⁷ E.g., LAWRENCE & MORRISON, *supra* note 1, at 27, 34; David Reid, *China is Urging the U.S. to Cancel a \$2.2 Billion Arms Sale to Taiwan*, CNBC (July 9, 2019), <https://www.cnbc.com/2019/07/09/china-wants-trump-to-cancel-a-2point2-billion-weapons-sale-to-taiwan.html>.

³⁹⁸ E.g., Huang, *infra* note 400; Jiang, *infra* note 401; Stephen Collinson, Nicole Gaouette, Elise Labott & Laura Smith-Spark, *China Lodges Complaint over Trump-Taiwan Call*, CNN (Dec. 3, 2016), <https://www.cnn.com/2016/12/02/politics/donald-trump-taiwan/index.html>.

³⁹⁹ A diplomatic protest or *démarche*, is a diplomatic representation. *Démarche*, WEBSTER’S NINTH NEW COLLEGIATE DICTIONARY (9th ed. 1990).

⁴⁰⁰ Huang Tzu-ti, *US Navy Research Vessel Docks at Taiwan’s Port of Kaohsiung*, TAIWAN NEWS (Oct. 16, 2018), <https://www.taiwannews.com.tw/en/news/3553469>. The research ship is jointly owned by the U.S. Navy and the University of Washington. *Id.* The international project involved scientists from the U.S., Taiwan, and the Philippines. *Id.*

⁴⁰¹ Steven Jiang, *Washington Opens De Facto Embassy in Taiwan, Angering China*, CNN (June 12, 2018), <https://www.cnn.com/2018/06/12/asia/us-taiwan-de-facto-embassy-china-intl/index.html>.

⁴⁰² All U.S. embassies and consulates have traditionally been guarded by a detachment of U.S. Marines of the Marine Corps Embassy Security Group. TOM CLANCY & JOHN GRESHAM, *MARINE: A GUIDED TOUR OF A MARINE EXPEDITIONARY UNIT 58* (1996); *MCESG History*, U.S. MARINE CORPS, <https://www.mcesg.marines.mil/About/MCESG-History/> (last visited Mar. 21, 2019).

⁴⁰³ Ryan Browne, *Pentagon Turns down Request to Send US Marines to Taiwan*, CNN (Sept. 13, 2018), <https://www.cnn.com/2018/09/13/politics/taiwan-pentagon-marines-request/index.html>. The DoD eventually declined to send a detachment of Marines due to resource constraint issues. The security requirements will likely be fulfilled by contractors. *Id.*

pandemic (“COVID-19”).⁴⁰⁴ In addition, Taiwan pledged to donate 100,000 face masks per week to the U.S., while the U.S. is reserving materials for 300,000 hazmat suits for Taiwan in exchange.⁴⁰⁵ As of August 2020, Taiwan has donated 51 million surgical masks to frontline medical workers worldwide.⁴⁰⁶ The PRC described the joint statement and the pledged donation as “despicable behavior” and “kidnapping the health and well-being of the people of Taiwan.”⁴⁰⁷

There are other legal arguments the PRC could use to protest the legality of the Dixie Mission II besides the typical “violation of the One-China Policy” argument.⁴⁰⁸ First, the PRC could raise a historical counterargument regarding the original Dixie Mission.⁴⁰⁹ Second, the PRC could claim an alleged violation of the Taiwan Relations Act.⁴¹⁰ Finally, the PRC could argue that the Dixie Mission II should be classified as a defense article under the U.S. Arms Export Control Act (“AECA”)⁴¹¹ and thus would violate the ongoing U.S. arms embargo on the PRC.⁴¹² Notwithstanding Taiwan’s political status, the PRC could also refer to the UNCLOS and the Chicago Convention to explain its refusal to assist foreign warships or aircraft in distress as well as practical reasons regarding humanitarian relief for future natural disasters on Taiwan.⁴¹³

⁴⁰⁴ Lin Chia-nan, *Virus Outbreak: Taiwan and US Partner in Fight Against COVID-19*, TAIPEI TIMES (Mar. 19, 2020), <https://www.taipeitimes.com/News/front/archives/2020/03/19/2003732967>; Keoni Everington, *Taiwan to Donate 100,000 Masks per Week to US*, TAIWAN NEWS (Mar. 18, 2020), <https://www.taiwannews.com.tw/en/news/3899531>; Keoni Everington, *China Decries Taiwan’s Gift of 100,000 Masks to US as ‘Confronting the Motherland,’* TAIWAN NEWS (Mar. 25, 2020), <https://www.taiwannews.com.tw/en/news/3904112>.

⁴⁰⁵ Everington, *Taiwan to Donate 100,000 Masks per Week to US*, *supra* note 404.

⁴⁰⁶ Sylvia Teng, *Taiwan Has Donated 51 Million Surgical Masks Worldwide amid Coronavirus Pandemic*, TAIWAN NEWS (Aug. 11, 2020), <https://www.taiwannews.com.tw/en/news/3984834>.

⁴⁰⁷ Everington, *China Decries Taiwan’s Gift of 100,000 Masks to US as ‘Confronting the Motherland,’* *supra* note 404.

⁴⁰⁸ See LAWRENCE & MORRISON, *supra* note 1, at 9, 38–40.

⁴⁰⁹ Cf. *China Urges U.S. to Drop ‘Cold War’ Mentality*, REUTERS (Oct. 6, 2020), <https://www.reuters.com/article/usa-asia-pompeo-china-idUSKBN26S0KU>.

⁴¹⁰ See TRA, Pub. L. No. 96-8, 93 Stat. 14 (1979) (codified as amended in 22 U.S.C. § 3301 (2011)).

⁴¹¹ Arms Export Control Act (AECA), 22 U.S.C. § 2778 (2014).

⁴¹² Suspension of Munitions Exports to PRC, 54 Fed. Reg. 24,539 (June 7, 1989); Prohibited Exports and Sales to Certain Countries, 58 Fed. Reg. 39,312 (July 22, 1993) (to be codified at 22 C.F.R. pt. 126).

⁴¹³ See UNCLOS, *supra* note 7, art. 2; Chicago Convention, *supra* note 8, at 2.

A. *Historical Counterargument*

The PRC would likely argue that the historical Dixie Mission is completely different from the proposed Dixie Mission II.⁴¹⁴ First, the PRC would argue that the original Dixie Mission was formed out of military necessity.⁴¹⁵ Second, the PRC would assert that the U.S. sought and obtained permission from Chiang-Kai Shek to form and send the Dixie Mission, which should also apply to the Dixie Mission II.⁴¹⁶ However, the circumstances surrounding the Dixie Mission and a potential Dixie Mission II differ so greatly as to render the historical counter-argument moot.⁴¹⁷

Although there certainly is no ongoing conflict on a scale that approaches World War II, there has been a pattern of PRC aggression towards Taiwan that threatens peace and stability in the Asia-Pacific Region and justifies the Dixie Mission II.⁴¹⁸ These include: the PRC's Anti-Secession Law of 2005, which codified the use of military force against Taiwan;⁴¹⁹ President Xi Jinping's continuous political rhetoric that implies use of military force against Taiwan;⁴²⁰ and an increase in the number of PRC military operations and intrusions near Taiwan under the guise of "routine" exercises or patrols that have continued even during the COVID-19 pandemic.⁴²¹ If the PRC escalates its aggression towards Taiwan, it will

⁴¹⁴ See BAGBY, *supra* note 112, at 110–11; BARRETT, *supra* note 142, at 23; CARTER, *supra* note 108, at 16–17.

⁴¹⁵ See BARRETT, *supra* note 142, at 27–28; CARTER, *supra* note 108, at 27–28, 35, 74; COLLING, *supra* note 112, at 75–77.

⁴¹⁶ BARRETT, *supra* note 142, at 24, 26; CARTER, *supra* note 108, at 18, 27; COLLING, *supra* note 112, at 17–18.

⁴¹⁷ CARTER, *supra* note 108, at 18, 27.

⁴¹⁸ E.g., Fan Fenlie Guojia Fa (反分裂国家法) [Anti-Secession Law] (promulgated by the Standing Comm. Nat'l People's Cong., Mar. 14, 2005, effective Mar. 14, 2005) (China), translated at <http://www.china.org.cn/english/2005lh/122724.htm> [hereinafter Anti-Secession Law]; LAWRENCE & MORRISON, *supra* note 1, at 41; James Griffiths, *Xi Jinping Warns Taiwan Independence is 'A Dead End'*, CNN (Jan. 2, 2019), <https://www.cnn.com/2019/01/02/asia/xi-jinping-taiwan-tsai-intl/index.html>.

⁴¹⁹ Anti-Secession Law (China); LAWRENCE & MORRISON, *supra* note 1, at 41.

⁴²⁰ Griffiths, *supra* note 418.

⁴²¹ See LAWRENCE, *supra* note 208; e.g., LAWRENCE & MORRISON, *supra* note 1, at 46–47; Ben Westcott, *Taiwan Scrambles Jets to Confront Chinese Fighters After Rare Incursion*, CNN (Apr. 1, 2019), <https://www.cnn.com/2019/04/01/asia/china-japan-taiwan-jets-intl/index.html>; Matthew Strong, *China Bombers Simulated Attack on Taiwan: Foreign Minister Joseph Wu*, TAIWAN NEWS (Apr. 17, 2019), <https://www.taiwannews.com.tw/en/news/3682194>; Yimou Lee, *Taiwan President Says Chinese Drills a Threat But Not Intimidated*, TAIWAN NEWS (Apr. 15, 2019), <https://www.reuters.com/article/us-china-taiwan/taiwan-president-says-island-not-intimidated-by-chinese-military-drills-idUSKCN1RS03B>.

trigger a “ripple effect” on the global economy and destabilize the region because of Taiwan’s integration into the international system.⁴²² Notwithstanding Taiwan’s status as a *de facto* state, Taiwan maintains representative offices in fifty-eight countries and hosts sixty-nine embassies and representatives from countries around the world.⁴²³ Taiwan has a dynamic capitalist economy driven largely by industrial manufacturing, especially exports of electronics, machinery, and petrochemicals.⁴²⁴ Taiwan also runs a trade surplus regarding many economies, including the PRC and the U.S., and has the world’s fifth largest foreign reserves.⁴²⁵ In 2016, U.S. trade data indicated that Taiwan was the United States’ tenth largest merchandise trade partner.⁴²⁶ Taiwan is the world’s largest contract chip manufacturer with a market share of sixty-five percent.⁴²⁷ Since Taiwan’s transformation from an authoritarian state to a democracy in the 1980s, the country has made landmark progress towards a democratic society.⁴²⁸

In May 2019, Taiwan became the first country in Asia to legalize same-sex marriage⁴²⁹ and re-elected Tsai Ing-wen, the first female president of Taiwan in 2020.⁴³⁰ Most recently, Taiwan has now become a refuge for

⁴²² See, e.g., Alan Crawford et al., *The World is Dangerously Dependent on Taiwan for Semiconductors*, BLOOMBERG (Jan. 25, 2021), <https://www.bloomberg.com/news/features/2021-01-25/the-world-is-dangerously-dependent-on-taiwan-for-semiconductors>; Matthew Strong, *White House Adviser Thanks Taiwan for Help with Chips Shortage*, TAIWAN NEWS (Feb. 2, 2021), <https://www.taiwannews.com.tw/en/news/4130184>; Ben Blanchard, *Taiwan Says Receives U.S. Letter on Auto Chips, Firms Are Doing What They Should*, REUTERS (Feb. 19, 2021), <https://www.reuters.com/article/us-autos-semiconductors-taiwan-idUSKBN2AK04S>; Matthew Strong, *South Korea Wants Taiwan’s Help with Semiconductor Shortage*, TAIWAN NEWS (Mar. 19, 2021), <https://www.taiwannews.com.tw/en/news/4155147>.

⁴²³ LAWRENCE & MORRISON, *supra* note 1, at 54.

⁴²⁴ *East Asia/Southeast Asia: Taiwan*, *supra* note 278.

⁴²⁵ *Id.*

⁴²⁶ LAWRENCE & MORRISON, *supra* note 1, at 36.

⁴²⁷ Sophia Yang, *Six of China’s Largest Semiconductor Projects Now Halted*, TAIWAN NEWS (Oct. 5, 2020), <https://www.taiwannews.com.tw/en/news/4023601>.

⁴²⁸ LAWRENCE & MORRISON, *supra* note 1, at 3, 49–50.

⁴²⁹ Although homosexuality is not illegal in the PRC, experts and LGBT activists agree that the PRC continues to discriminate against the LGBT community. Julia Hollingsworth, *Taiwan Legalizes Same-Sex Marriage in Historic First for Asia*, CNN (May 17, 2019), <https://www.cnn.com/2019/05/17/asia/taiwan-same-sex-marriage-intl/index.html>; Steven Jiang, *Taiwan Furious After China Attempts to Take Credit for LGBT Marriage Win*, CNN (May 20, 2019), <https://www.cnn.com/2019/05/20/asia/taiwan-china-gay-marriage-intl/index.html>.

⁴³⁰ Tiffany Ap, *Who is Tsai Ing-wen, Taiwan’s Newly-Elected President?*, CNN (Jan. 18, 2016), <https://www.cnn.com/2016/01/18/asia/taiwan-president-tsai-ing->

Hong Kong pro-democracy activists fleeing persecution⁴³¹ due to Hong Kong's new draconian national security law⁴³² and the PRC.⁴³³ Thus, should a conflict erupt between the PRC and Taiwan, the world will be greatly affected politically and economically.⁴³⁴ The Dixie Mission II's presence will not only benefit Taiwan but the entire Asia-Pacific Region.⁴³⁵

Second, the PRC would likely argue that the U.S. must request permission from the PRC before a U.S. military observer group to Taiwan is formed and deployed because the U.S. received Chiang-Kai Shek's permission—albeit reluctant—to form the Dixie Mission.⁴³⁶ Prior to the Dixie Mission, the Americans had no previous relationship with the CCP.⁴³⁷ The U.S. had to persuade Chiang-Kai Shek to approve the Dixie Mission because Chiang-Kai Shek's government was still recognized as the legitimate government of China.⁴³⁸ The U.S. also sought his permission to guarantee safe passage for the Dixie Mission through Nationalist-controlled

wen/index.html; James Griffiths & Alex Lin, *Taiwan's President Thanks Voters After Winning Reelection*, CNN (Jan. 11, 2020), <https://www.cnn.com/2020/01/11/asia/taiwan-election-intl/index.html>.

⁴³¹ Vanesse Chan, Ivan Watson & Rebecca Wright, *Hong Kong was Once a Safe Haven from China. Now Activists are Fleeing the City by Boat to Taiwan*, CNN (Sept. 15, 2020), <https://www.cnn.com/2020/09/14/asia/hong-kong-taiwan-boat-dst-intl-hnk/index.html>; Helen Davidson, *Number of Hong Kong Residents Moving to Taiwan Nearly Doubles in 2020*, GUARDIAN (Feb. 25, 2021), <https://www.theguardian.com/world/2021/feb/25/number-of-hong-kong-residents-moving-to-taiwan-nearly-doubles-in-2020>.

⁴³² SUSAN V. LAWRENCE & MICHAEL F. MARTIN, CONG. RSCH. SERV., R46473, CHINA'S NATIONAL SECURITY LAW FOR HONG KONG: ISSUES FOR CONGRESS 1 (2020). The national security law criminalizes four broadly defined categories of offenses: secession, subversion, organization, and perpetration of terrorist activities, and "collusion with a foreign country or with external elements to endanger national security." *Id.*

⁴³³ Chan, Watson & Wright, *supra* note 431; Davidson, *supra* note 431.

⁴³⁴ See, e.g., Crawford et al., *supra* note 422; Strong, *White House Adviser Thanks Taiwan for Help with Chips Shortage*, *supra* note 422; Blanchard, *Taiwan Says Receives U.S. Letter on Auto Chips, Firms Are Doing What They Should*, *supra* note 422; *Advance Policy Questions for Admiral John C. Aquilino, USN Nominee for Commander, U.S. Indo-Pacific Command Before the S. Comm. on Armed Servs.*, 117th Cong. 11–12 (2021) [hereinafter *Advance Policy Questions for Admiral John C. Aquilino*] (statement of Admiral John C. Aquilino, USN).

⁴³⁵ See Holshek, *supra* note 267, at 2–6; Press Release, Interim National Security Strategic Guidance, *supra* note 5, at 9–10, 20–21.

⁴³⁶ See BAGBY, *supra* note 112, at 110; BARRETT, *supra* note 142, at 24; CARTER, *supra* note 108, at 18, 27.

⁴³⁷ BAGBY, *supra* note 112, at 110–11; BARRETT, *supra* note 142, at 23; CARTER, *supra* note 108, at 16–17.

⁴³⁸ SPENCE, *supra* note 14, at 392; Jones, *supra* note 112, at 2.

areas to reach Yan'an.⁴³⁹ The sole supply route was from Chunking, the temporary capital of the KMT.⁴⁴⁰

The current circumstances differ greatly from World War II.⁴⁴¹ First, the U.S. has maintained official and unofficial relations with the government of Taiwan.⁴⁴² Second, should the U.S. deploy the Dixie Mission II to Taiwan, the unit will not have to travel through PRC-controlled territory to reach Taiwan.⁴⁴³ Thus, the U.S. does not have to receive PRC permission.⁴⁴⁴ Additionally, the Dixie Mission II would merely expand the current unofficial relationship between the U.S. and Taiwan.⁴⁴⁵ Similar to those of the first Dixie Mission, the primary objectives of the Dixie Mission II would be to assess Taiwan's military capabilities and coordinate with Taiwan to respond to future humanitarian situations, such as epidemics or natural disasters.⁴⁴⁶ A PRC counterargument is unpersuasive.

However, the PRC will also argue that even a minimal U.S. military presence on Taiwan would violate the TRA as well as the ongoing U.S. arms embargo on the PRC.⁴⁴⁷

B. *Violation of the Taiwan Relations Act*

The Taiwan Relations Act permits the U.S. to maintain the *status quo* by making available to Taiwan defense articles and defense services necessary for a sufficient self-defense.⁴⁴⁸ The ambiguous language allows Congress to interpret the relevant provision broadly.⁴⁴⁹ In this case, the Dixie Mission II could be classified as a defense service. Thus, Congress

⁴³⁹ CARTER, *supra* note 108, at 18, 27.

⁴⁴⁰ *Id.*

⁴⁴¹ Cf. REUTERS, *China Urges U.S. to Drop 'Cold War' Mentality*, *supra* note 409.

⁴⁴² LAWRENCE & MORRISON, *supra* note 1, at 1, 7–10.

⁴⁴³ *See id.* at 4 fig.1.

⁴⁴⁴ *See id.* at 1, 7–10.

⁴⁴⁵ *See* TRA, Pub. L. No. 96-8, 93 Stat. 14-21 (codified as amended in 22 U.S.C. §§ 3302–16); TTA, Pub. L. No. 115-135, 132 Stat. 341–42 (2018).

⁴⁴⁶ *See* BARRETT, *supra* note 142, at 37–38; CARTER, *supra* note 108, at 46–48; COLLING, *supra* note 112, at 69–72, 124–25; Holshek, *supra* note 267, at 2–6.

⁴⁴⁷ Suspension of Munitions Exports to PRC, 54 Fed. Reg. 24,539 (June 7, 1989); Prohibited Exports and Sales to Certain Countries, 58 Fed. Reg. 39,312 (July 22, 1993) (to be codified at 22 C.F.R. pt. 126).

⁴⁴⁸ TRA, Pub. L. 96-8, 93 Stat. 14–15 (codified as amended in 22 U.S.C. §§ 3301–3302).

⁴⁴⁹ *See* KAN, *supra* note 43, at 1–2; LAWRENCE & MORRISON, *supra* note 1, at 23–26.

has interpreted the sale of defense articles and defense services to Taiwan as maintaining the *status quo* because they are of defensive nature.⁴⁵⁰

However, the PRC would likely argue that the Dixie Mission II, like previous arms sales to Taiwan, does not help stabilize the peace and security in the region.⁴⁵¹ Rather, it adds fuel to the fire because it will embolden Taiwan to seek independence and thus upset the *status quo*.⁴⁵² The PRC would strongly argue that the Dixie Mission II is not a defense service under the TRA⁴⁵³ because the observer group would surely provide technical training on “offensive warfare tactics,” such as infantry or close-quarter-combat tactics, that could be used in an invasion against the PRC.⁴⁵⁴

Contrary to this interesting argument, the Dixie Mission II would help ensure the *status quo* is maintained through regular reports to Congress and the DoD.⁴⁵⁵ Additionally, the fact that the U.S. has only sent observers to Taiwan’s annual military exercises and assessment teams to evaluate Taiwan’s military capabilities and facilities merely illustrates the close relationship between the U.S. and Taiwan.⁴⁵⁶ Given that Taiwan is undergoing several programs to modernize its military⁴⁵⁷ and develop a robust domestic defense industry, the Dixie Mission II would only monitor

⁴⁵⁰ See TRA, Pub. L. No. 96-8, 93 Stat. 15 (codified as amended in 22 U.S.C. § 3302); LAWRENCE & MORRISON, *supra* note 1, at 29–30.

⁴⁵¹ See, e.g., Ben Blanchard & Gabriel Crossley, *China Threatens Retaliation over New U.S. Arms Sales to Taiwan*, REUTERS (Oct. 21, 2020), <https://www.reuters.com/article/us-usa-taiwan-arms/china-threatens-retaliation-over-new-u-s-arms-sales-to-taiwan-idUSKBN2770C6>; Michael Martina, *China Warns of War in Case of Move Toward Taiwan Independence*, REUTERS (July 23, 2019), <https://www.reuters.com/article/us-china-taiwan-usa/china-warns-of-war-in-case-of-move-toward-taiwan-independence-idUSKCN1UJ07O>; David Lague & Michael Martina, *Taiwan Waits for Biden as China Steps Up Pressure on the Island*, REUTERS (Dec. 10, 2020), <https://www.reuters.com/article/hongkong-taiwan-military-usa/taiwan-waits-for-biden-as-china-steps-up-pressure-on-the-island-idUSL4N2IQ22X>.

⁴⁵² See, e.g., Blanchard & Crossley, *supra* note 451; Martina, *supra* note 451; Lague & Martina, *supra* note 451.

⁴⁵³ See TRA, Pub. L. 96-8, 93 Stat. 15 (codified as amended in 22 U.S.C. § 3302).

⁴⁵⁴ Cf. Joshua Berlinger, *China, Russia Fear the US is Boxing Them in*, CNN (Jan. 13, 2017), <https://www.cnn.com/2017/01/13/asia/russia-china-thaad/index.html>. The PRC and Russia protested the deployment of the Terminal High Altitude Area Defense (“THAAD”) missile defense system in South Korea because they believed that the system could also be used against the two countries despite repeated assurances by the U.S. that the THAAD was to intercept North Korea’s nuclear missiles. *Id.*

⁴⁵⁵ See KAN, *supra* note 43, at 1–2; LAWRENCE & MORRISON, *supra* note 1, at 23–26.

⁴⁵⁶ KAN, *supra* note 43, at 3–4, 6–7.

⁴⁵⁷ Minnick, *supra* note 227.

Taiwan's progress.⁴⁵⁸ This would be completely lawful under the Taiwan Relations Act.⁴⁵⁹ Nevertheless, the PRC will likely argue that such a role violates the U.S. arms embargo on China.⁴⁶⁰

C. *Violation of the U.S. Arms Embargo on China*

The United States' arms embargo dates back to the PRC's brutal suppression of the June 1989 Tiananmen Square Democracy Protests.⁴⁶¹ In response to the bloody massacre, the U.S. banned the export of defense articles and defense services to China.⁴⁶² This included manufacturing licenses and technical assistance agreements.⁴⁶³ The Arms Export Control Act ("AECA")⁴⁶⁴ encompasses the import and export of defense articles and defense services listed under the U.S. Munitions List ("USML"),⁴⁶⁵ which

⁴⁵⁸ William Ide, *How the U.S. Stopped Taiwan's Bomb*, TAIPEI TIMES (Oct. 14, 1999), <http://www.taipeitimes.com/News/local/archives/1999/10/14/0000006401/1> (describing how the U.S. pressured Taiwan to abandon its nuclear weapons program after a Taiwanese Colonel who was recruited by the CIA in the 1960s defected to the U.S. in 1987 with evidence of Taiwan's nuclear weapons program); Tim Weiner, *How a Spy Left Taiwan in the Cold*, N.Y. TIMES, <https://www.nytimes.com/1997/12/20/world/how-a-spy-left-taiwan-in-the-cold.html> (last visited Mar. 20, 2019).

⁴⁵⁹ See TRA, Pub. L. 96-8, 93 Stat. 14–15 (codified as amended in 22 U.S.C. §§ 3301–3302).

⁴⁶⁰ See Suspension of Munitions Exports to PRC, 54 Fed. Reg. 24,539 (June 7, 1989); Prohibited Exports and Sales to Certain Countries, 58 Fed. Reg. 39,312 (July 22, 1993) (to be codified at 22 C.F.R. pt. 126).

⁴⁶¹ Ben Westcott, *Tiananmen Square Massacre: How Beijing Turned on Its Own People*, CNN (June 3, 2019), <https://www.cnn.com/2019/06/02/asia/tiananmen-square-june-1989-intl/index.html>. The Tiananmen Square Democracy Protests were month and a half long protests led by young students advocating for greater social freedoms, such as the freedom of speech and democracy in response to the death of former CCP leader Hu Yaobang, who championed liberalization. *Id.* On June 3, 1989, armed soldiers used lethal force against the protesters. *Id.* No official death toll was ever released, but human rights groups estimate thousands were killed and many more imprisoned. *Id.*

⁴⁶² Suspension of Munitions Exports to PRC, 54 Fed. Reg. 24,539 (June 7, 1989); Prohibited Exports and Sales to Certain Countries, 58 Fed. Reg. 39,312 (July 22, 1993) (to be codified at 22 C.F.R. pt. 126).

⁴⁶³ Suspension of Munitions Exports to PRC, 54 Fed. Reg. at 24,539.

⁴⁶⁴ AECA, 22 U.S.C. § 2778 (2014). The AECA grants the President to exercise authority to control the export of defense articles and services and the Secretary of State statutory authority. *Id.*; DIRECTORATE OF DEF. TRADE CONTROLS, UNDERSTAND THE ITAR AND EXPORT CONTROLS, https://www.pmdtc.state.gov/ddtc_public?id=ddtc_public_portal_itar_landing#tab-aeca, (last visited Mar. 5, 2021).

⁴⁶⁵ The U.S. Munitions List, 22 C.F.R. § 121.1 (2017). The USML are articles, services, and related technical data that are designated as defense articles or defense services pursuant to Sections 38 and 47(7) of the AECA. DIRECTORATE OF DEF. TRADE CONTROLS, *supra* note 464.

is implemented by the International Traffic in Arms Regulations (“ITAR”).⁴⁶⁶ The purpose of the AECA is to control the export of U.S.-manufactured defense articles and services.⁴⁶⁷ The ambiguous, broad language in the USML allows Congress to amend the ACEA as required such as when it amended the definition of military electronics in 2018.⁴⁶⁸ The USML also includes Military Training Equipment and Training and Articles, Technical Data, and other Defense Services Not Otherwise Enumerated under Categories Nine and Twenty-One.⁴⁶⁹

Based on its “One-China Policy,” the PRC could argue that if China is banned from importing defense articles from the United States, then Taiwan, as part of China, should be similarly banned.⁴⁷⁰ The PRC would assert that the Dixie Mission II qualifies as a defense article under Categories Nine and Twenty-One of the USML, which includes training and other defense services.⁴⁷¹ Furthermore, any advice or informal training that the Dixie Mission II gives to its Taiwanese counterparts would be classified as technical training under the USML.⁴⁷²

In response to this creative argument, the U.S. could argue that the Dixie Mission II is not a defense article because it will only observe rather than provide formal technical training under any arms sales to Taiwan.⁴⁷³ This is beside the point, however. Although the U.S. does not formally recognize Taiwan’s independence, previous Presidents and Congress have reaffirmed U.S. relations with Taiwan and the U.S. continues to sell arms to Taiwan.⁴⁷⁴ The U.S. can argue that the Six Assurances implicitly waive the ITAR restrictions on past and future arms sales to Taiwan.⁴⁷⁵ In 2003, Congress designated Taiwan to be treated as if it were a Major Non-NATO Ally (“MNNA”) for the purpose of transferring defense articles and services

⁴⁶⁶ ITAR, 22 C.F.R. §§ 120–30 (2016).

⁴⁶⁷ AECA, 22 U.S.C. § 2778 (2014).

⁴⁶⁸ See Continued Temporary Modification of Category XI of the U.S. Munitions List, 83 Fed. Reg. 44,229 (Aug. 30, 2018).

⁴⁶⁹ ITAR, 22 C.F.R. § 121.1 (2017).

⁴⁷⁰ *Id.* § 126.1.

⁴⁷¹ *Id.* § 121.1.

⁴⁷² See *id.*

⁴⁷³ See TRA, Pub. L. 96-8, 93 Stat. 14-15 (codified as amended in 22 U.S.C. §§ 3301–3302).

⁴⁷⁴ *E.g.*, National Defense Authorization Act for Fiscal Year 2018, Pub. L. No. 115-91 § 1259, 131 Stat. 1685 (2017); Asia Reassurance Initiative Act of 2018, Pub. L. No. 115-409, § 209, 132 Stat. 5387 (2018); see Press Release, Interim National Security Strategic Guidance, *supra* note 5, at 20–21.

⁴⁷⁵ See LAWRENCE & MORRISON, *supra* note 1, at 10–11. In refusing to alter its position about the sovereignty of Taiwan, the U.S. may continue to sell military hardware to Taiwan. *Id.*

under the AECA and other legal provisions.⁴⁷⁶ This designation entitles Taiwan to request more arms from the U.S. and implicitly excludes Taiwan from the U.S. arms embargo on the PRC.⁴⁷⁷

In September 2018, the U.S. Administration declared that the Six Assurances were guidelines to U.S.-Taiwan relations.⁴⁷⁸ The U.S. has sold arms to Taiwan since 1979.⁴⁷⁹ In late 2020, the State Department notified Congress of its approval to sell military hardware worth over \$5.1 billion to Taiwan.⁴⁸⁰ Finally, Taiwan just inaugurated the first Asia-Pacific maintenance center for F-16s as part of an agreement between Taiwan's state-owned Aerospace Industrial Development Corporation and the U.S. Lockheed Martin Corporation.⁴⁸¹ Besides reducing maintenance and repair costs and stimulating economic growth in Taiwan's aviation industry, the maintenance center can also service F-16s from other nearby air forces—including Thailand, Singapore, the Republic of Korea (“South Korea”), Indonesia, and nearby U.S. Air Force units.⁴⁸² These recent arms sales approvals and defense-related economic developments provide further evidence that Taiwan is exempted from the U.S. arms embargo on China.⁴⁸³

⁴⁷⁶ *Id.* at 34.

⁴⁷⁷ *Id.* Taiwan is also eligible to stockpile U.S. defense articles; purchase depleted uranium anti-tank rounds; with a reciprocity agreement, exempt itself from indirect costs, administrative charges, and billeting costs for training; and use any allocated foreign military training programs funding for commercial leasing of defense articles. *See id.*

⁴⁷⁸ LAWRENCE, *supra* note 208.

⁴⁷⁹ KAN, *supra* note 43, at 1.

⁴⁸⁰ Ryan Browne & Jennifer Hansler, *Trump Administration Notifies Congress of \$1.8B in Proposed Weapons Sales to Taiwan*, CNN (Oct. 22, 2020), <https://www.cnn.com/2020/10/21/politics/taiwan-arms-sales-formal-notification/index.html>; 92 MK 48 MOD 6 AT HWT, *supra* note 92; HARPOON SURFACE LAUNCHED BLOCK II MISSILES, *supra* note 94; HIMARS, SUPPORT, AND EQUIPMENT, *supra* note 95; AGM-84H SLAM-ER MISSILES, *supra* note 96; MS-110 RECCE POD SYSTEM, *supra* note 97; MQ-9B REMOTELY PILOTED AIRCRAFT, *supra* note 98; Ben Blanchard, *Timeline: U.S. Arms Sales to Taiwan in 2020 Total \$5 Billion Amid China Tensions*, REUTERS (Dec. 7, 2020), <https://www.reuters.com/article/us-taiwan-security-usa-timeline/timeline-u-s-arms-sales-to-taiwan-in-2020-total-5-billion-amid-china-tensions-idUSKBN28I0BF>.

⁴⁸¹ Sophia Yang, *Taiwan's AIDC to Work with Lockheed Martin to Build F-16 Repair Center*, TAIWAN NEWS (Dec. 17, 2019), <https://www.taiwannews.com.tw/en/news/3838357>.

⁴⁸² *See Pacific Air Forces Fact Sheets*, U.S. PAC. AIR FORCES, <https://www.pacaf.af.mil/Info/Fact-Sheets/> (omitting the fact that the U.S. Air Force has F-16 Falcon squadrons stationed in the Asia-Pacific Region); Chen, *supra* note 240; Strong, *supra* note 241.

⁴⁸³ Suspension of Munitions Exports to PRC, 54 Fed. Reg. at 24, 539.

Therefore, despite the PRC's potential arguments that the Dixie Mission II would violate the Taiwan Relations Act, the arms embargo, and the "One-China Policy," the U.S. has a stronger argument for deploying a military observer group.⁴⁸⁴ The U.S. may deploy a military observer group like the Dixie Mission II because it would not violate any pre-existing agreements with the PRC.⁴⁸⁵ Although it is unlikely the U.S. will restore official diplomatic relations with Taiwan in the foreseeable future, the U.S. remains concerned about Taiwan's capability to defend itself against a PRC invasion.⁴⁸⁶ The U.S. has also made it clear, however, that it does not want Taiwan to enter into an arms race with the PRC.⁴⁸⁷

D. *The PRC is Responsible for Humanitarian Aid to Taiwan*

The PRC would also likely argue that the PRC is able to provide humanitarian aid and disaster relief to Taiwan faster than the U.S. or any other country because of the geographical distance.⁴⁸⁸ The distance between the PRC and Taiwan is about 110 miles;⁴⁸⁹ the distance between Taiwan and Okinawa, which hosts the U.S. military bases nearest to Taiwan, is about 400 miles.⁴⁹⁰ With a modernized navy and air force, the PRC will likely argue it is capable of quickly providing whatever Taiwan requires in relief efforts.⁴⁹¹ Furthermore, the PRC can claim that it is concerned for the welfare of PRC citizens in Taiwan because the PRC (including Hong Kong) is Taiwan's largest merchandise export market.⁴⁹² Despite this creative

⁴⁸⁴ See TRA, Pub. L. 96-8, 93 Stat. 14-15 (codified as amended in 22 U.S.C. §§ 3301-3302); TTA Pub. L. No. 115-135, 132 Stat. 341-42 (2018).

⁴⁸⁵ See TTA § 3(b)(1), Pub. L. No. 115-135, 132 Stat. 342 (2018); Holshek, *supra* note 267, at 1.

⁴⁸⁶ See Chung, *supra* note 10, at 123-25.

⁴⁸⁷ See *id.* at 125.

⁴⁸⁸ See *Where is the Taiwan Strait Located?*, WORLD ATLAS, <https://www.worldatlas.com/articles/where-is-the-taiwan-strait-located.html> (last visited Apr. 5, 2019).

⁴⁸⁹ *Id.* The Taiwan Strait, which separates the PRC and Taiwan, has an average width of 110 miles, while its narrow part is 81 miles wide. *Id.*

⁴⁹⁰ *Distance from Taipei to Okinawa*, <https://www.distancecalculator.net/from-taipei-to-okinawa> (last visited Apr. 5, 2019). Okinawa hosts a substantial U.S. military presence, which is the closest to Taiwan. See EMMA CHANLETT-AVERY & IAN E. RINEHART, CONG. RSCH. SERV., R42645, THE U.S. MILITARY PRESENCE IN OKINAWA AND THE FUTENMA BASE CONTROVERSY 4-5 (2016).

⁴⁹¹ See DEP'T OF DEF., *supra* note 280, at 32.

⁴⁹² See LAWRENCE & MORRISON, *supra* note 1, at 47-48. The PRC accounted for forty percent of Taiwan's global exports in 2016 and Taiwan is a popular destination for PRC tourists. *Id.*

practical counter-argument, Taiwan has limited the PRC's emergency relief efforts to financial donations.⁴⁹³

For example, on September 21, 1999, a 7.6 magnitude earthquake struck Jiji, Nantou County, Taiwan, killing 2,455 people and injuring another 11,305.⁴⁹⁴ Although many countries, including the PRC, expressed sympathy, the PRC exploited the tragedy by invoking the "One-China Policy" to compel the UN and countries with unofficial relations with Taiwan to seek permission from the PRC first before sending relief teams to Taiwan.⁴⁹⁵ The PRC's Foreign Minister, Tang Jiaxuan, promoted the PRC's position that Taiwan is part of China by expressing gratitude for the international humanitarian aid "on behalf of the Taiwan people."⁴⁹⁶ Additionally, the PRC's Red Cross Chapter insisted that other international Red Cross Chapters "consult" with it before they offer to help Taiwan.⁴⁹⁷ As a result, international aid efforts were delayed by the PRC's meddling.⁴⁹⁸

When a Russian earthquake relief mission was *en route* to Taiwan, its plane was forced to make a lengthy detour over Siberia because the PRC refused to allow the Russian plane to pass through PRC-airspace.⁴⁹⁹ Taiwan politely declined the PRC's offer to send medical teams because Taiwan was afraid the PRC teams would serve a political purpose.⁵⁰⁰ Before the Jiji earthquake, the PRC never sent disaster relief aid to Taiwan even though Taiwan donated millions of dollars in disaster relief to the PRC.⁵⁰¹ However, Taiwan accepted the PRC's financial donations.⁵⁰² Yet, Taiwan accepted the assistance of both financial donations and relief teams from the U.S., Japan, Singapore, and several other countries.⁵⁰³ Although the AIT, as a *de facto* embassy, is capable of relaying any official requests from Taiwan for U.S.

⁴⁹³ Lin, *infra* note 495.

⁴⁹⁴ Yuki Shimada, *Taiwan's Quake-Stricken Areas Rise from the Ashes*, JAPAN TIMES (Feb. 18, 2006), https://www.japantimes.co.jp/news/2006/02/18/business/taiwans-quake-stricken-areas-rise-from-the-ashes/#.XJvfnS_Mw6g.

⁴⁹⁵ Irene Lin, *Taipei Accuses China of Exploiting Quake*, TAIPEI TIMES (Sept. 25, 1999), <http://www.taipetimes.com/News/front/archives/1999/09/25/3912/1>.

⁴⁹⁶ *Id.*

⁴⁹⁷ *Id.*

⁴⁹⁸ *Id.*

⁴⁹⁹ *Id.*

⁵⁰⁰ Michael Laris, *Taiwan Declines Offer of Quake Aid from China*, WASH. POST (Sept. 24, 1999), https://www.washingtonpost.com/wp-srv/inatl/daily/sept99/quake_aid24.htm.

⁵⁰¹ *Id.*

⁵⁰² Lin, *supra* note 495.

⁵⁰³ Lauren Chen, *World Leaders Express Their Condolences*, TAIPEI TIMES (Sept. 22, 1999), <http://www.taipetimes.com/News/react/archives/1999/09/22/3512/1>.

humanitarian assistance, the Dixie Mission II would further be able to provide immediate support and coordinate with the U.S. military assets sent to deliver humanitarian aid.⁵⁰⁴

E. *International Law Supports the PRC's Actions*

The PRC will likely argue that the UNCLOS and Chicago Convention does not require the PRC to assist U.S. warships and aircraft in distress.⁵⁰⁵ Under both conventions, the PRC is free to regulate all traffic within its territorial waters or airspace—twelve nautical miles from the coast.⁵⁰⁶ Additionally, the Chicago Convention only applies to commercial aircraft, not state aircraft, under Article 3.⁵⁰⁷ Thus, the PRC was entitled to deny the two U.S. Navy minesweepers fuel and shelter in Hong Kong from a storm in 2007.⁵⁰⁸ Furthermore, the PRC could argue that the minesweepers were not in distress because the U.S. Navy was able to refuel the two ships at sea.⁵⁰⁹

As for the Hainan Island Incident, the PRC asserted that the EP-3 crew did not request permission to land.⁵¹⁰ Although then-Secretary of Defense Donald H. Rumsfeld stated the EP-3's crew transmitted at least twenty-five to thirty distress signals over a universally recognized radio frequency, the PRC denied receiving them.⁵¹¹ The PRC claimed that because the EP-3 landed on PRC sovereign territory without advance authorization, the PRC had the right to investigate the EP-3 for various reasons.⁵¹² Although the U.S. asserted that the EP-3's crew appropriately executed a distress landing and that the EP-3 was *ipso facto*⁵¹³ entitled to sovereign territorial status, the U.S. conceded that it was powerless to prevent the PRC from boarding the EP-3.⁵¹⁴ Thus, despite customary international law, the PRC would argue it is not obligated to assist foreign

⁵⁰⁴ BAGBY, *supra* note 112, at 201; FEICKERT & CHANLETT-AVERY, *supra* note 300, at 1, 4; CARTER, *supra* note 108, at 58, 214; APCSS Editor, *supra* note 309.

⁵⁰⁵ See UNCLOS, *supra* note 7, art. 2; Chicago Convention, *supra* note 8, at 2.

⁵⁰⁶ See UNCLOS, *supra* note 7, art. 2; Chicago Convention, *supra* note 8, at 2.

⁵⁰⁷ Chicago Convention, *supra* note 8, at 2.

⁵⁰⁸ Schriver, *supra* note 193.

⁵⁰⁹ Shanker, *supra* note 332.

⁵¹⁰ Edmiston, III, *supra* note 352, at 660.

⁵¹¹ *Id.* at 641, 660.

⁵¹² See *id.* at 662. The reasons could include a safety check, confirming whether the aircraft had a legitimate emergency, and as part of the investigation of the Hainan Island Incident. *Id.*

⁵¹³ Latin for “by the fact itself.” *Ipso facto*, BLACK’S LAW DICTIONARY (2d Pocket ed. 2001).

⁵¹⁴ Edmiston, III, *supra* note 352, at 663.

warships and military aircraft in distress and can board a distressed foreign warship or military aircraft that docks or lands in the PRC's territory.⁵¹⁵

Therefore, the PRC is not obligated to assist foreign warships and military aircraft in distress despite the fact that countries have assisted distressed foreign warships and military aircraft during peacetime.⁵¹⁶ The PRC's position demonstrates that the PRC does not abide by a time-honored custom.⁵¹⁷ With the remotely possible exception of commercial vessels or aircraft, the PRC cannot be relied on to offer future refuge for foreign warships and military aircraft in distress during peacetime.⁵¹⁸ Rather, its policies actually encourage foreign military vessels and aircraft in distress or in need of assistance to look elsewhere, such as to Taiwan.⁵¹⁹ Thus, the Dixie Mission II's presence could coordinate Taiwan's assistance to American, and to an extent, NATO⁵²⁰ and Major Non-NATO⁵²¹ warships or aircraft⁵²² in distress because other nations are sending military assets to the South China Sea to conduct FON patrols.⁵²³

⁵¹⁵ See Chicago Convention, *supra* note 8, at 2.

⁵¹⁶ See Edmiston III, *supra* note 352, at 661; *Remembering Our Heritage*, COMMEMORATIVE AIR FORCE, *supra* note 353.

⁵¹⁷ Schriver, *supra* note 193.

⁵¹⁸ See KAN ET AL., *supra* note 369, at 1–3.

⁵¹⁹ Schriver, *supra* note 193.

⁵²⁰ See North Atlantic Treaty art. 5, Apr. 4, 1949, 63 Stat. 2241, 34 U.N.T.S. 243; PAUL BELKIN, CONG. RSCH. SERV., R46066, NATO: KEY ISSUES FOR THE 117TH CONGRESS 5–7, 12, 16 (2015).

⁵²¹ MNNA countries in the Asia-Pacific Region include Australia, Japan, South Korea, New Zealand, the Philippines, and Thailand. Dep't of State, *Major Non-NATO Ally Status – Fact Sheet*, <https://www.state.gov/major-non-nato-ally-status/#footnote> (last visited Mar. 5, 2021).

⁵²² NATO and non-NATO allies use standardized interoperable military equipment that incorporates U.S. technology. See NATO, *NATO Standardization Office*, https://www.nato.int/cps/en/natohq/topics_124879.htm; NATO, *NATO Multinational Capability Cooperation*, https://www.nato.int/cps/en/natohq/topics_163289.htm. As such, NATO Members have collaborated in defense projects such as the F-35 Joint Strike Fighter Program. JEREMIAH GERTLER, CONG. RSCH. SERV., RL30563, F-35 JOINT STRIKE FIGHTER (JSF) PROGRAM 25–28 (2020). As of 2020, Australia, Belgium, Poland, Japan, Norway, the Netherlands, Singapore, South Korea, the United Kingdom, Canada, Italy, and Denmark have or intend to purchase the F-35 Lightning Joint Strike Fighter. *Id.* at 7–8, 30.

⁵²³ NATO and MNNA countries that send military assets to the South China Sea or Taiwan Strait will likely trigger a reaction from the PRC. *E.g.*, *Canadian Warship Sails Near Taiwan at Time of Heightened China Tension*, REUTERS (Oct. 2, 2019), <https://www.reuters.com/article/us-taiwan-canada/canadian-warship-sails-near-taiwan-at-time-of-heightened-china-tension-idUSKBN2600E3>; *U.S. Calls German Warship's Plan to Sail South China Sea Support for Rules-Based Order*, REUTERS (Mar. 3, 2021), <https://www.reuters.com/article/uk-southchinesea-germany-usa-idUKKCN2AW01G>;

V. CONCERNS

Despite the PRC's commitment to a "peaceful resolution" regarding the issue of Taiwan,⁵²⁴ the PRC continues its aggressiveness towards Taiwan.⁵²⁵ Besides political rhetoric and the implicit threat of military force to "reunify" Taiwan with the PRC and an increase of "routine" PRC military operations and exercises near Taiwan, the PRC has continued to be aggressive in the South China Sea.⁵²⁶ Since September 2013, the PRC has created and militarized several man-made islands to assert its sovereignty claims there.⁵²⁷ Despite diplomatic protests by Taiwan, Malaysia, Vietnam, and the Philippines, as well as the U.S., the PRC has continued to assert its interests in the South China Sea through its military and civilians, particularly the PRC's Coast Guard⁵²⁸ and fishermen.⁵²⁹ Furthermore, the PRC has modernized its military rapidly over the last two decades, including the construction of aircraft carriers, development of fifth-

William Choong, *South China Sea: Bringing Power to Bear*, INT'L INST. FOR STRATEGIC STUD. (June 5, 2018), <https://www.iiss.org/blogs/analysis/2018/06/south-china-sea-power>; Richard Javad Heydarian, *France Wades into South China Sea Against China*, ASIA TIMES (Feb. 12, 2021), <https://asiatimes.com/2021/02/france-wades-into-south-china-sea-against-china/>; Brad Lendon, *Britain is sending a huge naval force through some of the most tense waters in Asia*, CNN (Apr. 27, 2021), <https://www.cnn.com/2021/04/26/europe/uk-aircraft-carrier-strike-group-asia-intl-hnk-scli-ml/index.html> (describing the deployment of a British aircraft carrier strike group, which includes warships from the U.S. and the Netherlands to the Asia-Pacific Region to visit 40 countries and to participate in military exercises with India, Japan, and South Korea); Andrew Tillett, *Australian Navy to Join UK Carrier in Regional Show of Strength*, AUSTRALIAN FIN. REV. (Feb. 11, 2021), <https://www.afr.com/politics/federal/australian-navy-to-join-uk-carrier-in-regional-show-of-strength-20210210-p57150>.

⁵²⁴ LAWRENCE & MORRISON, *supra* note 1, at 8.

⁵²⁵ Ben Blanchard, David Lague & Yimou Lee, *Special Report – China Launches 'Gray-zone' Warfare to Subdue Taiwan*, REUTERS (Dec. 10, 2020), <https://www.reuters.com/article/hongkong-taiwan-military/special-report-china-launches-gray-zone-warfare-to-subdue-taiwan-idUSKBN28K1GS>.

⁵²⁶ LAWRENCE & MORRISON, *supra* note 1, at 46–47.

⁵²⁷ BEN DOLVEN ET AL., CONG. RSCH. SERV., R44072, CHINESE LAND RECLAMATION IN THE SOUTH CHINA SEA: IMPLICATIONS AND POLICY OPTIONS 1, 7–10 (2015).

⁵²⁸ *Id.* at 1, 7–10; Drake Long, *New Law Would Let China Coast Guard Use Weapons in South China Sea*, RADIO FREE ASIA (Nov. 6, 2020), <https://www.rfa.org/english/news/china/weapons-11062020152528.html>.

⁵²⁹ Gregory B. Poling, *Illuminating the South China Sea's Dark Fishing Fleets*, CTR. FOR STRATEGIC & INT'L STUD. (Jan. 9, 2019), <https://ocean.csis.org/spotlights/illuminating-the-south-china-seas-dark-fishing-fleets/>.

generation stealth fighters, and improved ballistic missiles.⁵³⁰ As a result, the technological gap and military capability between Taiwan and the PRC has widened heavily in favor of the PRC to the point that Taiwan's ability to defend itself is gravely concerning.⁵³¹ Unfortunately, the PRC's military capabilities are now rivaling the U.S. military's capabilities at modern warfare, which has alarmed the U.S.⁵³² However, the Dixie Mission II would be able to observe and assess Taiwan's defense capabilities and recommend the appropriate defense articles to Congress and the DoD that Taiwan would need to effectively deter a PRC invasion.⁵³³

Since 2016, the PRC has offered countries that recognize Taiwan as an independent country massive financial incentive packages to switch diplomatic relations—the goal being to isolate Taiwan diplomatically.⁵³⁴ As of 2020, the PRC has persuaded eight countries that previously recognized Taiwan to instead establish diplomatic relations with the PRC: The Gambia, Sao Tome and Principe, Panama, the Dominican Republic, Burkina Faso, El Salvador, the Solomon Islands, and Kiribati.⁵³⁵ Two months after Kiribati

⁵³⁰ E.g. IAN E. RINEHART, CONG. RSCH. SERV., R44196, THE CHINESE MILITARY: OVERVIEW AND ISSUES FOR CONGRESS 12–18 (2016); RONALD O'ROURKE, CONG. RSCH. SERV., RL33153, CHINA NAVAL MODERNIZATION: IMPLICATIONS FOR U.S. NAVY CAPABILITIES – BACKGROUND AND ISSUES FOR CONGRESS 8–55 (2018).

⁵³¹ See DAVID R. FRELINGER ET AL., AIR DEFENSE OPTIONS FOR TAIWAN: AN ASSESSMENT OF RELATIVE COSTS AND OPERATIONAL BENEFITS 1–3 (2016); RINEHART, *supra* note 530, at 30; RONALD O'ROURKE, CONG. RSCH. SERV., RL33153, CHINA NAVAL MODERNIZATION: IMPLICATIONS FOR U.S. NAVY CAPABILITIES – BACKGROUND AND ISSUES FOR CONGRESS 2–35 (2020); Brad Lendon, *China Has Built the World's Largest Navy. Now What's Beijing Going to Do with It?*, CNN (Mar. 5, 2021), <https://www.cnn.com/2021/03/05/china/china-world-biggest-navy-intl-hnk-ml-dst/index.html>.

⁵³² DEP'T OF DEF., *supra* note 280, at 1–151; *United State Indo-Pacific Command: Hearing to Receive Testimony on United States Indo-Pacific Command in Review of the Defense Authorization Request for Fiscal Year 2022 and the Future Years Defense Program Before the Senate Comm. On Armed Services*, 117th Cong. 22, 34–37 (2021) [hereinafter *USINDOPACOM Hearing*] (statement of Admiral Philip S. Davidson, USN); *Advance Policy Questions for Admiral John C. Aquilino*, *supra* note 434, at 11–12 (statement of Admiral John C. Aquilino, USN); Lendon, *supra* note 531.

⁵³³ John Grady, *Taiwan Retooling Defenses to Counter a 'Belligerent' China*, U.S. NAVAL INST. (Aug. 12, 2020), <https://news.usni.org/2020/08/12/taiwan-retooling-defenses-to-counter-a-belligerent-china>; Drew Thompson, *Hope on the Horizon: Taiwan's Radical New Defense Concept*, WAR ON THE ROCKS (Oct. 2, 2018), <https://warontherocks.com/2018/10/hope-on-the-horizon-taiwans-radical-new-defense-concept/>.

⁵³⁴ LAWRENCE, *supra* note 208; Ralph Jennings, *China Prepared to Resist if US Adds Support for Taiwan's Foreign Relations*, VOA (Sept. 10, 2018), <https://www.voanews.com/a/taiwan-diplomatic-allies/4564622.html>.

⁵³⁵ LAWRENCE, *supra* note 208; Ben Westcott, *Second Pacific Nation in a Week Ditches Taiwan for Beijing*, CNN (Sept. 20, 2019), <https://www.cnn.com/2019/09/20/asia/taiwan-china-kiribati-intl-hnk/index.html>.

terminated diplomatic ties with Taiwan in September 2019, Tuvalu reported that PRC companies offered to build artificial islands to help with the rising sea levels in exchange for dropping diplomatic ties with Taiwan.⁵³⁶ Tuvalu rejected the offer and reaffirmed its diplomatic relationship with Taiwan.⁵³⁷ In March 2021, Paraguay's Foreign Ministry revealed that PRC representatives offered PRC-manufactured COVID-19 vaccines⁵³⁸ in exchange for severing diplomatic relations with Taiwan.⁵³⁹ While visiting Taiwan in March 2021, Palau's President Surangel Whipps Jr. reported he rejected the PRC's demands to switch diplomatic recognition to the PRC after he was elected in November 2020.⁵⁴⁰

The PRC has used its economic weight to pressure multi-national companies and foreign airlines to refer to Taiwan as part of the PRC on their websites, and most airlines have complied.⁵⁴¹ The PRC has also used its

⁵³⁶ Keoni Everington, *Tuvalu Spurns China Bid to Build Artificial Islands, Sticks with Taiwan*, TAIWAN NEWS (Nov. 22, 2019), <https://www.taiwannews.com.tw/en/news/3822510>; Yimou Lee, *Tuvalu Rejects China Offer to Build Islands and Retains Ties with Taiwan*, REUTERS (Nov. 20, 2019), <https://www.reuters.com/article/us-taiwan-diplomacy-tuvalu/tuvalu-rejects-china-offer-to-build-islands-and-retains-ties-with-taiwan-idUSKBN1XV0H8>.

⁵³⁷ Everington, *supra* note 536; Lee, *supra* note 536.

⁵³⁸ The effectiveness of the PRC's COVID-19 vaccines are questionable due to the PRC's refusal to share with the global community critical trial data of the vaccines, which are needed to determine the vaccines' effectiveness. Kristen Gelineau & Huizhong Wu, *Chinese Vaccines Sweep Much of the World, Despite Concerns*, AP NEWS (Mar. 1, 2021), <https://apnews.com/article/china-vaccines-worldwide-0382aefa52c75b834fbaf6d869808f51>; Nectar Gan, *Chinese COVID-19 Vaccine Efficacy is 'Not High,' Top Health Official Admits*, CNN (Apr. 12, 2021), <https://www.cnn.com/2021/04/12/china/china-vaccine-efficacy-intl-hnk/index.html> (describing how the PRC's Director of the Chinese Center for Disease Control and Prevention admitted the protection rates of the PRC-made COVID-19 vaccines were not high).

⁵³⁹ Paraguay is the only country in South America that maintains diplomatic relations with Taiwan. Ben Blanchard, *Taiwan to Help Allies Buy Vaccines, But Not from China*, REUTERS (Mar. 23, 2021), <https://www.reuters.com/article/us-taiwan-diplomacy-tuvalu/tuvalu-rejects-china-offer-to-build-islands-and-retains-ties-with-taiwan-idUSKBN1XV0H8>.

⁵⁴⁰ Ben Blanchard, *China Sends Fighters as Palau President, U.S. Diplomat Visit Taiwan*, REUTERS (Mar. 29, 2021), <https://www.reuters.com/world/china/taiwan-reports-large-incursion-by-chinese-air-force-2021-03-29/>; Keoni Everington, *Taiwan Ally Tells China 'Don't Tell Me Who My Friends Can Be,'* TAIWAN NEWS (Mar. 23, 2021), <https://www.taiwannews.com.tw/en/news/4157966>.

⁵⁴¹ LAWRENCE, *supra* note 208 (describing how these threats include sanctions that would impede business operations in the PRC or a complete boycott); Ralph Jennings, *China's Strategy to Unify with Taiwan Sparks Anger*, VOA (Jan. 21, 2019), <https://www.voanews.com/a/china-taiwan-ties-to-take-hit-as-world-top-companies-pick-sides/4751994.html>.

influence in the international community to isolate Taiwan.⁵⁴² In particular, the PRC has prevented Taiwan from joining international organizations, such as the WHO and the International Civil Aviation Organization.⁵⁴³

The U.S. and a few other countries have conducted Freedom of Navigation Patrols in the South China Sea and the Taiwan Strait to challenge the PRC's excessive maritime claims in the region—much to the annoyance of the PRC⁵⁴⁴—however, the PRC shows no sign of being deterred.⁵⁴⁵ Instead, the PRC continues to assert its claims in the South China Sea and over Taiwan by militarizing the South China Sea and making military incursions in Taiwan's territorial waters and airspace.⁵⁴⁶

Another concern that supports the presence of a U.S. military observer group is Taiwan's security against the PRC's espionage activities in Taiwan.⁵⁴⁷ Prior to the COVID-19 pandemic, many tourists from the PRC continued to visit Taiwan despite the strained relations between Taiwan and the PRC.⁵⁴⁸ It is no secret that the PRC has spies with student visas or those who pose as tourists.⁵⁴⁹ For example, in March 2019, a Chinese spy was sentenced by Taiwan's court to fourteen months in prison because he attempted to develop spy networks in Taiwan.⁵⁵⁰ Additionally, Taiwan's military was rocked by intelligence scandals such as when senior officers were caught selling classified information to the PRC and attempting to

⁵⁴² See LAWRENCE & MORRISON, *supra* note 1, at 38.

⁵⁴³ See *id.* at 45–46, 56–62.

⁵⁴⁴ William Choong, *South China Sea: Bringing Power to Bear*, INT'L INST. FOR STRATEGIC STUD. (June 5, 2018), <https://www.iiss.org/blogs/analysis/2018/06/south-china-sea-power>.

⁵⁴⁵ DEP'T OF DEF., *supra* note 280, at 80–81; O'ROURKE, *supra* note 269, at 9–12.

⁵⁴⁶ DEP'T OF DEF., *supra* note 280, at 9–10, 99–102; O'ROURKE, *supra* note 269, at 36, 38.

⁵⁴⁷ KAN, *supra* note 43, at 11, 48–51.

⁵⁴⁸ See LAWRENCE & MORRISON, *supra* note 1, at 47; Maggie Hiufu Wong, *Tanks, Propaganda and Tourists: Welcome to Kinmen County, 'Taiwan's DMZ'*, CNN (Mar. 3, 2021), <https://www.cnn.com/travel/article/kinmen-travel-taiwan-china/index.html>.

⁵⁴⁹ Zachary Cohen & Alex Marquardt, *US Intelligence Warns China is Using Student Spies to Steal Secrets*, CNN (Feb. 1, 2019), <https://www.cnn.com/2019/02/01/politics/us-intelligence-chinese-student-espionage/index.html>.

⁵⁵⁰ George Liao, *Taiwan's Supreme Court Upholds Lower Court's 14-month Sentence for Chinese Spy*, TAIWAN NEWS (Mar. 14, 2019), <https://www.taiwannews.com.tw/en/news/3658279>. The spy previously studied in Taiwan as an exchange student. *Id.*

recruit individuals who have access to sensitive materials to form spy networks.⁵⁵¹

Finally, the PRC has retaliated against the U.S., Taiwan, and other countries when the PRC is extremely displeased with their actions.⁵⁵² When the U.S., for example, allowed Taiwan's then-President Lee Teng-hui to attend a reunion at his alma mater, Cornell University, the PRC retaliated with arrests⁵⁵³ and live-fire military exercises to intimidate Taiwan.⁵⁵⁴ The PRC conducted two rounds of missile exercises in waters near Taiwan and announced a third round of missile exercises, as well as other military exercises, in a failed attempt to intimidate the Taiwanese so as not to reelect Lee Teng-hui in Taiwan's first presidential election.⁵⁵⁵ In response, the U.S. deployed two aircraft carrier battlegroups to the area to maintain the *status quo*.⁵⁵⁶ The crisis ended in March 1996 when, shortly after Taiwan's elections, the PRC ended its war games.⁵⁵⁷

⁵⁵¹ KAN, *supra* note 43, at 48–49; Ching-Tse Cheng, *Retired Taiwanese Colonel Jailed for Being China Spy*, TAIWAN NEWS (Sept. 26, 2020), <https://www.taiwannews.com.tw/en/news/4017378>.

⁵⁵² Chun Han Wong, John Lyons & Josh Chin, 'No Coincidence': China's Detention of Canadian Seen as Retaliation for Huawei Arrest, WALL ST. J., <https://www.wsj.com/articles/no-coincidence-chinas-detention-of-canadian-seen-as-retaliation-for-huawei-arrest-11544619753> (last updated Dec. 12, 2018). The PRC detained three Canadians and charged them for espionage or subversion shortly after Canadian authorities arrested Meng Wanzhou, the Chief Financial Officer of the Huawei, at the request of the U.S. Department of Justice. *Id.* Additionally, the PRC retaliated against the Czech Republic when the mayor of Prague cancelled its sister-city relationship with Beijing by cancelling various cultural events. The PRC also sent a letter to the President of the Czech Republic threatening economic retaliation if the Speaker of the Senate, Jaroslav Kubera made his planned visit to Taiwan. But Kubera passed away before he could make the trip. Duncan DeAeth, *Prague and Beijing to End Sister-City Relations Over Taiwan and 'One China' Policy*, TAIWAN NEWS (Oct. 6, 2019), <https://www.taiwannews.com.tw/en/news/3791649>; Keoni Everington, *Prague Signs Sister City Agreement with Taipei After Dumping Beijing*, TAIWAN NEWS (Jan. 14, 2020), <https://www.taiwannews.com.tw/en/news/3856786>; Matthew Strong, *China Sent Threatening Letter About Czech Official's Plan to Visit Taiwan*, TAIWAN NEWS (Feb. 19, 2020), <https://www.taiwannews.com.tw/en/news/3878370>.

⁵⁵³ U.S. human rights activist Harry Wu was detained and charged with espionage, and two Hong Kong-based U.S. military attachés, who were in the Fujian Province (directly across the Strait from Taiwan), were arrested for alleged illegal photography of a restricted area and were expelled. Glenn R. Butters, *Article, Signals, Threats, and Deterrence: Alive and Well in the Taiwan Strait*, 47 CATH. U. L. REV. 51, 100 (1997).

⁵⁵⁴ LAWRENCE & MORRISON, *supra* note 1, at 25; *see* Butters, *supra* note 553, at 97–98.

⁵⁵⁵ LAWRENCE & MORRISON, *supra* note 1, at 25; Butters, *supra* note 553, at 100–07.

⁵⁵⁶ KAN, *supra* note 43, at 26; LAWRENCE & MORRISON, *supra* note 1, at 25.

⁵⁵⁷ Butters, *supra* note 553, at 111.

The PRC's most recent aggressive behavior was an increase in PRC intrusions in the vicinity of Taiwan's airspace despite the ongoing COVID-19 pandemic.⁵⁵⁸ This included an increase of PRC warplanes violating Taiwan's airspace and military exercises when then-U.S. Secretary of Health and Human Services Azar and then-U.S. Undersecretary of State for Economic Growth, Energy, and the Environment Krach visited Taiwan.⁵⁵⁹ As of October 2020, Taiwan has dispatched aircraft nearly 3,000 times to intercept PRC air intrusions in Taiwan's airspace.⁵⁶⁰ As for foreign officials who visited Taiwan and promoted closer relations, the PRC has threatened them with sanctions or open-ended threats.⁵⁶¹

In sum, should the Dixie Mission II be implemented, it is foreseeable that the PRC will retaliate by: increasing efforts to isolate Taiwan diplomatically; sanctioning foreign officials who visit Taiwan;⁵⁶² arresting U.S. and Taiwanese citizens on false charges of violating "national

⁵⁵⁸ Ben Blanchard & Yimou Lee, *Taiwan Again Scrambles Jets to Intercept Chinese Planes, Tensions Spike*, REUTERS (Feb. 8, 2020), <https://www.reuters.com/article/us-taiwan-china-defence/taiwan-again-scrambles-jets-to-intercept-chinese-planes-tensions-spike-idUSKBN2030AE>.

⁵⁵⁹ E.g., Brad Lendon, *Almost 40 Chinese Warplanes Breach Taiwan Strait Median Line; Taiwan President Calls it a 'Threat of Force,'* CNN (Sept. 21, 2020), https://www.cnn.com/2020/09/21/asia/taiwan-china-warplanes-median-line-intl-hnk-scli/?hpt=ob_blogfooterold; Brad Lendon, *China Sends 25 Warplanes into Taiwan's Air Defense Zone, Taipei Says*, CNN (Apr. 13, 2021), <https://www.cnn.com/2021/04/12/china/china-taiwan-jets-defense-zone-incursion-intl-hnk-ml/index.html>.

⁵⁶⁰ George Liao, *Nearly 3,000 Interceptions of Intruding Chinese Aircraft Cost Taiwan NT \$25.5 Billion This Year*, TAIWAN NEWS (Oct. 7, 2020), <https://www.taiwannews.com.tw/en/news/4025285>.

⁵⁶¹ State Councilor Wang Yi, the PRC's top diplomat, stated that Czech Senate speaker Milos Vystrcil will "pay a heavy price" for making an official trip to Taiwan. This thinly veiled threat not only resulted in widespread condemnation, but the remarks were so strong that the Czech Foreign Minister Tomas Petricek, who did not support the Czech delegation's trip to Taiwan, summoned the Chinese ambassador to the Czech Republic to demand an explanation for State Councilor Yi's remarks. Additionally, the PRC announced sanctions on the businesses that sent representatives with the Czech delegation. Ben Blanchard & Yew Lun Tian, *Czech Senate Speaker Will Pay 'Heavy Price' for Taiwan Visit, China Says*, REUTERS (Aug. 30, 2020), <https://www.reuters.com/article/us-taiwan-visit-china-says-idUSKBN25R059>; *Czech Businesses Slam China for 'Childish' Economic Retaliation*, TAIWAN NEWS (Sept. 11, 2020), <https://www.taiwannews.com.tw/en/news/4006554>.

⁵⁶² *China to Sanction Senior US Officials Who Visit Taiwan: Global Times Editor*, REUTERS (Sept. 8, 2020), <https://www.reuters.com/article/us-usa-china-sanction/china-to-sanction-senior-us-officials-who-visit-taiwan-global-times-editor-idUSKBN25Z2I4>.

security” laws;⁵⁶³ increasing military operations and exercises near Taiwan; increasing espionage operations against the U.S.⁵⁶⁴ and Taiwan; sanctioning companies that conduct business in Taiwan, particularly defense contractors;⁵⁶⁵ and implementing various other aggressive economic and political measures.⁵⁶⁶

On the other hand, the PRC may also launch a “charm offensive” such as the “31 Measures,”⁵⁶⁷ to offer Taiwanese citizens incentives to live and invest in Mainland China and to highlight the “One Country, Two Systems” policy⁵⁶⁸ along with other benefits if Taiwan “reunified” with the

⁵⁶³ Ching-Tse Cheng, *48 Taiwan Nationals Missing in China Amid ‘Spy Confessions,’* TAIWAN NEWS (Oct. 16, 2020), <https://www.taiwannews.com.tw/en/news/4031461>; Keoni Everington, *China Trots out 2 More Alleged Taiwanese ‘Spies,’* TAIWAN NEWS (Oct. 14, 2020), <https://www.taiwannews.com.tw/en/news/4029734>.

⁵⁶⁴ DEP’T OF DEF., *supra* note 280, at 81–84, 148–51. A Chinese exchange student was apprehended and sentenced to a year in federal prison for photographing the Naval Air Station Key West, Florida. Marlena Baldacci & Brad Lendon, *Chinese Student Sentenced to a Year in Prison for Taking Photos of Naval Base*, CNN (Feb. 7, 2019), <https://www.cnn.com/2019/02/06/us/chinese-student-photographs-military-base/index.html>. Naval Air Station Key West is the host facility for numerous tenant activities, including Joint Interagency Task Force South, the U.S. Coast Guard, and the U.S. Army Special Forces Underwater Training School. *Naval Air Station Key West*, COMMANDER, NAVAL INSTALLATIONS COMMAND, https://www.cnic.navy.mil/regions/cnrse/installations/nas_key_west.html (last visited Mar. 2019); Dep’t of Just., *News Release: Harvard University Professor and Two Chinese Nationals Charged in Three Separate China Related Cases* (2020), <https://www.justice.gov/opa/pr/harvard-university-professor-and-two-chinese-nationals-charged-three-separate-china-related>.

⁵⁶⁵ Sarah Faidell & Ben Westcott, *China Says It Will Impose Sanctions on Boeing and Lockheed Martin over Taiwan Arms Sales*, CNN (Oct. 26, 2020), <https://www.cnn.com/2020/10/26/business/china-taiwan-sanctions-arms-boeing-intl-hnk/index.html>.

⁵⁶⁶ *See, e.g.,* Abigail Ng, *China Has Banned Taiwan’s Pineapples. Taiwan Says It’s Not Fair Play*, CNBC (Mar. 4, 2021), <https://www.cnbc.com/2021/03/04/taiwan-chinas-ban-on-pineapples-not-in-line-with-global-trade-rules.html>; Bert Wilkinson, *Pushed by China, Guyana Cancels Taiwanese Investment Office*, AP NEWS (Feb. 5, 2021), <https://apnews.com/article/global-trade-south-america-china-guyana-taiwan-894441b12b0f31cad9a6fef2e2c21e6d>; *Taiwan Says Diplomat Sent to Hospital After China Spat*, REUTERS (Oct. 18, 2020), <https://www.reuters.com/article/taiwan-china-fiji-idINKBN2740AC>; Blanchard, Lague & Lee, *supra* note 525.

⁵⁶⁷ In 2018, the PRC announced thirty-one measures to lure Taiwanese talent and business investment as part of its pro-unification campaign. Sophia Yang, *China’s Pro-Unification 31 Measures for Taiwan Have Failed: Academia Sinica Scholar*, TAIWAN NEWS (Jan. 26, 2019), <https://www.taiwannews.com.tw/en/news/3625988>.

⁵⁶⁸ The One Country, Two Systems would allow Taiwan to enjoy a high degree of autonomy after a “peaceful reunification.” LAWRENCE & MORRISON, *supra* note 1, at 39-41; LAWRENCE & MARTIN, *supra* note 432, at 1, 40–41 (however, the PRC’s efforts to

PRC.⁵⁶⁹ Therefore, the PRC will retaliate with a variety of methods against the U.S. and Taiwan should the U.S. continue to maintain the U.S.-Taiwan relationship.

Despite the potential political fallout and increased security concerns, the U.S. government should still consider the Dixie Mission II as a way to strengthen unofficial relations with Taiwan while still abiding by the Taiwan Relations Act and also not firmly committing the U.S. to defend Taiwan.⁵⁷⁰ The Dixie Mission II will also demonstrate America's commitment to a peaceful and stable Asia-Pacific Region.⁵⁷¹

VI. CONCLUSION

With the PRC's increased aggression towards Taiwan and its rapidly modernizing military, Taiwan's capability to defend itself has become more difficult.⁵⁷² Although the U.S. conducts Freedom of Navigation Patrols and routine military flights through the Taiwan Strait and the South China Sea⁵⁷³ and sell arms to Taiwan, the PRC continues to harass and isolate Taiwan while also militarizing the South China Sea. To sell the appropriate defense articles to Taiwan and to maintain the *status quo* under the Taiwan Relations Act and the Six Assurances,⁵⁷⁴ the U.S. should consider deploying a military observer group to Taiwan.

erode Hong Kong's autonomy has stiffened Taiwanese opposition to the One Country, Two Systems and demonstrated the system was no longer viable).

⁵⁶⁹ Keoni Everington, *Chinese General Lists 10 'Privileges' Taiwan Will 'Enjoy' Under 'One Country, Two Systems,'* TAIWAN NEWS (Mar. 5, 2019), <https://www.taiwannews.com.tw/en/news/3651302>.

⁵⁷⁰ KAN, *supra* note 43, at 27.

⁵⁷¹ RONALD O'ROURKE, CONG. RSCH. SERV., R42784, U.S.-CHINA STRATEGIC COMPETITION IN SOUTH AND EAST CHINA SEAS 22 (2021); *see* Press Release, Interim National Security Strategic Guidance, *supra* note 5, at 8–9, 20–21.

⁵⁷² DEP'T OF DEF., *supra* note 280, at 96; *see* LAWRENCE & MORRISON, *supra* note 1, at 31–34.

⁵⁷³ *E.g.*, Ryan Browne, *US Navy Sails Ships Through Taiwan Strait*, CNN (Nov. 29, 2018), <https://www.cnn.com/2018/11/29/politics/us-navy-taiwan-strait/index.html>; Ryan Browne, *US Sails Two Ships Through Taiwan Strait Ahead of Trade Talks in Beijing*, CNN (Mar. 24, 2019), <https://www.cnn.com/2019/03/24/politics/taiwan-strait-us-destroyer-intl/index.html>; Keoni Everington, *US Guided-Missile Destroyer Steams Through Taiwan Strait*, TAIWAN NEWS (Oct. 15, 2020), <https://www.taiwannews.com.tw/en/news/4030529>; *Taiwan Says U.S. Flies Bombers Near Island After China's Drills*, REUTERS, <https://www.reuters.com/article/us-taiwan-china-usa-idUSKBN2060UO> (last visited Feb. 20, 2021).

⁵⁷⁴ *See* TRA, Pub. L. 96-8, 93 Stat. 14–15 (codified as amended in 22 U.S.C. §§ 3301-3302); LAWRENCE & MORRISON, *supra* note 1, at 10–11.

The deployment of a military observer group would strengthen current unofficial relations between the U.S. and Taiwan.⁵⁷⁵ Focusing on disaster relief and assessing Taiwan's military capabilities regularly would benefit both the U.S. and Taiwan on a long-term basis. It is undeniable that the People's Republic of China's rapid military modernization is outpacing Taiwan's military modernization.⁵⁷⁶ The PRC's rapid military modernization also threatens the U.S. military's capabilities.⁵⁷⁷ Therefore, the Dixie Mission II would be the first step to strengthen U.S.-Taiwan defense relations to support a peaceful and stabilized Asia-Pacific Region in the long run.

⁵⁷⁵ See TRA, Pub. L. No. 96-8, 93 Stat. 14–21 (codified as amended in 22 U.S.C. §§ 3302-16); TTA, Pub. L. No. 115-135, 132 Stat. 341–42 (2018).

⁵⁷⁶ See DAVID R. FRELINGER ET AL., AIR DEFENSE OPTIONS FOR TAIWAN: AN ASSESSMENT OF RELATIVE COSTS AND OPERATIONAL BENEFITS 1–3 (2016); RINEHART, *supra* note 530, at 30; O'ROURKE, *supra* note 531, at 2–35; Lendon, *supra* note 531.

⁵⁷⁷ DEP'T OF DEF., *supra* note 280, at 1–151; *USINDOPACOM Hearing*, *supra* note 532, at 22, 34–37 (statement of Admiral Philip S. Davidson, USN); *Advance Policy Questions for Admiral John C. Aquilino*, *supra* note 434, at 11–12 (statement of Admiral John C. Aquilino, USN); Lendon, *supra* note 531.