

MEMBERSHIP IN THE UNITED NATIONS CHINA, TAIWAN AND BANGLADESH*

L. C. GREEN

University Professor of International Law,
University of Alberta

In the communiqué issued in February 1972 after their meeting President Nixon and Mr. Cho En-lai declared¹ :

"The Chinese side reaffirmed its position:

...the Government of the People's Republic of China is the sole legal Government of China; Taiwan is a province of China which has long been returned to the motherland; the liberation of Taiwan is China's internal affair in which no other country has the right to interfere; and all United States forces and military installations must be withdrawn from Taiwan.

"The Chinese Government firmly opposes any activities which aim at the creation of 'one China, one Taiwan', 'one China, two Governments', 'two Chinas and independent Taiwan, or advocate that the 'status of Taiwan remains to be determined'.

The United States side declared :

The United States acknowledges that all Chinese on either side of the Taiwan Strait maintain there is but one China and that Taiwan is a part of China. The United States Government does not challenge that position. It reaffirms its interest in a peaceful settlement of the Taiwan question by the Chinese themselves. "With this prospect in mind, it reaffirms the ultimate objective

(*) Conference given in Istanbul at the Institute of International Law and International Affairs on May 16, 1972.

1) **The Times** (London), 28 Feb. 1972.

of the withdrawal of all United States forces and military installations on Taiwan as the tension diminishes...".

Such a statement, coupled with the recent acceptance by the United Nations of a delegation from the Government of the People's Republic of China in place of the formerly sent by the Kuomintang authorities on Taiwan as the true representative of China as a member of the United Nations, might well lead one to assume that the legal problems relating to the China-Taiwan-United Nations triangle have become of purely historical interest. However, Dr. Kissinger, the President's senior adviser, is reported to have said that the United States treaty of defence with the Chiang Kai-shek Government² would be maintained, and that "nothing has changed in that position". If that be the case, there is much to be said for accepting the view of Professor Tung that President Truman's order neutralising the Formosa Strait at the time of the Korean War³ "was, in effect, a sheer intervention in China's civil war. [Moreover], this unilateral declaration was not in conformity with the principle of neutrality under traditional rules of international law, because at that time the Chinese Communists had not entered the Korean War"⁴. Once it is conceded by any state that the People's Republican Government constitutes the Government of China and once that state accepts the Chinese contention that Taiwan is part of China, that state must agree that the presence of United States forces on Taiwan without the consent of the legitimate government of China constitutes illegal intervention against China's sovereignty by the United States which could, rightly, be referred to the United Nations for consideration.

Further, recent events in Pakistan leading to the establishment in East Pakistan of the independent state of Bangladesh demonstrate that the Chinese situation could recur, for it could easily have happened that the Pakistan representative at the United Nations might well have declared his allegiance to Bangladesh which has the larger population, and it could have consti-

2) U. S. T.I.A.S., 1955, vol. 1, p. 433; **Documents on American Foreign Relations 1934**, p. 360.

3) 27 June 1950, XIII Dept. of State Bulletin, p. 5.

4) **China and the Foreign Powers**, 1970, pp. 345-6.

tuted the larger part of the territory, with the President as head of state continuing to claim to represent Pakistan at the United Nations, asserting that the new regime was nothing but a gang of rebels installed and supported by foreign governments for their own ends. For this reason it is important to remember that the issue of China as a member of the United Nations turns on a number of general problems of law, as well as on the interpretation of undertakings which may or may not be treaties. To this extent, the China-Taiwan-United Nations issue may yet serve as an important precedent for the future.

Many of the statements made by politicians, commentators and journalists concerning the dispute between Peking and Taipei as to the Chinese relationship with the United Nations leave the impression that what was at issue was China's membership in the Organisation. It must not be forgotten, however, that a state called China was one of the participants in the San Francisco Conference, became a foundation member of the United Nations and was granted by the Charter permanent membership of the Security Council with the concomitant right to exercise a veto under Article 27 (3). It becomes necessary, therefore, to look at the problem of United Nations membership. The overriding consideration here is that it is states which are members of the Organisation. In its Preamble the Charter proclaims that it has been drawn up in the name of the peoples of the world, and in its practice the organisation is increasingly seeking to deny international personality to entities which the majority of members claim do not represent the majority of those over whom the entity in question exercises jurisdiction. On the other hand, the Charter was drawn up and signed by politicians nominated by governments which had not consulted their peoples as to whether they wished to see this organisation established. Further, the 'people'—whoever that term may connote—do not nominate the individual who speaks in their name at United Nations meetings, nor are they consulted as to the fashion in which the representative will cast his vote on any issue. In fact, it is neither governments nor peoples who are members of the United Nations. The United Nations consists of states, and it is the governments of these states which send the individuals to meetings of the United Nations and who direct them

as to the way in which they are to cast their votes in the name of the country whose delegate they purport to be. When revolutions take place in a member state, it is rare for the United Nations to deny the right to be heard to the delegate sent by the newly installed regime, regardless of whether that regime has taken power with the support of the populace or in direct opposition to its wishes which may well have been suppressed by the leaders now in office. In other words, despite the language of the Charter and the propaganda suggesting the United Nations is the parliament of the world and the common man, the people as such have no role to play in so far as membership of the United Nations is concerned.

According to Article 4 of the Charter, membership in the United Nations is of two kinds. On the one hand there are the original members —those which participated in the San Francisco Conference or signed the original Declaration of United Nations 1942, and China did both— and then there are new members admitted into the Organisation by decision of the General Assembly upon the recommendation of the Security Council. Applicants for membership must be peace-loving and able and willing to carry out their obligations under the Charter, conditions which do not have to be satisfied by the original members, although they like any other member may be suspended or expelled from membership in accordance with the terms of the Charter. The decision as to membership depends upon joint positive action⁵ by both the principal organs of the United Nations, although the ultimate word is with the General Assembly. It is partly for this reason that applications for admission are often made at or shortly before the Assembly comes into session so that the new member is able to take its seat immediately its admission is decided upon. Once it has taken its seat in the Assembly, the new member enjoys all the rights of membership, including that of being elected to other United Nations bodies, including the Security Council.

In view of the present trend to consider admission to the United Nations as the ultimate cachet of independence, newly

5) **Competence of the General Assembly for Admission to the United Nations, I.C.J. Reports 1950, p. 4.**

created states hasten to apply for admission, and it has become clear in practice, at least since the great 'horse-trading' exercise⁶ concerning applicants supported, on the one hand, by the western group of members led by the United States and, on the other, by the Soviet group, that the Organisation is no longer over-scrupulous in its examination of the qualifications under the Charter. Further, the speed with which admission is accorded sometimes gives the impression that the applicant can hardly have been in existence long enough to indicate whether it is peace-loving or willing to carry out such obligations. The applications by such states as Bahrein, Bhutan and Qatar perhaps fall into this category. At the same time, the Organisation itself has shown that, while an applicant may in fact be peace-loving and willing to carry out its obligations, undue weight will not be given to third requirement of ability. Thus, Austria, though neutralised by treaty⁷, and Japan, though unable to carry out any 'offensive' military operations by its Constitution⁸, have both been admitted, even though it may well be that by virtue of these special considerations both countries are incapable of carrying out any direction given them by the Organisation by way of enforcement measures. Not only this, but Japan has been elected as a non-permanent member of the Security Council, and it might have happened that a directive to the members of the Organisation to resort to enforcement measures might have been issued by the Council by the legal minimum of votes, including that of Japan, which would have meant that the members were obliged to take some action which one of the 'ordering' members was itself unable to take.

Again, the hasty admission of newly-independent states may mean that some applicants become members of the United Nations even though a large number of the existing members have not yet recognised the entity which has applied for admission as a state, or, although its existence as a state might have been acknowledged, the effective government might not yet have received re-

6) On 14 Dec. 1955, 16 applicants were admitted as a group.

7) Austrian State Treaty, 1955.

8) Article 9 - see Green, 'Law and Administration in Present-Day Japan', 1 *Current Legal Problems* 1948.

cognition. This could easily happen in the case of Bangladesh which by mid - 1972 had been recognised by some fifty members of the United Nations, and might have occurred if the Indo-Pakistan war had terminated, and the separation of East Pakistan become effective and Bangladesh received such recognition while the Assembly was in session. In so far as an existing state votes in favour of admitting an applicant, it may be contended that it has recognised the applicant as a state, for only states may be members of the Organisation⁹. This was recognised by the Government of Canada in 1949 in reply to a request for recognition by Israel. Canada stated that its vote in favour of Israel's admission was considered "as having implied full recognition by the Government of Canada of the State of Israel"¹⁰. It can just as easily be contended that this positive vote in favour of Israel's admission also meant recognition of its Government. States act through their representatives, and action in the United Nations is carried on in the name of the state member by its government. This fact was of course known by the Government of Canada when it cast its supporting vote, and that Government would also have been aware that immediately upon a favourable vote being recorded in the Assembly the delegate sent by the Government of Israel would take his seat as the representative acting on behalf of the new member. In fact, in most cases the representative of the *soi-disant* government of the applicant is already in the United Nations building so that he may be 'welcomed' by the representatives of his fellow members immediately the result of the vote is known. It would appear that this was the method by which the Government of Yugoslavia recognised the Franco Government of Spain.

United Nations practice also indicates that the form of a member's governmental organisation is a matter of domestic jurisdiction and not the concern of the United Nations. There has, for example, never been a suggestion that a revolutionary change of government in a Latin American member of the United Nations has in any way affected the right of that country to remain a

9) *Admission of a State to Membership in the United Nations*, I.C.J. Reports 1948, p. 57.

10) Israel Foreign Office Letter, FO/I/60, 18 November 1949.

member of the Organisation and for its current government to nominate its spokesman. The only time this has been questioned has been when, as in the case of Hungary in 1956, there have been indications that the revolution has been brought about or crushed as a result of outside intervention. Likewise, the replacement of a monarchy by a republic as in the case of Egypt and Iraq has not affected the membership of the states concerned, nor have changes in the name of the country had any such effect. No one raised problems when Cambodia became the Khmer Republic or when the Congo (Khinshasa) became Zaire. Perhaps the best example of this phenomenon is Egypt. The transition from Farouk to Neguib to Nasser, from Egypt to United Arab Republic including Syria (at that time an independent member of the Organisation) then to United Arab Republic without Syria—which resumed its seat in the United Nations without any acknowledgement of the fact that this country had ceased to exist and to be a member and was now “reborn”, and as such should again have been considered for membership—and finally to the Arab Republic of Egypt has never had any effect on Egyptian membership of the United Nations¹¹. Even when Indonesia announced its withdrawal from the United Nations and at a later date changed its mind and stated its intention of resuming its rights as a member, the Organisation allowed it to resume its seat ignoring the withdrawal. It is true that when Indonesia informed the United Nations of its intention in this matter, the Secretary-General replied ‘noting’ the purported withdrawal and gave no indication of acceptance¹². Nevertheless, the Indonesian flag was removed from its place outside the United Nations, the name of the country no longer appeared among the list of members and she was not billed for dues. All of these factors serve to indicate that the Indonesian withdrawal really amounted to a termination of membership and was accepted as such, and therefore could only be remedied by a new application for membership¹³.

11) See Green, “Dissolution of States and Membership in the United Nations”, in Schwarzenberger, *Law, Justice and Equity*, 1967, p. 152 et pp. 162 - 6.

12) 26 Feb. 1965, c. *International Legal Materials*, vol. 5, 1966, p. 1187.

13) *Loc. cit.*, n. 11, p. 167.

The United Nations has also been faced with problems when an existing member has undergone fundamental changes in status and size. India was a foundation member of the United Nations, even though she had not yet received her independence - yet another instance of the fact that original members of the United Nations do not have to possess the same qualifications as do applicants for admission. When the India Act¹⁴ was passed creating both India and Pakistan as new states, a problem arose as to whether India remained a member of the United Nations, whether the identity between the original India and the new India and Pakistan was such that both were automatically members succeeding to the original membership, or whether the foundation member India has ceased to exist and been replaced by two entirely new states both of which were required to apply for membership. From the constitutional or municipal law point of view, there was much to be said for arguing that India and Pakistan stood on an exactly equal level, so that if one were considered as a new state having to apply for admission, then the same requirement should be made of the other. Equally, if India were to be considered as remaining a member, this would mean either that she was not a new state - which would have been contrary to the views of the British, Indian and Pakistan authorities - or else that Pakistan, enjoying the same legal rights and status as India, should also be considered a member having succeeded to membership rights in respect of that portion of India which had become Pakistan. A decision along these lines would have meant that two foundation members now stood in the place where there was formerly one, with the consequence that there would have been in 1947 more original members of the United Nations than there had been when the Organisation was established in 1945. Recognising the incongruity of such a situation, the General Assembly decided to accept the view¹⁵ that India remained a foundation member, while Pakistan was a new state which had to apply for admission in the normal way¹⁶.

14) Indian Independence Act, 1947.

15) *United Nations Yearbook 1947 - 48*, pp. 39 - 40.

16) *Loc. cit.*, n. 11, pp. 159 - 62.

While it was maintained at the time of the Indo-Pakistan membership discussion that the decision on this matter was not to constitute a precedent and that each application would in future be considered on its merits, in practice it has not proved possible to avoid reference to what happened in 1947 and some countries have attempted to argue in the way Pakistan did and to contend that succession to membership is feasible. Thus, when Singapore separated from Malaysia it became necessary to amend the Constitution of the Federation and section 13 of the amending Bill¹⁷ stated that "any treaty, agreement or convention... shall be deemed to be a treaty, agreement or convention between Singapore and that country or countries [with which the Federation had contracted], and any decision taken by an international organisation and accepted before Singapore Day by the Government of Malaysia shall in so far as that decision has application to Singapore be deemed to be a decision of an international organisation of which Singapore is a member". While, as between themselves, Singapore and Malaysia may have been competent to arrange for Singapore to bear any burden arising from the decision of an international organisation made before the breach and falling upon that part of Malaysia which had become Singapore, and while Singapore may have been anxious to show the world that she intended to abide by decisions of international organisations of which Malaysia had been a member, Singapore and Malaysia were unable to reach any binding agreement which had the effect of making Singapore a member of such an organisation¹⁸. In fact, despite the wording of the Bill, Singapore applied for admission to the United Nations and other international organisations in the ordinary way.

When East Pakistan broke away from the Federation of Pakistan and declared itself to be the independent state of Bangladesh, the government of the new state, even though it claimed to be

17) *State of Singapore Government Gazette*, 9 August 1965.

18) See Green, "Malaya/Singapore/Malaysia: Comments on State Competence, Succession and Continuity", 4 *Canadian Yearbook of International Law* 1966.

the beneficiary of aid extended to Pakistan on behalf of the eastern province and which had been held up en route by the war, at no time suggested that she was entitled to be treated as a member of the United Nations. An interesting problem might have arisen if President Yahya Khan had in fact installed Sheikh Mujibur Rahman as Prime Minister, and if the latter had appointed his partisans as Cabinet Ministers and representatives to the United Nations and other international organisations, and if Bangladesh had subsequently declared its independence and the President had then attempted to abrogate the Constitution and set in motion the series of actions which eventually led to the establishment of Bangladesh. In such a case the United Nations might well have been faced with a situation which in many ways would have resembled that affecting China.

In the light of what has been said, there is no reason why the original member of the United Nations known as China—for the description of its government as Nationalist, Kuomintang, Communist or People's Republic is completely irrelevant—should be treated in any way that is different. Granted this, it matters little which government is considered to be the Government of China. Once the credentials committee of the General Assembly accepts the credentials of a particular governmental representative, and the report of the committee is accepted by the Assembly, that government is the one entitled to nominate the representative of that member, in this case China, and that representative will speak for that member in the United Nations. Since the General Assembly is the organ of the United Nations which possesses the final decision as to membership and all members have a right to sit in that body, and to be elected from there to serve on other organs of the United Nations, there should be no question but that a government accepted by the General Assembly is the rightful government from the point of view of all other organs. It would be invidious if an organ of which membership depends upon election by the General Assembly were to attempt to assert that it would not accept the representative so elected, since it was of opinion that the United Nations member elected to membership of the organ in question should properly be represented by some-

body else nominated by some other governmental authority. In so far as most members of the Organisation are concerned there can be no problem in this connection, nor can there, for the reason just mentioned, be a problem with regard to most of the organs. But the Security Council is in a special position. Five of the original members of the United Nations are entitled to permanent membership of that body, while the remaining seats are open to election among the other members of the United Nations with the five permanent members participating in the ballot. Since elections are made from among the members of the United Nations by the members of the General Assembly, this means that the government which is accepted as representing a member in the United Nations is *ipso facto* the one which would nominate the representative to sit in the Security Council if elected. In fact, no member would suggest otherwise.

The position of China is however a little different. China is a permanent member of the Security Council. The privilege of permanent membership belongs to the member and not to any government. According to Article 2, paragraph 1, of the Charter, the Organisation is based on the sovereign equality of all its members — save when, as in the case of permanent membership of the Security Council and the veto right embodied in Article 27, paragraph 3, the Charter expressly provides otherwise. In view of this, there is no reason why the representation of a permanent member in the Security Council should be in any way different in kind from that of an elected member. This means that the government nominating the General Assembly representative is also the government entitled to nominate the Security Council representative. If this were not so, the United Nations would be rendered unworkable. If China were elected to sit on any other organ or sub-organ of the United Nations, her spokesman on that body would be nominated by the spokesman in the General Assembly. Since members of the Organisation are under a Charter obligation to enable the Security Council to function continuously, it is essential that members be able to ensure this. If this representative of China in the Security Council came from a government different from that represented in all the other United Nations bodies, there

can be no doubt that that representative would not be able to speak on behalf of the member he purported to represent, and this would be particularly so in the event of the General Assembly recommending to the Security Council that it take some particular action. Even more strange would be the situation if the resolution before the Assembly had been proposed by the member known as China.

What has been said here of the position if the Chinese representative in the Security Council were appointed by a different government from the representatives serving on other organs, is of course equally valid in respect of any other member in which a revolution has resulted in rival claimants purporting to be the legitimate government and claiming to be the one entitled to nominate delegates to the United Nations. As has already been suggested, this could easily have been the case had Sheikh Mujib become Prime Minister of Pakistan and if the delegation to the United Nations had been made up of representatives of both wings of Pakistan, claiming after the secession — and Bangladesh could have maintained with Mujib as Premier that it was really Pakistan under a new name — to be the true representatives of the member known as Pakistan in the organs to which they were delegates.

The comments made so far relate equally to both the authorities claiming to be the Government of China. What has been involved for the United Nations has been purely a question of representation and not one of membership, although at times public statements by persons who should know better have tended to obscure this fact. Among the suggestions that have been put forward have been calls for a two Chinas or a one China/one Taiwan solution. It is true that in the Chou-Nixon communiqué the Chinese have expressly rejected any such idea, while the United States has acknowledged that Taiwan is part of China. The problem, however, has not been finally resolved, for there are still countries which, though bound to accept the presence of the People's Republic in the United Nations, continue in their refusal to acknowledge that authority as the Government of China, while others still hanker after a separate Taiwan. Thus, on March 5, 1972, the Prime Mi-

nister of Australia stated¹⁹ that his government "would like this country (Taiwan) to have the right to be independentBoth parts on either side of the Taiwan Strait recognise that they belong to one China, and we can't deny that. ... But nonetheless we do feel that in what is called a *de facto* way, and according to international law, we feel that Taiwan has a right to be regarded, to be treated, at international law as having jurisdiction over Taiwan ..." Presumably, the references to international law are intended to indicate a so-called right of self-determination.

Statements like this make it clear that it is too early to cease examining whether Taiwan is part of China; while it is still worthwhile from a jurisprudential point of view to consider whether the two-China school has any substance, and whether there was any basis to the suggestion made at the time of the General Assembly debate by the United States and others that Taiwan should remain a member of the United Nations. It is perhaps unfortunate in this connection that the United States and its supporters made the question of the continued seating of the Kuomintang representative a prestige issue. The matter could in law have been decided simply on the basis that the issue was merely the proper representation of China. A result in favour of the People's Republican Government would, certainly, have meant that the delegate from Taiwan could no longer claim to speak for China, and problems would have arisen in connection with his *locus standi* for the future. But this could have been done as a simple issue of representation, without any need to put forward a resolution to preserve the island's presence, accompanied by statements of the dire effect upon the Nations and for small states in the United Nations if the resolution were to be carried²⁰. Inevitably, this meant that if the resolution for retention were defeated, those who supported it and made it into a major issue of principle involving their prestige would have

19) Transcript of interview on "This Week", broadcast on Channel 7, Melbourne, issue by Prime Minister's Office, Canberra.

20) See, e.g., Secretary of State Rogers, *The Times* (London), 5, 27 Oct., and Mr. Bush, U.S. Ambassador to the United Nations, *ibid.*, 19 Oct., 1971.

suffered a major diplomatic reverse. By pursuing this course they showed themselves less adept than their opponents at tuning in to United Nations sentiments. At no time in the past have those whose partisanship of the Chinese People's Republic in the United Nations failed to carry the day given an indication that this was a matter of their own state's prestige possibly affecting adversely its continued co-operation with the Organisation, or a direct and immediate threat to the continued existence of the United Nations and its smaller members. The stand taken and peevishness shown by United States spokesmen were bound to rally all sorts of sentiments against that country. In the first place, there were those who were anti-american and who might be pleased to see the United States defeated. Then there were those who, while not anti-American, might well have felt it was time that the United States was shewn that the United Nations was not a United States dependency other than in a financial sense and that the United States was as much subject to the decisions of the Organisation as were other members, even when those decisions were contrary to the view put forward by the United States. Finally there were those who were by no means anti-American but who felt that it was time for the United Nations to recognise the realities of Asian and world politics, particularly when it was on a matter that was not obviously one affecting the peace and security of the world in an adverse fashion.

For those who maintained that Taiwan should remain a member of the United Nations a basic problem required solution. If China was represented by the Government of the Chinese People's Republic, who did the Kuomintang spokesman represent? Taiwan is not and never has been a member of the United Nations. True, the Government on the island describes itself as the Government of China and there are still members of the United Nations, including the United States despite the Chou-Nixon communiqué, which agree with that point of view, although there are some countries, of which Japan is perhaps the leading example, which have become so confused that it is now virtually impossible to know what the official point of view really is. The decision of the General Assembly clearly meant that the authority in Taiwan was no longer accepted

by the General Assembly as the Government of China for United Nations purposes and could, therefore, no longer claim any seat in any organ as the government of the member known as China. To argue that even for United Nations purposes it was desirable to continue to describe that entity as the Government of China/Taiwan with authority to sit in the United Nations, is to argue that there are in fact two members known as China, one of which had not by the time of the debate taken its seat because the General Assembly had in the past positively prevented it from doing so. There would, in fact, have been a repetition of the India-Pakistan situation, only on this occasion there would have been more original members of the United Nations than there were originally.

In considering the suggestion that Taiwan should have been allowed to *continue* as a member of the United Nations distinct from China, it must be borne in mind that no state known as Taiwan appears among the list of members of the United Nations. There was, therefore, no basis for suggesting that Taiwan should *remain* represented or enjoying *its* seat. It would therefore be necessary for such an entity to apply for admission to the United Nations. To be eligible to make such an application, however, the entity in question must be a state²¹. In the eyes of international law a state does not come into existence by its own decision. Recognition by existing states is a basic condition of statehood, and, as yet, no state, whether a member of the United Nations or not, has seen fit to recognise the entity known as Taiwan as a state. The Bangladesh situation has made it clear that for statehood to exist as a practical reality, recognition must have been accorded by a reasonably substantial number of existing states, and by the time the General Assembly comes to examine the application for admission that has been lodged by Bangladesh it is probable that she will have been recognised by the majority of the countries of the world. Having received recognition of its statehood, Taiwan would then have had to submit its application for admission to the United Nations. It is impossible for even the most partisan supporter of Taiwan to argue that Taiwan or any other state could

21) See n. 9 above.

have belonged to the United Nations before it came into existence, although the position of Poland at the time of the San Francisco Conference shows that a state could be an original member of the United Nations even though it had no government which enjoyed general recognition and was, therefore, unable to participate with the other original members in the drafting conference.

In order to secure election the applicant must receive a positive recommendation from the Security Council, including the concurring votes of its permanent members. It is true that in its practice the Security Council has adopted a policy, which has received the blessing to acquiescence of the International Court of Justice²², whereby a permanent member is assumed to concur unless it positively cast its vote in a negative fashion. In view of the fact that China — and this is true of both administrations claiming to be the government and therefore spokesman for that country — considers Taiwan to be an inherent part of its territory, it is most unlikely that the representative of China sitting in the Security Council as the representative of the People's Republic would abstain or cast anything but a negative vote. Even if the application were to receive the support of the Security Council it must not be assumed that it would receive the necessary two-thirds vote in the General Assembly. To recognise an independent Taiwan is to accept the right of secession. Many of the members of the United Nations are already faced with secessionist movements of various kinds in their own territory. It is unlikely that they would be willing to vote in favour of accepting Taiwan for fear of the, in their view, unfortunate precedent that this would constitute. It must also be remembered that there is now talk of the existence of an independent Taiwanese Nationalist Movement that is opposed to both Chinese governments, and which claims the right of self-determination and to be an independent state under its own national regime. Even if one were to ignore the relevance of the General Assembly's Declaration on the Granting of Independence to Colonial Countries and Peoples²³ with its pledge of self-determination and the reite-

²²) **Namibia (South West Africa) Advisory Opinion, I.C.J., I.C.J. Reports 1971**, p. 16, at pp. 51 *et seqq.*

²³) Res. 1514 (XV) 1960.

ration of that pledge in the two Covenants on Human Rights²⁴, which a number of states, for example Indonesia at the time of the transfer of West Irian, consider does not mean disintegration of a sovereign state, but only removal of a foreign colonial power — and in the practice of the United Nations it would seem that such a colonial power must be western and must be white — there would again be difficulties for all those members of the United Nations which are multi-national. They would perhaps find it unfortunate for themselves at home were they to vote in favour of an independent Taiwan while denying independence to their own national minorities.

In so far as the contention that there is an independent Taiwanese Movement distinct from the Chinese is put forward, it might be well to mention the remarks on this subject by Professor Tung²⁵:

“The truth of the matter is that the people in Taiwan all came from the mainland at different times. After Taiwan became one of the Chinese provinces subsequent to Japan’s surrender, people from other parts of the country should have had the right to move there both before and after the Communists gained control of the mainland. Like the Constitution of the United States, the fundamental laws of China provide that all Chinese nationals are entitled to freedom of residence and change of residence. To urge the indepen-

24) Covenant on Economic, Social and Cultural Rights and Covenant on Civil and Political Rights, Art. 1 in each case, Res. 2200 (XXI) 1966. See Green, “Self - Determination and Settlement of Arab - Israeli Conflict”, 65 A.J.I.L. 1971, **Proceedings**, p. 40, for rejection of view that international law recognises any right of self - determination.

25) **Op. cit.**, n. 4 above, pp. 408 - 9. See, for a similar argument, review of Goddard, **Formosa: A Study in Chinese History**, 1966, by P.T.K. Lin: “...the Chinese refer to the Taiwanese 98 % of whom are Chinese) in the same way as Americans refer to Texas ... The discrepancy might disappear if Americans knew the history of Taiwan as well as they knew that of Texas”, 27 **Journal of Asian Studies** 1968, p. 394.

dence of Taiwan under those early migrants corresponds to advocating independence by native-born Americans in Florida and California after the United States acquired these territories.

"Twenty years have passed since the multitude of the so-called mainlanders came to Taiwan and their children have been born and raised in Taiwan. While Thomas Lias and several other prominent separatists residing abroad have realised the futility of their independence movement and returned to Taiwan to cooperate with the existing regime, it is surprising that the idea of independence by the Taiwanese still persists in the minds of many Westerners, with regard to a small number of people in Taiwan dissatisfied with the present situation, they may recommend reforms through constitutional process before resorting to drastic action of independence. If every dissatisfaction were allowed to lead to secession, there would be a multiplication of new states, for discontent is prevalent even in the most democratic countries.

"Discussion would be incomplete without mentioning a small minority of aborigines, who are indigenous to Taiwan and now living mostly in mountainous areas. In view of their background and training, to devise a new state for them would be much more difficult than the formation of an independent state for the American Indians.... Nor is the argument valid that, because of Peking's growing power and potential threat to the security of the Far East, it is better to make Taiwan independent so as to preclude Communist occupation of this strategic island. Such a proposition is based on international expediency at the expense of China's territorial integrity."

It might be thought that the recognition of Bangladesh after its secession from Pakistan belies the above arguments. However, it should not be forgotten that in this case the secession was brought about by the actions of the inhabitants of the territory concerned after a bitter civil war, during which the governing party

incurred a great deal of criticism by reason of the methods it was alleged to have employed in seeking to reassert its authority. Moreover, it became clear, certainly after the recognition granted by India and her participation in the hostilities leading to the defeat of Pakistan, that there was no prospect at all of the re-establishment of central authority over the Bengalis. In this case, the recognising powers have acted in the light of a *fait accompli*, which, moreover, has now apparently been acquiesced in by the former government. In the case of Taiwan, there has been no such successful revolt with an administration requesting recognition. Instead, there is a former legitimate government which asserts that Taiwan is part of the national territory, as does the successful revolutionary authority which has been accepted by the majority of states in the world as the present, or soon to be, lawful government. In so far as there have been suggestions that an independent Taiwan should be recognised, these suggestions have come from existing states all of which are members of the United Nations, who have put forward the suggestion for independence not out of any consideration for the so-called independence movement, but have sought to use this as a means for getting out of an embarrassing political difficulty by way of granting independence to an administration made up of Chinese refugees who do not wish to be governed by the authority that exercises power in the rest of China.

The suggestion that Taiwan, either as a separate state or as a second China, might be entitled to a seat or to remain in the United Nations without being admitted as a new member in accordance with the terms of Article 4 is to disregard the Charter and, in fact, to propose a breach thereof — a breach probably more blatant than any that may have occurred in the past, or more glaring than any of which China governed by the People's Republican Government might herself have been guilty, for it should be remembered that among the grounds for opposition to the seating of that Government was the contention that it was in breach of the Charter. In any case, even if China, or the People's Republican Government has been in breach of the Charter, this in no way affects its right to send a representative to participate in

the activities of the United Nations. While it is true that breaches of the obligations in the Charter may be construed by the Security Council or the General Assembly as preventing an applicant from becoming a member, in so far as an existing member is concerned it would need to be expelled or suspended before it could be prevented from taking its seat. In the case of the People's Republic of China, this would involve an acknowledgement that it had all along been the proper Government of China entitled to represent it in the United Nations, and then taking steps in accordance with the terms of the Charter to deprive it of its right to sit or vote. Given today's political climate, it is extremely doubtful, to say the least, that any such proposal could be carried — any more than it was possible to obtain support for a similar proposition against the Soviet Union under the terms of Article 19 in 1965²⁶.

Perhaps this part of the discussion may be concluded by referring to a view expressed in 1952, two years after the flight of the Kuomintang from China and its esconcement on Taiwan, by G.G. Fitzmaurice, then Second Legal Adviser to the British Foreign Office, and now as Sir Gerald a Judge of the International Court of Justice²⁷:

"China has for all practical purposes been unrepresented in the United Nations for the last two (eventually twenty-one) years, although as a state it remains a member. Since the Chinese intervention in Korea (which allegedly was the main reason for United States opposition to the mainland government occupying the Chinese seat), it may well be argued that China as a state would qualify for suspension or expulsion under Articles 5 and 6 if it were technically possible to carry out the procedures contemplated by these Articles. On this basis, it might be argued that an enforced *de facto* suspension, by refusal to allow its government to occupy the Chinese seat, was not unjustified. However, this is a spe-

26) See, e.g., Kay, **The New Nations in the United Nations**, 1970, pp. 120 - 2.

27) "Chinese Representation in the United Nations", **6 Yearbook of World Affairs**, 1952, p. 36, at pp. 54 - 5 (italics in original).

cial consideration, not affecting the general issues of principle, and of course it did not in any case apply to China previous to her intervention in Korea, when, for nearly a year, she was equally kept in a state of *de facto* suspension. Moreover, it should be noted that this argument implicitly admits that the Peking government is the effective and representative Government of China, since it is the acts of this government which are in question, and it is only by admitting that these acts are the acts of the Chinese state, that China could be held to have incurred a liability to suspension or expulsion under Articles 5 and 6. But the acts of the Peking Government can only be acts of the Chinese state if the Peking Government is admitted to be the representative government of that state. It is therefore, paradoxically enough, precisely those members of the United Nations which have all along maintained that the Peking Government should occupy China's seat in the United Nations, which alone have the right to argue, should they see fit to do so, that China's intervention in Korea justifies her *de facto* suspension by means of continuance of the practice of keeping the Peking Government out of this seat!"

The next problem of importance, and one that has received added significance since the Government of the United States has changed its policy and publicly acknowledged that Taiwan is part of China, refers to the contention that perhaps Taiwan, though not still part of Japan, had not in fact reverted to China, and might be in some sort of limbo — an argument which seems to have been favoured by the British Government. Once it is conceded that Taiwan is part of China — and the fact that the United States now agrees does not mean that is necessarily so, for she speaks only for herself, as the Thai government has been quick to point out — there can be no ground whatever for giving it separate representation or membership in the United Nations. Suggestions that this has been done before, merely betray a lack of historical knowledge. By 1945 the various self-governing parts of the Commonwealth had received sufficient recognition as international persons, as had India, to be able to enter the United Nations in

their own right. They had been members of the League of Nations and had participated in the Second World War by virtue of their own declarations of war. Moreover, neither the British Empire nor the Commonwealth is or ever has been a member of the United Nations. It is the United Kingdom which is the member. Reference has frequently been made to the 'precedent' afforded by separate membership of the United Nations enjoyed by the Byelorussian and Ukrainian Soviet Socialist Republics, which are constituent parts of the Soviet Union which is also a member of the United Nations. This, however, was a result of political arrangements made at the time that the Dumbarton Oaks Proposals, from which the Charter evolved, were being discussed. In any case, all three are original members of the Organisation and, as has been indicated, the conditions relating to original members are very different from those that pertain to new members of the United Nations. Even if it were agreed that this should constitute a model, it would of necessity be acceptance of the fact that Taiwan is a constituent part of China; acceptance by China that for political reasons it might be convenient to have Taiwan recognised as possessing sufficient personality to be admitted as a member of the United Nations — and Article 4 as interpreted by the World Court makes statehood a prerequisite of membership; and acceptance by the existing members of the United Nations of Taiwan as a member, even though it might not satisfy the membership conditions prescribed in the Charter. There is no reason to assume that the existing members, especially those with minority problems, such as Nigeria and Biafra, Great Britain and Northern Ireland, or perhaps Canada and Quebec, would be any more willing to accept this arrangement, whereby China would enjoy two votes, than they would an independent Taiwan.

Before the Second World War Taiwan was acknowledged as being part of the Japanese Empire, having been ceded by China, of which it had been a constituent part since the early days of the Manchus in the seventeenth century, in accordance with the Treaty of Shimonoseki, 1895²⁸. Even though peace treaties have been re-

28) 1 Hertslet, *Treaties between Great Britain and China, and between China and Foreign Powers ... Affecting British Interests in China*, 1908, p. 362.

cognised in the past as legitimate means of settling territorial problems, while the inequality between the parties necessarily attaching to them has never been recognised as constituting duress which might be a ground for invalidity, during the Second World War the United Nations²⁹ assumed a different attitude towards what they decried as the fruits of aggression. At the Caire Conference, 1943³⁰, China, the United Kingdom and the United States stated that it was "their purpose that Japan shall be stripped of all the islands in the Pacific which she has seized or occupied since ... 1914, and that all the territories that Japan has stolen from the Chinese, such as Manchuria, Formosa and the Pescadores, shall be restored to the Republic of China. Japan will also be expelled from all other territories which she has taken by violence and greed [presumably territories claimed by the Soviet Union as having been stolen from 'Russia']. The aforesaid three great powers, mindful of the enslavement of the people of Korea, are determined that in due course Korea [which was annexed by Japan in 1910] shall become free and independent." Further policy statements relating to territories under Japanese sovereignty came in 1945. At the Yalta Conference³¹ the Soviet Union undertook to enter the war against Japan "two or three months after Germany has surrendered and the war in Europe has terminated ... on condition that ... 2. the former rights of Russia violated by the treacherous attack of Japan on Russia in 1904 [— Russo-Japanese War terminated by the Treaty of Portsmouth 1905³² —] shall be restored, viz. (a) the southern part of Sakhalin as well as the islands adjacent to it shall be restored to the Soviet Union, ... (3) the Kurile Islands shall be handed over to the Soviet Union ... The Heads of the three Great Powers have agreed that these claims of the Soviet Union shall be unquestionably fulfilled after Japan has been defeated...." This was followed by the Potsdam Proclamation defining Japan's Terms

29) Wartime name of the Alliance against the Axis, see, e.g., Declaration of United Nations, 1942 (36 A J.I.L. 1942, Supp., p. 191).

30) 1 Dec. 1943, Royal Institute of Int. Affairs, *Survey of Int. Affairs 1939 - 46: The Far East 1942 - 46*, 1955, p. 491.

31) 11 Feb. 1945, *ibid.*, p. 194.

32) 1 Hertslet, *op. cit.*, p. 608.

for Surrender³³. China, the United Kingdom and the United States — the Soviet Union not having yet declared war on Japan — in laying down the conditions that would have to be accepted by Japan, reaffirmed that “the terms of the, Cairo Declaration shall be carried out and Japanese sovereignty shall be limited to the islands of Honshu, Hokkaido, Kyushu, Shikoku and such minor islands as we determine.” Six days before the Japanese accepted the Potsdam surrender demand, the Soviet Union declared war on Japan and proclaimed its adherence to the Potsdam Proclamation³⁴, including, of course, the terms of the Cairo Declaration On August 15th. Japan accepted Potsdam³⁵ and in the Instrument of Surrender³⁶ undertook “to carry out the provisions of the Potsdam Declaration in good faith, and to issue whatever orders and take whatever action may be required ... for the purpose of giving effect to that declaration.” In his first Order as Supreme Commander for the Allied Powers³⁷ General Mac Arthur instructed the Japanese forces in China (excluding Manchuria), Formosa and French Indo-China, north of 16° N. to surrender to Generalissimo Chiang Kai-shek; those in Manchuria, Korea north of 38° N., Karafute and the Kurile Islands to surrender to the Commander-in-Chief of Soviet Forces in the Far East; others to surrender to various named Commanders; while those in Japan proper, in Korea south of 38° N., the Ryukyus and the Philippines were instructed to surrender to the Commander-in-Chief, United States Army Forces, Pacific.

An Allied Council was established by the Moscow Declaration, 1945³⁸, the purpose of which was to assist the Supreme Commander in carrying out his mission with regard to the surrender and administration of Japan. But it soon became clear that the Allied Council's jurisdiction would not extend to all the territories surrendered by Japan. For one thing, the relations between the Soviet Union and China concerning the future of Manchuria and the

33) 26 Jul. 1945, *Survey*, p. 216.

34) 8 Aug. 1945, *ibid.*, p. 141.

35) *Ibid.*, p. 497.

36) 2 Sept. 1945, *ibid.*, p. 498.

37) 2 Sept. 1945, *ibid.*, p. 499.

38) 27 Dec. 1945, *ibid.*, p. 528 at p. 531.

withdrawal of Soviet troops were to be settled bilaterally³⁹, although it was only by virtue of the agreement between the Nationalist Government and the Chinese Communists negotiated under the auspices of General Marshall⁴⁰ that it was finally agreed that Manchuria would be occupied by the Nationalist forces. This was in line with President Truman's Statement of Policy issued on December 17⁴¹, in which he reiterated that the three Great Powers were committed to the liberation of China, including its recovery of Manchuria — the United Kingdom and the United States being bound by Cairo, Yalta and Potsdam, and the Soviet Union by the first two, its subsequent acceptance of Potsdam, and the Sino-Soviet Treaty of August 1945⁴² which, broadly speaking, confirmed what had been agreed, primarily in the Soviet Union's favour, at Yalta and recognised the separation of Outer Mongolia from China.

Korea was another area outside the scope of the Allied Council's authority. By the Moscow Agreement, 1945⁴³ a Joint Command representing the Soviet command in the north and the United States command in the south was set up "to assist the formation of a provisional Korean government. ... It shall be the task of the Joint Commission, with the participation of the Korean democratic organisations, to work out measures for helping and assisting (trusteeship) the political, economic and social progress of the Korean people, the development of democratic self-government and the establishment of the national independence of Korea." The trusteeship never materialised, and the independence of the Republic of Korea — South Korea — was proclaimed on August 15, 1948, and that of the People's Republic — North Korea — on September 8.

An attempt was made by the Soviet Union to assert the Allied Council's jurisdiction over the Ryukyus. This brought the comment

39) *ibid.*, p. 198.

40) *ibid.*, p. 202.

41) Dept. of State Publication 3573, **U.S. Relations with China**, 1949, pp. 607 - 9.

42) *ibid.*, p. 179.

43) 27 Dec. 1945, *ibid.*, p. 562.

from MacArthur that "they did not fall into the jurisdiction of the international control, being entirely subject to the jurisdiction of the United States"⁴⁴ — a jurisdiction so complete that by virtue of a bilateral agreement between the United States and Japan these islands, of which the most important is Okinawa, reverted to Japanese sovereignty in 1972, without apparently any other state being consulted or objecting.

It would appear, therefore, that the wartime assurances and understandings with regard to territories formerly under Russian sovereignty and 'seized' by Japan were fully carried out, well before the signature of any formal peace treaty with Japan. It is of interest to note in this connection that the Soviet Union did not sign the 1951 Peace Treaty with Japan⁴⁵ and only signed a declaration terminating war in 1956⁴⁶, which made no reference to South Sakhalin or the Kuriles. The same was true of the re-creation of an independent Korea, albeit in the form of two separate entities. As no time has it been suggested by the former Allied Powers that the re-establishment of the state was invalid or required any further confirmation in a peace treaty to make it effective, even though the western powers have refused to recognise the existence of the People's Republic or its government.

In so far as the Chinese territories are concerned, however, this has not been the case. True, Manchuria was restored and the independence of Outer Mongolia resulted from an agreement entered into by the Chinese Government. At the same time, small offshore islands like Quemoy and Matsu were considered to have returned to China, but in the case of Taiwan controversy has arisen, particularly since the success of the People's Republic in expelling the Kuomintang authorities from the mainland, and the Korean War on behalf of those against whom the United States and its Allies were taking military action under the umbrella of United Nations resolutions.

44) *The Times* (London), 5 May 1945.

45) 136 U.N.T.S. 45.

46) 1 *Japanese Annual of International Law*, 1957, p. 129.

At the time of the Japanese surrender, there were no allied troops other than Chinese present in Taiwan, and no suggestion was made in the immediate post-surrender period that these troops did not represent the authority of the Chinese Government, nor was there any assertion that the island had not reverted to China. In fact, with the consent of the Allied Powers, administration over Taiwan was undertaken by the Government of the Republic of China⁴⁷ and Taiwan, together with the Pescadores, was incorporated "as an integral part of Chinese territory under the administration of a provincial government"⁴⁸. This was the position at the time of the withdrawal of the Nationalist authorities from the mainland of China and the installation of the Government of China on the island, which as a province of China was the obvious place to which the legitimate government, at that time the only government enjoying international recognition, should withdraw.

There is of course no reason, in the light of the diplomatic history concerned, why the legal position with regard to the restoration of Taiwan to China should be any different from that with regard to other territories taken from Japan in accordance with allied statements—which referred also to Taiwan—and which as has been seen, were restored to former sovereigns or granted independence regardless of the absence of any peace treaty by which Japan formally acknowledged the transfer of sovereignty. If there were political reasons, either relating to the cold war, the fear of the spread of communism, or connected with the Chinese participation in the Korean War, these must be seen for what they were. They cannot be construed as having had any effect on the legal situation, particularly as the undertakings in question had all come into operation before 1950, and the first indication that any problem existed related not the sovereignty of China but to the security of the allied operations over Korea. The North Korean forces moved south on 25 June, 1950, and two days later President Truman announced that "the occupation of Formosa by Commu-

47) See statement by British Foreign Office in the **Civil Transport** case, n. 55 *et seq.*, below.

48) Tung, *op. cit.*, p. 35, n. 100.

nist forces would be a direct threat to the security of the Pacific area and to the United States forces performing their lawful and necessary functions in that area... Accordingly I have ordered the Seventh Fleet to prevent any attack on Formosa. As corollary of this action I am calling upon the Chinese Government on Formosa to cease all air and sea operations against the mainland. The Seventh Fleet will see that this is done"⁴⁹. This statement cannot be construed in any way as a denial of Chinese sovereignty over Taiwan. Since the People's Republican Government had not yet entered the Korean operations the only ground for their attack upon Formosa lay in the fact that this was Chinese territory on which the Government of China, against which they were waging a civil war, had established itself. Similarly, the only basis on which that Government could operate on or from Taiwan was the same, and the only fear that the President had in mind was that the activities of either side in seeking to establish or re-establish its jurisdiction over the whole of China might endanger the United States in its policies concerning Korea. The statement is, therefore, a clear recognition that the Government on Formosa is the Government of China and has little meaning if it does not accept Taiwan as part of the territories of China.

It has sometimes been suggested that the allied statements were nothing but declarations of intention and policy lacking any legal significance. This contention is somewhat hard to maintain in view of the effect given to such statements in the way indicated above, as well as the fashion in which the Occupying Powers carried them out in Europe after the unconditional surrender of Germany. It is hardly possible to contend that the statements were valid for some purposes and not for others, particularly when the latter were intrinsically of the same kind as the former. Moreover, it must be remembered that in the *Eastern Greenland case*⁵⁰ the World Court considered "it beyond all dispute that a reply... given by the Minister for Foreign Affairs on behalf of his Government in reply to a request by the diplo-

49) 13 *Dept. of State Bulletin*, 1950, p. 5.

50) 1933, P.C.I.J., Series A/B 53, at pp. 71, 91.

matic representative of a foreign Power, in regard to a question falling within his province, is binding upon the country to which the Minister belongs". If this is true of a Foreign Minister, described in Anzilotti; dissenting judgment as "the direct agent of the chief of the State", it is even more true of a Prime Minister and Heads of State meeting together. In any case, their action in the instances cited show that they intended their agreements to be effective, as was emphasised by the representatives of two of the states parties to the Declarations in statements made by them during the Communist-Nationalist struggle. Thus, in September 1949 the British Government made it clear that "it believed the strategic island of Formosa should *remain* Chinese - even if the Communists take over control there"⁵¹. Shortly thereafter, President Truman, stating that he was speaking in the light of the General Assembly resolution of December 1945⁵², which called upon all members of the United Nations "to respect the political independence of China, ... to respect the right of the people of China, now and in the future, to choose freely their political institutions, ... to refrain from seeking to acquire spheres of influence or to create foreign-controlled regimes within the territory of China...", declared⁵³ that "the United States has no predatory design on Formosa or any other Chinese territory". The same day Secretary of State Acheson stated⁵⁴ that "the island of Formosa should be regarded as *part of the territory of China*. It was *not necessary to wait for a peace treaty* before handing Formosa over to China... Whatever sort of China was recognised Formosa should be regarded as *part of it*". He went on to say that any suggestion that Taiwan should be regarded as still technically part of the occupied territory of Japan and thus amenable to United States intervention was a "lawyer's quibble".

Despite these official statements on behalf of the United States and its own statement of September 1949, the British Foreign Office in February 1950 adopted a somewhat different

51) *New York Times*, 23 Sept. 1949 (italics added).

52) Res. 291 (IV) 1949.

53) *The Times* (London), 6 Jan. 1950 (italics added).

54) *Ibid.* (italics added).

approach to the status of Formosa. The Supreme Court of Hong Kong was faced with the issue of which authority was recognised as the government of the Republic of China⁵⁵. In reply to the questionnaire submitted to it, the Foreign Office stated :

"1. H.M.G. in the United Kingdom does not recognise the Nationalist Government (Republican Government) as *de jure* government of the Republic of China...

3. As from midnight of January 5/6, 1950, H.M.G. recognised the Central People's Government as *de jure* government of the Republic of China.

"4. H.M.G. recognises that the Nationalist Government has ceased to be the *de facto* Government of the Republic of China...

"5. H.M.G. do not recognise any government other than the Central People's Government of the People's Republic of China as the *de facto* government of the Republic of China...

"6. In 1943 Formosa was a part of the territories of the Japanese Empire and H.M.G. consider *Formosa is still de jure part of that territory*-. On December 1, 1943, at Cairo, President Roosevelt, Generalissimo Chiang Kai-shek and Prime Minister Churchill declared that all territories that Japan had stolen from the Chinese, including Formosa, should be restored to the Republic of China. On July 26, 1945, at Potsdam, the Heads of the Governments of the United States of America, the United Kingdom and the Republic of China reaffirmed 'The terms of the Cairo Declaration shall be carried out'. On October 25, 1945, as a result of an order issued on the basis of consultation and agreement between the Allied Powers concerned, the Japanese forces in Formosa surrendered to Chiang Kai-shek. Thereupon, with the consent of the Allied Powers, administration of Formosa was undertaken by the Government of the Republic of China. At present, the actual administration of the Island is by Wu Kou-Cheng, who has not, as far

55) **Civil Air Transport Inc., v. Central Air Transport Corporation** 35 H.K.L.R. 22, 162, 215 (1953) A.C. 70, at 87 (italics added). For an analysis of this case, see Green, "The Recognition of Communist China", 3 **Int. Law Quarterly** 1950, p. 418.

as H.M.G. are aware, repudiated the superiority of the Nationalist Government". It would appear, therefore, that far from agreeing with Acheson's view that to regard Formosa as still *de jure* part of the Japanese Empire was a 'lawyer's quibble', the British Government accorded it that precise status. It might have been thought, therefore, that after the signature of the Japanese Peace Treaty, when such a view would no longer have any basis, Britain might have come round to accepting the more reasonable view, in the light of the facts discussed above, that Taiwan had now at least become part of China. In 1956⁵⁶, however, when asked for "a factual statement on the legalistic and treaty aspects of the situation in the South-East China coast", the Foreign Secretary stated that the Government still maintained the view expressed by the Prime Minister a year earlier⁵⁷ :

"Formosa and the Pescadores were ceded to Japan by China in the Shimonoseki Treaty of 1895. In the Cairo Declaration of November, 1943, the Allies stated that it was their purpose' that all the territories which Japan has stolen from the Chinese such as... Formosa and the Pescadores, shall be restored to the Republic of China...' This Declaration was a statement of intention that Formosa should be retroceded to China after the war. This retrocession has, in fact, never taken place, *because of the difficulties arising from the existence of two entities claiming to represent China, and the differences amongst the Powers as to the status of these entities.*

"The Potsdam Declaration of July, 1945, laid down as one of the conditions of the Japanese Peace that the terms of the Cairo Declaration should be carried out. In September, 1945, the administration of Formosa was taken over from the Japanese by Chinese forces at the direction of the

56) House of Commons, 15 Feb. 1956, 548 **Hansard**, col. 2366.

57) 4 Feb. 1955, 536 **ibid.**, Written Answers, col. 159 (reprinted by E. Lauterpacht, under the heading 'Sovereignty in Suspense', in his *Contemporary Practice of the U.K. in the Field of International Law*, 5 *I.C.L.Q.*, 1956, p. 405, at p. 413 -italics added).

Supreme Commander of the Allied Powers; but this was not a cession, nor did it in itself involve any change of sovereignty. The arrangements made with Chiang Kai-shek put him there on a basis of military occupation pending further arrangements, and did not of themselves constitute the territory Chinese.

“Under the Peace Treaty of April, 1952, Japan formally renounced all right, title and claim to Formosa and the Pescadores; but again this did not operate as a transfer to Chinese sovereignty, either to the People’s Republic of China or to the Chinese Nationalist authorities. Formosa and the Pescadores are therefore, in the view of Her Majesty’s Government, territory the *de jure* sovereignty over which is uncertain or undetermined.

“The Nationalist - held islands in close proximity to the coast of China are in different category from Formosa and the Pescadores since they undoubtedly form part of the territory of the People’s Republic of China. Any attempt by the Government of the People’s Republic of China, however, to assert its authority over these islands by force would, in the circumstances at present peculiar to the case, give rise to a situation endangering peace and security, which is properly a matter of international concern”.

It is clear from this statement that the British Government’s change of view had nothing whatever to do with the legal position of the various islands in question, as is obvious from the comment concerning the offshore islands. The statement refers to disagreements among third Powers as to which entity - and, by then, as has been seen, Great Britain recognised the People’s Republic - was the proper Government of China. Further, her attitude was also affected by the fact that the mainland could only extend its effective authority over Taiwan by force, which at that time would have endangered peace and security. It can hardly be maintained that an argument of this character has any connection with legal reasoning. Further, in the light of this Answer, it must probably be presumed that had there been no disagreement between

the United Kingdom and the United States as to the proper government of China, and had there not been the aftermath of the Korean War, with the United States regarding the extension of Communist influence from the mainland a threat to its security and international peace, the British Government would not have denied that Taiwan was part of China. Commenting on this British statement, Professor Northedge has written⁵⁸ that "in 1955 [Great Britain] recognising (Peking's) legal right to establish its rule over the offshore islands of Quemoy and Matsu [still argued] that any Communist attempt to recover the islands must be resisted because it would 'give rise to a situation endangering peace and security which is properly a matter of international concern'. By making this statement in the House of Commons Sir Anthony Eden could only have meant that the United States would forcibly resist what the British Government considered as Peking's right to recover its own property". It is interesting to compare this attitude with the British Government's stance concerning Rhodesia where, even in the face of numerous calls by other countries comprising a majority of the United Nations, Great Britain has declined to use force to recover its own property when administered by a rebel authority which can only be brought to heel by the use of force. Moreover, since Great Britain professed not to know to whom sovereignty rightly belonged and since jurisdiction was being exercised by a Chinese Government which had incorporated the territory as a province into China and whose authority over the island was acknowledged by Britain's leading ally, the British Government might have recalled its own attitude to problems of sovereignty, as illustrated by, for instance, *The Fagernes*⁵⁹, when an English court was bound by a statement from the government that Great Britain did not claim a particular location as British territory, or *Sayce v. Ameer of Bahawalpur*⁶⁰ when the Government and the court regarded themselves as bound to accept the statement of the Government of Pakistan that a particular individual was a sovereign entitled to immunity in the English courts.

58) "Britain and the United Nations", in Twitchett, **The Evolving United Nations**, 1971, p. 141, at p. 146.

59) [1927] p. 31.

60) [1952] 1 All. E.R. 326, [1952] Z.Q.B. 390.

It is not really difficult to ascertain the reason for the change in the British attitude. Had the British Government confirmed its view that Formosa belonged to China, recognition of the Central People's Government would have been acknowledgement of that Government's jurisdiction over Taiwan and at least an implied acceptance of the view that the Island as Chinese territory was, from the British point of view, in the unlawful possession of a Chinese official who denied the authority of his own government in order to acknowledge that authority of an entity which the United Kingdom asserted had no governmental status. Moreover, it would have presented a situation in which the United Kingdom would have found itself stating that a territory was illegally occupied by an entity recognised as the legitimate government of China by Britain's leading ally, the United States. Rather than placing itself in this invidious position, the British Government sought refuge by saying before the Japanese Peace Treaty was signed that Taiwan still *de jure* belonged to Japan, and after the Treaty had come into force that its status was "uncertain or undetermined". If this were a correct statement of the position, it would mean that the representative of Generalissimo Chiang Kai-shek to whom the Japanese forces had surrendered, or his successor, was occupying the Island merely as the representative of the Allied Powers until such time as there was in the eyes of Great Britain a determination of the final allocation of the Island. This came in March 1972 with the appointment of the first British ambassador to Peking, when Britain closed her consulate in Taiwan and "acknowledged" that Taiwan was a province of the People's Republic.

From the point of view of the United States, the Nationalist, despite the rapprochement with Peking, still constitute the Government of China, although the communiqué clearly hints that it is only a question of time before this ceases to be so, even though a presidential representative has assured Taiwan that it is still recognised and the President has himself asserted that the Defence Treaty has been unaffected by his talks with the Communist authorities. Since the State Department has all along considered Taiwan to be part of China, this has meant that in its view the exiled government is continuing to exercise its authority and ma-

ke its claims to the rest of China from a territory that is in fact part of China. For the United States to have denied this and accepted the British view would have meant that the United States too considered Taiwan to be held on behalf of a Chinese commander of occupied Japanese territory. Further, it would have entailed recognition of the fact that Chiang Kai-shek's tenure of the Island lacked any legal or political significance, while his administration would have been without any Chinese territorial base from which to continue its functions. Such an interpretation would have made it difficult for the United States to continue to support the Nationalists in their claims to be the Government of China, for it would have been an acceptance of the fact that it was not in occupation of any part of China, and it would have been equally difficult to argue that the Nationalists were entitled to speak in the name of China in the United Nations. It is true that the United States now seems to have come to terms with reality in acknowledging that the People's Republic is in fact administering the bulk of China. Its agreement in the communiqué that "there is but one China and that Taiwan is a part of China" is consistent with the view that it has taken all long and represents no departure or change in policy, or in interpretation of the legal position.

The controversy between Great Britain and some of the other Allied Powers and the United States and others among the Allied Powers caused difficulties when it came to the drafting of the Japanese Peace Treaty. Because the Allied Powers could not agree among themselves whether it was the People's Republic or the Kuomintang Government which constituted the Government of China, it was ultimately decided that neither government would be invited to participate in the San Francisco Conference or become a party to the Peace Treaty. India and Burma declined to attend the Conference, while the Soviet Union refused to sign the Treaty⁶¹, although it was signed by such important enemies of Japan as the Latin American countries, Ethiopia, Haiti, Lebanon, Saudi Arabia, and others. The Treaty confirmed the inde-

61) See Green, "Making Peace with Japan", 6 *Yearbook of World Affairs* 1952, p. 1.

pendence of Korea, while Japan renounced all claim to Formosa, the Pescadores, South Sakhalin and the Kuriles. No indication was given as to the ultimate destination of these, which, as has been seen, enabled Great Britain to take the line that Taiwan and the Pescadores are in a state of limbo — although she has not taken the same line with regard to the former Russian territories, which presumably are in the same legal position. The situation was not clarified by the China (Taiwan) Japan Peace Treaty of 1952⁶². This confirmed Japan's abandonment of Taiwan and the Pescadores as provided by the San Francisco Treaty, but it too made no provision for the ultimate destination of these territories — presumably because the two Powers thought Japan was merely making a formal declaration acknowledging what had already happened. Provision was made for Japanese property in Taiwan to be disposed of in accordance with special arrangements to be made by the two parties, and stated that "nationals of China" would include inhabitants and former inhabitants of Taiwan, while the exchange of ratifications was to take place in Taipei where the Treaty had been signed. Here, it might be pointed out that nationality is altered by transfer of territory. Prior to the Japanese surrender, the inhabitants of Taiwan possessed Japanese nationality. By affording them Chinese nationality, the Treaty merely confirmed that the land of which they were nationals was in fact part of China, so that they were to be regarded as Chinese. By referring to "former inhabitants" the Treaty was merely acknowledging the "illegality" of the Japanese occupation and restoring to these persons their former status as Chinese, even though the majority of them had been born after China had ceased to exercise jurisdiction. It would appear, therefore, that Japan had at least impliedly acknowledged Taiwan as Chinese territory, while in a Protocol, as if envisaging the possibility of a Chinese return to the mainland, the Japanese plenipotentiary referred to the "understanding reached between us that the terms of the present Treaty shall, in respect of China, be applicable to all the territories which are now, or which may hereafter be, under the control of its Government." Although the People's

62) 159 B.F.S.P., p. 591.

Republic has made it clear that it would not regard itself as bound by any treaty to which it is not a party⁶³, there is no doubt that it will, when it eventually comes to terms with Japan, insist on the latter reaffirming its abandonment of former Chinese territories, and already Japan has indicated that it must apologise to China for the sins of the past. The Soviet Union, too, has made a statement to this effect, but she has signed an end of war declaration with Japan, which, in so far as the ultimate destination of territory is concerned, is even more nebulous than the Sino-Japanese Peace Treaty, for while it restores peace it makes no reference to South Sakhalin and the Kuriles.

It would appear in the light of the wartime statements of the Great Powers, the action taken by them with regard to some of the territorial settlements consequent upon the defeat of Japan, the San Francisco Peace Treaty, and the subsequent Treaty between China and Japan, that Taiwan was in law undoubtedly part of China. Any statement to the contrary made by the British Government of example is, in view of its own earlier statement, completely devoid of legal significance, and seems to have made purely as a matter of convenience and for political reasons, regardless of law. The only problem that might arise appears to relate to the time at which the recession of Taiwan to China took place. It cannot be suggested with any rational basis that this occurred at the time the Powers were indulging in declarations and undertakings, for these all referred to the settlement to follow the defeat of Japan, which of course might never have occurred. It is submitted that, from a practical and administrative point of view, the recession occurred at the date of the surrender when, in accordance with the Great Power statements and with Allied concurrence, Taiwan passed into Chinese hands, and was shortly thereafter incorporated into China as a province, an action which was known to China's allied and drew no protest. If purists wish to argue that Japan had not yet agreed to the reversion and that therefore the Island was still technically Japanese, they ignore that by virtue of her surrender

63) Sino - Soviet Exchange of Notes, 16 Sept. 1952, C.P.R., 2 **Diplomatic Archives**, p. 89.

Japan had accepted Allied proposals for Taiwan and had, in any case, concurred in these by the time of the San Francisco Treaty with China. By the time that countries like Britain had second thoughts different from those which they had expressed earlier, the transfer of the Island to China was in fact complete, and any denial of Chinese sovereignty over the Island constituted an unlawful intervention in Chinese affairs and was a denial of her territorial integrity, not compatible with the wartime commitments nor with undertakings concerning territorial integrity in the Charter of the United Nations, of which all the Allied Powers including China were members.

In the twenty years that elapsed between the retreat of the Nationalist authorities from the mainland and the acceptance of the representative of the People's Republic as the properly accredited spokesman for China in the United Nations, it would appear to have been the case that states which recognised the Nationalist Government regarded Taiwan as part of China, for it was only on that basis that it could be argued that Chiang Kai-shek and his followers claimed to speak for the Government of China from Chinese territory. On the other hand, those which recognised the People's Republic as the Government of China while seeking to preserve the goodwill of the United States, appear to have been willing to deny this incorporation, regardless of wartime statements, actions taken with regard to other territories affected by the same undertakings, and even in opposition to their own prior stance. To have done otherwise would have placed them in the position of saying that the ally of the United States was, in defiance of the Charter, in unlawful occupation of another state's territory. While these countries may have denied that Taiwan was part of China, and may even have described its status as being somewhat doubtful, none seems to have gone so far as to assert that Taiwan constituted a separate entity. To have done so, would hardly have amounted even to a 'lawyer's guibble'.

By 1970 it had become increasingly clear that the final recognition of the People's Republic by the majority of the states of

the world and acceptance of it as the government entitled to represent China in the United Nations could not be delayed much longer. Willingness to accept the People's Republic in the United Nations did not mean a complete rejection of the position of the United States. Countries which had long since accorded recognition and which had gone on record to the effect that the Peking regime was entitled to speak for China on the world scene, were prepared to agree that, in view of the security problems involved in the Far East and particularly the United States' declared intention of protecting the Kuomintang's hold on Taiwan by force of arms if necessary, the problem of China in the United Nations was not a simple straightforward question of credentials and representation. While, normally, one might imagine that a state was entitled to decide upon its own form of government, and while it might be thought that a question of credentials was one of procedure, there was agreement with the United States, which had itself not originally taken that position, that the question of Chinese representation was in fact an important question requiring a two-thirds majority in the Assembly. The reason put forward for this way that to seat the Peking representative would, if the Charter meant anything and was to be obeyed, require the concomitant unseating of the Kuomintang representative, reducing the number of United States supporters, and presenting the Communist world with another permanent seat on the Security Council. For this reason, there was nothing inconsistent in the behaviour of a state which declared that it considered Peking the proper government which should be seated in the United Nations and would vote accordingly, yet at the same time agreeing that the issue was sufficiently important to require the qualified majority, particularly whenever the draft resolution was framed in a form that called for the removal of the former representative, thus appearing to constitute a direct inflammatory challenge to the United States. Such a bifurcation of policy meant that a country might vote for the qualified majority, knowing that ultimately on the actual seating vote it would itself be in the minority group favouring a change in Chinese representation. Perhaps inconsistent: but hardly illogical or unrealistic.

During 1970 and 1971 states extending recognition to the Chinese People's Republic appeared to be seeking ways to do so without expressly committing themselves on the status of Taiwan. Thus, on 13 October, 1970, the Government of Canada announced⁶⁴ that the two Governments "in accordance with the principles of *mutual respect for sovereignty and territorial integrity*, non-interference in each other's internal affairs and equality and mutual benefit, have decided upon *mutual* recognition." Therefore, "the Canadian Government recognises the Government of the People's Republic of China as the sole legal government of China." As to Taiwan, "the Chinese Government reaffirms that *Taiwan is an inalienable part of the territory of the Republic of China*. The Canadian Government *takes note of this position* of the Chinese Government." While it may normally be the case that by 'taking note' a government acknowledges that it is aware of the stance being adopted by another state, while giving no indication of its own position, it is submitted that in view of Canadian recognition that states define their own territorial limits unless reservations are made, and in view of the preambular reference to mutual respect for sovereignty and territorial integrity, which tends to confirm this view, it is submitted that by 'taking note' of the Chinese position regarding Taiwan in this form the Canadian Government has in fact acknowledged that Taiwan is part of China. As soon as the Canadian Government announced its recognition of the Peking Government, the Chinese Nationalist Government in Taiwan broke off diplomatic relations and withdrew its ambassador from Ottawa. This was something in the character of a vainglorious exhibition, probably intended to avert the possibility of his being asked to leave, for, with the recognition of the People's Republic as the Government of China, in Canada's view the representative of the Kuomintang no longer represented any state or government. The same formule was employed by Italy when extending recognition to the People's Republic⁶⁵, with the same consequences. Belgium, too, 'took note' of China's assertion that Taiwan is an "inalienable part of the territory of the People's Republic of

64) Dept. of External Affairs, Inf. Div., No. 70/19 (italics added).

65) 6 Nov. 1970, *Ansa Bulletin* (Rome), No. 121/1.

China", when recognising that Government as the sole legal government of China on the very day that the United Nations voted to accept Peking as China's true spokesman in the Organisation⁶⁶.

The interpretation of 'taking note' put forward here appears to be in line with that adopted by Singapore, albeit to the opposite effect, in relation to the Straits of Malacca⁶⁷. In their Joint Statement, the Governments of Indonesia, Malaysia and Singapore proclaimed their interest in the safety of navigation in the Straits, agreed that cooperative efforts were necessary, and "(iv) ... also agreed that the problem of the safety of navigation and the question of internationalisation of the straits are two separate issues; (v) the Governments of the Republic of Indonesia and of Malaysia agreed that the Straits of Malacca and Singapore are not international straits, while fully recognising their use for international shipping in accordance with the principle of innocent passage. The Government of Singapore *takes note* of the position of the Governments of the Republic of Indonesia and of Malaysia on this point..." It is clear from the way in which this document has been drafted that the Government of Singapore has not merely indicated its awareness of the attitude of the other two, but it is an assertion that Singapore does not agree with this attitude, but does not consider it politic to make its opposition any more manifest. Later statements relating to the Straits have been made by both the Governments of Indonesia and Malaysia rejecting the criticisms of third Powers, while the Government of Singapore has preserved silence. In so far as the approach of Canada, Italy and Belgium vis-à-vis Taiwan is concerned, the subsequent attitude of these countries and of China would suggest that when they 'took note' of the Chinese position they acquiesced therein, while in the case of Singapore and the Straits the same language was used to express dissent.

When Austria extended recognition, it used a somewhat different form. While the formal announcement contained a similar

66) *The Times* (London), 27 Oct. 1971.

67) Joint Statement published by Ministry of Foreign Affairs, Singapore, 16 Nov. 1971 (italics added).

preamble to that in the Canadian-Chinese accord, there is no mention of Taiwan. The statement⁶⁸ merely says that "the Austrian Government is recognising the Government of the People's Republic of China as the sole lawful Government of China." It was perhaps easier for Austria to remain silent as to the status of Taiwan than for Canada, Italy and Belgium, since no diplomatic relations existed between Austria and the government in Taiwan. In fact, Foreign Minister Kirschlaeger pointed out that "Austria never made a declaration of recognition of Formosa nor intended to come forward with a declaration of non-recognition." In view of the declared mutual recognition of sovereignty and territorial integrity and the silence with regard to Taiwan, one can only assume that Austria accepted that China exists where the Government of China which she recognises says that it exists, and hence must be considered to have conceded that Taiwan is part of China. Support for this view is to be found in the Minister's further comment that, on the level of the United Nations, "the delegates of Austria and the Republic of China up to now had been sitting at the same table which amounted to mutual recognition.' Since the delegate of the Republic came from Taiwan, now that Austria recognises that the only government of China is that of the People's Republic, it follows from this statement that Austria must regard Taiwan as part of China and that the Peking Government is the only one able to represent China in the United Nations, so that the delegate formerly recognised as fulfilling this function would no longer, so far as Austria was concerned, be able to claim to represent any member of the United Nations. A somewhat similar attitude was taken by Japan which continues to recognise the Taiwan Government as the Government of China. However, Prime Minister Sato did indicate that Japan accepted that Taiwan is part of China⁶⁹, and that by sitting with the People's Republic in the United Nations Japan acknowledged that the Government of China was the Government

68) Austrian Consulate, Singapore, *News from Austria*, Political Bulletin, 20/71.

69) *The Times* (London), 29 Feb. 1972 - as early as Sept. 27 Japan's delegate had indicated that Japan believed China to be a single country, *ibid.*, 28 Sept. 1971.

of the whole of China including Taiwan. Due to internal party pressures, this stand has been modified so that Japan merely accepts that Peking's position that Taiwan is part of China is "fully understandable particularly since the Peking Government had come to represent China" in the United Nations⁷⁰.

In the light of what has been put forward above, it is submitted that there can no longer be any doubt that Taiwan is in fact part of China. Recognition of the Government of the People's Republic as the Government of China means, therefore, that it automatically also becomes the government of that part of China which is known as Taiwan, with the agreement of the United Nations that it is the representative of the People's Republic who is the representative of China, there no longer remains any ground on which it can be argued that Taiwan is entitled to a seat in that Organisation — a fact which the delegate from Taiwan himself acknowledged when it became clear, with the rejection of the resolution calling for a two-thirds majority, that the United Nations was going to seat his opponent from Peking. Just as, in the past, the United States had made a prestige issue of the matter by calling for the retention of the Taiwanese representative, so on this occasion the same was done by Peking's supporters when they insisted on adding a clause to their proposal calling expressly for the expulsion of the Taiwanese delegation. As has already been seen, this addition was completely gratuitous and clearly motivated by a political desire to humiliate the United States, for with the acceptance of the People's Republic as the representative of China there was automatically no longer any basis for the Nationalist to be present in the United Nations building other than as a visitor.

While, as has been demonstrated earlier, there are real reasons, why the delegate of a member in the Assembly must also be that member's delegate in all other organs of the United Nations, there is no reason why the same should be the rule where other international institutions are concerned. The members of the United Nations might well have decided that China should be represented by the nominee of the Government of the People's Republic,

70) *Straits Times* (Singapore), 13 Mar. 1972.

but some other organisation might equally feel that its work can best be done by maintaining the status quo and continuing to regard the delegate from Taiwan as the spokesman for China. This is true even of those institutions which are specialised agencies of the United Nations, for each has a separate constitution and its own rules for membership and representation. It is true that when the United Nations indicated that it was not prepared to seat the representative from Peking, these agencies announced their intention to do likewise. When the United Nations resolved to change its policy, the Secretary General informed Peking and other organisations of this fact. He received from the acting Foreign Minister of the People's Republic an acknowledgement which said: "I have also noted that you have notified all the bodies and related agencies of the UN of this resolution adopted by the UN General Assembly and believe that the above-mentioned resolution will be speedily implemented in its entirety"⁷¹. There was no time lost before Unesco and the ILO voted to accept the representative from the mainland⁷², although the *London Times* seemed to think that there might be difficulties with WHO, since "its constitution has no clause for exclusion"⁷³! In fact, this problem never materialised for the organisation behaved as did the others, and merely voted to accept the Republican representative, while deciding to continue with projects already planned in Taiwan at least until the end of 1973⁷⁴. The position with the FAO was slightly different, since the Nationalist Government had left that Organisation in 1950, but "Peking could hardly accept a Nationalist decision as binding. Thus, it could be argued that the Chinese do not even have to re-apply for membership because it has never lapsed"⁷⁴. In any case, "it was understood earlier that the FAO had invited the Chinese to apply formally for readmission". If the decision of the United Nations that the disappearance of Syria while it was part of the United Arab Republic, and the withdrawal of Indonesia from the United Nations were to be regarded only as temporary

71) *The Times*, 30 Oct. 1971.

72) *Ibid.*, 30 Oct., 17 Nov. 1971.

73) *Ibid.*, 27 Oct. 1971.

74) *Ibid.*, 24 Nov. 1971.

disabilities that in no way interrupted the continued membership of the country concerned, serve as precedents, there is absolutely no reason why China should apply for admission to any organisation to which the former Government had sent the Chinese delegation if the Government of the People's Republic wished to do the same, provided that organisation was prepared, as it should be, to treat the matter as one of representation.

At the time of the decision in the United Nations, which Taiwan described as illegal and "in violation of the United Nations Charter", the Nationalist Government announced its intention to remain a member of some of the specialised agencies, including the World Bank⁷⁵. As we have seen, however, the decision did not remain with the Taiwan authorities but with the organisation involved. So much was this the case, that GATT, of which China was not a member but only enjoyed observer status, decided to deprive Taiwan of this role⁷⁶, although there was no suggestion that the Government of the People's Republic would be any more anxious to cooperate with GATT than are the governments of the other People's Republics. As to the International Monetary Fund, China did not wait for any action to be taken by the Organisation with the possibility that its automatic drawing rights might become an asset of the People's Republic. A week before the General Assembly reached its decision, Taiwan withdrew the whole of its automatic drawing rights (\$ 59.9 million) in convertible hard currency, which represented Taiwan's IMF gold subscription and was unconditionally redeemable⁷⁷.

In some cases action which seems to be completely unjustified was taken against representatives of China owing allegiance to the Nationalists. There would appear to be no basis for U Thant's decision to withdraw their credentials from newspaper correspondents belonging to a news agency owned by the Taiwanese autho-

75) *Ibid.*, 30 Oct. 1971.

76) *Ibid.*, 17 Nov. 1971.

77) *Ibid.*, 4 Nov. 1971. This move should be compared with the Nationalist Government's action in the case of Chinese aircraft in Hong Kong which formed the basis for the **Civil Aircraft** case n. 55 above.

rities, even if he were subjected to a pressure from delegates of the People's Republic⁷⁸. Reporting is a non-political activity: not all press agents at the United Nations are connected or sympathise with their governments and the whole situation smacks of interference with the freedom of information in which, presumably, the United Nations believes⁷⁹. It is understood that the new Secretary General rescinded this order. Another field in which action seems to have been taken unnecessarily concerns non-governmental organisations, particularly in the field of sport. It may well be that such organisations consider that the contribution to be made by athletes from the mainland is greater than that by those from Taiwan and if they felt that, since sport is no longer a matter of individual effort, but has become a contest between states whose prestige depends upon the valour of their nationals, almost as if they were knights of old meeting as the champions of rival armies, the only way in which cooperation from the mainland could be achieved is by excluding Taiwanese Chinese, it is possible to excuse and perhaps even justify such actions. Too often, however, such organisations have appeared to consider themselves entitled to play politics and have automatically followed the line set by the United Nations. In some ways the Taiwanese authorities cannot complain of this, for to do so would expose them to a *tu quoque* riposte. Thus, in 1952 Taiwan was admitted to the Fédération Internationale de Natation Amateur as 'Nationalist China', with the result that China withdrew from the Federation. At the end of 1971, as a result of proposals put forward by Canada and Japan, it was decided to re-invite China, for "FINA wants to be friends with all nations in sports. We can also take an independent view on the China issue. ... Just as there are two Germanies... we could come to a compromise on the two Chinas too", was the somewhat naive view of FINA's secretary⁸⁰.

At the beginning of 1972 it was announced in the British House of Commons that twelve states, eight of them in Central or Latin America, were two years or more in arrears with their

78) **The Times**, 20 Dec. 1971.

79) See Covenant on Civil and Political Rights, 1966, Art. 19.

80) **Straits Times**, 16 Nov. 1971.

mandatory contributions to the United Nations. One of the remaining four was China. While the other eleven might be expected to redeem their debt or to face suspension in failure thereof, such a policy could not be adopted towards China. China could rightly contend that the United Nations owed this debt simply because of its own "illegal" activity in refusing to afford China's legitimate government the rights which it enjoyed under the Charter to represent China in the United Nations. In fact, one of the first steps taken by the people's Republic was payment of its current contribution. For the United Nations to expect China to pay the debt that it allowed the Nationalist authorities to accumulate without sanction would indeed be a fine example of complete disregard of the maxim *nemo commodum capere potest de injuria sua propria*.
