

## The Question of Chinese Representation in the United Nations

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### 摘要：

從 1951 年至 1971 年期間，中華民國在聯合國中一直被視為代表中國的唯一政府，惟中華人民共和國政府每年都向聯合國大會提出議案，試圖取代中華民國政府以取得「中國代表權」。直至 1971 年 10 月 25 日，聯合國大會通過 2758 號決議後，「中國代表權」的爭議始暫告平息。

本文旨在討論聯合國「中國代表權」問題，研究聚焦於重建與分析聯合國中國代表權的爭執過程。其中聯合國安理會與大會上，所涉及之美國利益、台灣安全等各項問題，以及所有對應中國代表權的策略，分析緩議案、重要問題案、整批交易及雙重代表等方案，並評估其結果。內文除前言與結論外，分別就聯合國之會員國、否決權與整批交易、國家加入聯合國之條件與大會所具權限、中國代表權問題等議題進行申述。

本研究不認為當時中華民國政府若能保留其在聯合國大會在席位，就能阻止中華人民共和國政府進入聯合國；蓋中華人民共和國政府及其盟友並不會因此就容忍兩岸政權並存於聯合國之中，而放棄迫使中華民國政府喪失其代表中國的國際法人資格。

### Abstract:

The question of the Chinese Representation in the United Nations (UN) arose with the People's Republic of China (PRC)

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putting forward its demand for a seat in the UN Security Council on 18 January 1949. Since 1951, the government of the PRC applied annually to the UN General Assembly to be replaced the government of the Republic of China (ROC) as the representative of China. From 1950 to 1971 the ROC government was recognized as the sole government representing China in the UN. With the adoption of General Assembly Resolution 2758 on 25 October 1971, expelling the ROC government, the representatives of the PRC government replaced the ROC representatives as the sole legitimate representative of China to the UN, and have since held the seat in the General Assembly, the Security Council, as well as in all organs and specialized agencies of the UN. The issue of the Chinese representation in the UN came to a close.

The objective of this essay is to reconstruct and analyse the struggle over the issue of the Chinese representation in the UN. The essay is divided into two parts, namely conditions of entering into the UN, and the Chinese representation question to the UN. It provides an analysis of veto power and package deal, conditions of admission to the UN, the competence of the General Assembly, and the essence of Chinese representation question to the U N. It discusses the different solutions to the Chinese representation question involvement with the U.S. interest, the security of Taiwan and submits a realistic assessment of the ultimate outcome of the struggle from a ROC viewpoint. It will show that all strategies in dealing the of Chinese representation question depended on the voting situation in the Security Council and the General Assembly. If an “Important Question Variation” or “Dual Representation Resolution” had been approved and the resolution promulgated by Albania would have failed, the PRC would have been seated in the General Assembly and in the Security Council. But as long as Taiwan retained a seat in the UN, the PRC would not join the UN. PRC and its allies, however, would continue to find ways to exclude the ROC from their right to represent China. It concludes that the aim of the foreign policy is to pursuit national interest. Taiwan’s

attempt to enter the United Nations is not only unrealistic; conversely it also increases the tension across the Taiwan Strait. One must know that bilateral diplomatic relations is the base of international relations, without the strengthening of bilateral relations and the support of the United Nations member States, Taiwan's entrance into the United Nations is unfeasible. Strengthening the relations between two sides of Taiwan Strait is paramount.

**關鍵字：**中國代表權問題、安理會、加入聯合國之程序、緩議案、重要問題案、雙重代表案、聯合國大會 2758 號決議、中華民國、中華人民共和國、聯合國。

**Keywords :** Chinese representation question, Security Council, Procedure for Admission to the United Nations, Moratorium Device, "Important Question", Dual Representation of China, General Assembly Resolution 2758, Republic of China, People's Republic of China, United Nations,

## INTRODUCTION

This essay is divided into two parts, namely conditions of entering into the United Nations, and the Chinese representation question to the United Nations. It provides an analysis of veto power and package deal, conditions of admission to the United Nations, the competence of the General Assembly, and the essence of Chinese representation question to the United Nations.

The question of the Chinese Representation in the United Nations (UN) arose with the People's Republic of China (PRC) putting forward its demand for a seat in the Security Council on 18 January 1949. Since 1951, the government of the PRC annually applied to be seated instead of the government of the Republic of

China (ROC) as the representative of China. With the adoption of General Assembly Resolution 2758 on 25 October 1971 expelling the Nationalist government and recognizing the government of the PRC as the sole legitimate representative of China, the issue of the Chinese representation came to a close.

The objective of this essay is to reconstruct and analyse the struggle over the issue of the Chinese representation in the UN. It will discuss the different solutions to the problem in light of the United States' (USA) involvement with the security of Taiwan and suggest a realistic assessment of the ultimate outcome of the struggle from a ROC point of view. It concludes that the aim of the foreign policy is to achieve national interest. Taiwan's attempt to enter the United Nations is not only unrealistic, conversely it also increases the tension across the Taiwan Strait. One must know that bilateral diplomatic relations is the base of international relations, without the strengthening of bilateral relations and the support of the United Nations member States, Taiwan's entrance into the United Nations is unfeasible. Strengthening the relations between two sides of Taiwan Strait is paramount.

### **THE QUESTION OF CHINA'S REPRESENTATION IN THE UNITED NATIONS**

China was one of the important States within the Anti-Axis Alliance of the Second World War and a founding nation of the UN. It was given the status as an original member State in the UN. In the UN Charter Article 23 States that the Republic of China, along with another 4 sponsoring powers, shall be permanent members of the Security Council. When the UN Charter was signed in 1945, the PRC did not yet exist and the government of the ROC was the only legitimate representative of China. After 1 October 1949, when the Central Government of the PRC was established, two governments represented China: the Kuomintang Government and the Chinese Communist Government. Both claimed to be the central government

representing China. The former controlled only Taiwan, the Islands of Penghu, Jinmen and Mazu and the latter controlled Chinese mainland.

During the civil war in China, the Union of Socialist Soviet Republics (USSR) supported the Chinese communists and the US aligned with the government of the Kuomintang offering a counter-balance to the USSR. In order to oppose the Soviet bloc, the USA continued to recognize the ROC and her right to represent China in the UN and to hold the seat of China in all bodies of the UN. But the ROC neither represented a great power nor could it coordinate international conflicts in the UN effectively, because it depended on the U.S. to guarantee its seat as a permanent member in the Security Council. Instead of coordinating international conflicts, the ROC was troubled by the question of Chinese representation.

Representation of member States is not a customary issue within the UN. The delegations accredited by the governments of the member States are accepted by all bodies of the UN. Only if two governments exist in one territory and both declare their right of representation, the UN has to take action. The problem of representation arose because after the retreat of the ROC government to Taiwan it continued to claim the role as the central government representing China while the PRC had taken effective control of mainland China. From 1951 to 1971, the question of Chinese representation became an annual issue which had to be dealt with by the UN.

## **THE SECURITY COUNCIL**

On 15 November 1959, the Foreign Minister of the PRC, Zhou Enlai, announced in a letter to the Secretary-General of the United Nations, Trygve Halvdan Lie, and President of the fourth session of the General Assembly, Carlos P. Rumolo, that the government of the ROC should be replaced by the PRC. Consequently, according to

Zhou, the delegations accredited to the UN by the government of the ROC were not approved<sup>1</sup>.

On 15 November, the representative of the Soviet Union, Andrei Vyshinsky, declared that the Soviet delegation had informed the General Assembly of its support for the government of the PRC denying the Chinese delegation headed by Jiang Tingfu (蔣廷黻) the right to represent the Chinese government and people. On the 458<sup>th</sup> meeting, the delegate of the Soviet Union in the Security Council, Yakov Malik, suddenly cited the letter of Zhou Enlai and denied the ROC the right to represent China. However, the President (Canada) of the Security Council did not put this resolution to a vote because by commenting on items not on the agenda Malik had violated the rules of procedures in the Security Council.

The letter dated 8 January 1950 addressed to Trygve Halvdan Lie and the members of the Security Council, Zhou Enlai protested again against the Security Council's refusal to exclude the non-legitimate delegate of the government of the ROC, Jiang Tingfu. On January 10, Malik repeated his position and during the 459<sup>th</sup> meeting put forward a resolution demanding not to approve the credentials<sup>2</sup>

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<sup>1</sup> UN Doc. A/1123, 11/21/1949 (mimeo.)

<sup>2</sup> Credentials are provided in a document identifying a representative and authorizing him to act. It must be issued by the proper authority and comply with the requirements of the General Assembly. Rules of procedure allow for the provisional admission of a representative. Credentials are usually verified by a credentials committee, which reports to the plenary meeting for approval (Feltham:131). A question of recognition that originally arose as a question of credential is that concerning the representation of China. China was a member of the United Nations and of many specialized agencies when, after the 1949 revolution, the Chinese communist government came in power and the previous nationalist government only remained in control of Taiwan. Both governments claimed that they were the legitimate representations of China as a member State of numerous organizations. Were the credentials signed by the Taiwan government still valid credentials for delegations from China after the communist government had taken over the mainland? Dr. T.F. Tsiang—representing the Nationalist Government—answered that for two years the

signed by the government of the ROC and consequently excluded the delegate. Then the President of the Security Council, Jiang himself, put the resolution to a vote. It was rejected by eight votes against and by two votes in favor (Soviet Union and Yugoslavia) with one vote in abstention (India)<sup>3</sup>.

The American delegate Ernest Gross argued that the question of Chinese representation was a matter of procedure: If seven of the eleven member States voted for it, the PRC could gain admission to the Security Council. Secretary of State, Dean Acheson, stated that the US could not vote in favor of the admission of the PRC as it did not recognize this State. However, if other States voted in favor of this resolution and it won seven votes, the US would be outvoted. In

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Council had recognized his credential; if that were the issue, that could be no question. He submitted, however, that the question was not one of credentials – which are a procedure matter – but one of great political importance. He would veto the Soviet resolution, if necessary. The US representative stated that since his government recognized the Republic of China, it considered the credentials of the present representative valid. Security Council, Official Records, V, 459 Meeting (01/10/1950): 1–4; 460 Meeting (01/12/1950):6. Within the Security Council, representation was treated as a matter of credentials and under Rule 17 a representative to whom objection has been made continues to sit until the Council, by a simple majority vote, decides to expel him. Hence the Nationalist representative continued to sit until nine Members were prepared to oppose him. During the period 1950–1971 the United Nations and the specialized agencies had taken the view that the Taiwan government had remained the lawful one and that credentials signed on its behalf were valid credentials for the delegations from China. Consequently, until 1971 credentials signed by the communist government was generally recognized as the legitimate representation of China in international organizations, and Taiwan government was excluded from further participation in the work of these organizations, see Schermers/Blokker 1995:261.

<sup>3</sup> UN Doc. S/1462, 02/24/1950:2; Security Council, Official Records, 5<sup>th</sup> Year, 459<sup>th</sup> Meeting (01/10/1950):1–4. The Indian abstainer, Sir Benegal N. Rau, explained apologetically that he had abstained because he was such a newcomer to the United Nations that his experience of rules of procedure was only two hours old (Tetlow 1970:129–31).

spite of several consultations with the then ROC ambassador Gu Weijun (Wellington Koo), Secretary of the State John Foster Dulles did not retreat from this view<sup>4</sup>. On 13 January the Security Council rejected the resolution of the Soviet Union by six against and three votes in favor. But in letters dated 19 and 20 January addressed to the Secretary-General of the United Nations Trygve Halvdan Lie and all members of the Security Council, Zhou Enlai announced the appointment of Zhang Wentian as the Chairman of the delegation of the People's Republic of China to the General Assembly of the UN<sup>5</sup>. This is how the controversy over "China's Right to Representation"<sup>6</sup> in the UN began.

In March 1950, the Secretary-General Trygve Halvdan Lie ordered the Law Department of the Office of the Secretary-General to circulate a memorandum entitled "Legal Aspects of the Problem of Representation in the United Nations"<sup>7</sup> discussing the difference between recognition and representation of existing States. Lie pointed out that according to Article 4 of the Charter, the admission to membership in the United Nations was open to any States accepting the obligations contained in the present Charter and, in the judgment of the UN, are able and willing to carry out these obligations. The question of representation of a member State in the specialized organs should be decided in the organizations

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<sup>4</sup>Zhimai Chen, 《蔣廷黻的志事與生平》(Jiang Tingfu's Records and Life)(Taipei: Zhuanji wenxue chubanshe, 1967), pp. 129-130.

<sup>5</sup> UN Doc. S/1462, 24/2/1950:2-3

<sup>6</sup> Liang Yunli 1951; Briggs 1952; Brown/Greene 1955: 3-30, 31-52; Brook 1956; China Institute of International Affairs 1956: Ch. 12, 252-62; Fitzmaurice 1952; Bloomfield 1966; Bailey 1970, Bailey 1988:150-57; Wang Kuo-Chang 1984; Zhu Jianmin 1964; Liu Zhigong 1985:120-153; Xu Boxiong 1973:149.

<sup>7</sup> UN Doc. A/1466:2-3. Also a confidential memorandum on the legal aspects of the problem of the representation in the United Nations circulated to various members of the Security Council. Security Council, Official Records, 5<sup>th</sup> Year, Supplement for 1 January -31 May 1950, UN Doc. S/1466:18.



collectively. The General Assembly, other bodies and special agencies should recognize the credentials of representation of other States. Therefore, the solution of the dispute between the revolutionary and the existing government about which Chinese government should be recognized to represent China in the UN would, to his mind, have to be resolved as follows: If a government actually were able to maintain control over the people, it proved to have the ability to carry out the obligations of the UN.

Thus, Lie supported the PRC's claim to represent China<sup>8</sup>. On 9 March 1950, Ambassador Gu Weijun officially protested against Lie's opinion on the grounds that it offended the UN Charter and that it amounted to complying to Soviet demands. Jiang Tingfu launched a formal protest against Lie on 13 March.

According to Security Council decisions on procedural and substantive and procedural matters were passed if seven States including the permanent members voted in favor. The President would decide about the character of an issue as of procedural or either substantive character.

Article 30 of the Rules of Procedure of the Security Council states that if a resolution is challenged, the President shall submit his ruling to the Security Council for immediate decision and it shall stand unless overruled by seven member States.

According to Lie's analysis, the Soviet Union, Yugoslavia, Great Britain, Norway and India recognized the PRC. If they could find two additional States (e.g. France and Egypt) voting in favor of the PRC, the resolution would be passed with more than seven votes. Lie supposed that the USA, Cuba and Ecuador would not support the admission of the PRC, therefore the resolution had to be tabled when the State holding the presidency of the Security Council supported the recognition of the PRC. In that case the President

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<sup>8</sup> James Barros, *Trygve Lie and the Cold War: The UN Secretary-General Pursue Peace, 1946–1953*(DeKalb, Illinois: Northern Illinois University Press, 1989), pp. :225–233 .

would rule on the question of the Chinese credentials as a procedural question. Then the permanent members would not use their veto power.

Owing to the fact that the Soviet Union had the right to exercise a veto<sup>9</sup>, the USA anticipated that the PRC would replace the ROC

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<sup>9</sup> Article 27 of the U. N. Charter concerning voting in the Security Council requires unanimity of all its permanent members on all substantive matters as opposed to procedure matters. Decisions of the Security Council on all but procedural matters shall be made by an affirmative vote of nine Members, including the concurring votes of the permanent Members, provided that a party to a dispute shall abstain from voting on decisions relating to the pacific settlement of disputes. On the demarcation between procedural and substantive (non-procedural) matters, by deploying two successive vetoes (double veto), a permanent member of the Security Council may exercise the first veto on a vote on the procedural issue and again casting the second veto on the substantive decision. The question is whether or not an issue was procedural in accordance with the non-procedural vote. Through the double veto procedure the five permanent members can decide whether a matter is substantive or otherwise. Possession of veto power was regarded by the framers as a vital mechanism for maintaining international peace, since without the cooperation or acquiescence of the more powerful States which abstention from the use of the veto power implied international disputes would be that much more difficult to resolve. The veto or unanimity rule that obtains in the U.N. Security Council can be regarded as a self-created oligarchy at San Francisco Charter Conference in 1945. The veto power ensured that their oligarchy should be self-perpetuating. Inis L. Claude, Jr., *Swords into Plowshares: The Problems and Progress of International Organization*, 3<sup>rd</sup> ed. Rev. (New York: Random House, 1964), pp. 133-147; C. Wilfred Jenks, "Unanimity, The Veto, Weighted Voting, Special and Simple Majorities and Consensus as Modes of Decision in International Organization," *Cambridge Essays in International Law: Essays in honour of Lord McNair* (London: Stevens & Sons, 1965), pp.48-63; "The Double Veto and the Four-Power Statement on Voting in the Security Council", Leo Gross, *Essays on International Law and Organization* (Dobbs Ferry, New York: Transnational Publishers, 1984), Vol.1, pp.473-95; D.W. Bowett, *The Law of International Institutions*, 4<sup>th</sup> ed. (London: Steven & Sons, 1982), pp.29-30; Evan Luard, *The United Nations: How it Works and What it Does* (New York: St. Martin's Press, 1985), pp.11-12. In the practice

and get a seat as a permanent member of the Security Council. Therefore the US objected to the opinion of the General-Secretary. Instead, it argued that it did not suffice for a State to exercise effective power and to be able and willing to carry out the obligations of the UN Charter. It also had to respect human rights and fundamental freedoms. Later on, the USA argued that in addition, Communist China had no right to be admitted after having been accused of aggression by the General Assembly. It could not be considered as a “peace-loving” State<sup>10</sup>.

There were differences of view about the standards for admission between the USA and the General-Secretary. Whereas the former set a “subjective” criterion, Lie was promoting an “objective” criterion. As a matter of fact, both, the US administration and Lie, confused the question of Chinese representation in the UN with the admission of China to the UN. The question of representation is a dispute of two governments about the seat of a member State in the UN that could be solved by half or two thirds of the majority in the General Assembly. For admission of new members to take place, the Security Council had

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of the Security Council, and endorsed by the International Court of Justice in *Namibia (South-West Africa) (Advisory Opinion)* Case ICJ Reports [1971] 22. It was established UN practice to consider an absence in the same light as an abstention; an abstention is no bar to adoption of resolutions: “in order to prevent the adoption of a resolution requiring unanimity of the permanent members permanent member has only to cast a negative vote.”

<sup>10</sup> On 28 June 1957 the US Secretary of State, John Foster Dulles, in a public address, said “Diplomatic recognition is always a privilege, never a right. It “gives the recognized regime valuable rights and privilege, and, in the world of today, recognition by the US gives the recipient much added prestige and influence at home and abroad.” (Whiteman 1993:13) Mr. Victor Belaunde (Peru) addressed the General Assembly in these words: “We cannot forget that the Government of Communist China has been condemned by this Assembly for open aggression. [...] That Government was therefore justly condemned for aggression.” General Assembly, Official Records, 12<sup>th</sup> Sess., 685<sup>th</sup> Plenary Meeting, 09/24/1957:118–119.

to recommend a State for admission and gain two thirds of the votes in the General Assembly<sup>11</sup>.

## THE MEMBER STATES OF THE UN

During the initial process of founding the UN, the eligibility for membership was a rather controversial issue. The ultimate goal of the UN is membership for all countries of the world, but as according to Article 4 of the UN Charter, which governs the requirements for States to join the UN and the pertinent approval procedure, the admission of States still contains elements of selectivity. Looking for an explanation, we find that whereas universal membership<sup>12</sup> had been unanimously advocated at the

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<sup>11</sup> The distinction between admission and representation is important in other respects, too. Legally speaking if communist China had been admitted as a new member State, nationalist China (Taiwan) could have remained a member of the UN and a permanent member of the Security Council even after the admission of communist China. If, however, the question is treated as one of the representation, the arrival of communist representatives must inevitably be accompanied by the departure of nationalist representatives from all the organ of the UN, because a State cannot be represented simultaneously by two rival governments in the Organization. But the UN organization is indeed a political organ all its decisions decide on votes. Peter Malan Malanczuk, *Akehurst's Modern Introduction to International Law*, 7<sup>th</sup> ed. (London & New York: Routledge, 1997), pp. 371-372.

<sup>12</sup> The true meaning of universality consists not of a mechanical counting of heads. It must be a fellowship of kindred minds and spirits sharing the same fears, hopes, and aims. If this dream should come true, the United Nations would be able to include in its membership every nation on earth. Chen Tiqiang (陳體強), 〈聯合國的會員國應當具有普遍性〉 (Membership of the UN Should Be Universal), Chen Tiqiang (陳體強), 《國際法論文集》 (*Essays in International Law*) (Beijing: Falü chubanshe, 1985), pp.133 - 136.

Moscow Conference and the Dumbarton Oaks Conference<sup>13</sup>, things had changed by the time of the Yalta Conference<sup>14</sup>.

The decisions made at the Yalta Conference changed the initially-advocated model of universal membership into one of limited membership and forced neutral States to declare war on Germany and Japan as a prerequisite for joining the UN.

At the San Francisco Conference from 25 April to 25 June 1945, the representatives of the great majority of States approved an incorporation of the limited membership model into Article 4 of the Charter governing the requirements for the admission of States and the pertinent approval procedure<sup>15</sup>.

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<sup>13</sup> A meeting held in Georgetown, Washington, DC, between August and October 1944 to discuss the nature and functions of the UN organization. The main participants were the US, the Soviet Union, the U.K. and later China. The purpose was to hammer out agreement on the framework for post-war cooperation and to establish an effective security international community.

<sup>14</sup> An agreement reached in the Crimea in February 1945 between Roosevelt, Stalin and Churchill concerning the future conduct of the war and the shape of the post-war international order. The Conference made important decisions regarding the purposed U.N. organization, in particular that the great powers would be given the power of veto in the Security Council, and that the Soviet Union would receive three members, the Soviet Union, Belarus, and Ukraine. Hu assesses the damage afflicted upon Asia by the Yalta agreement in a speech delivered on 4 February 1952, at Seton-Hall. Hu, Shi, "China Seven Years after Yalta". Zhou Zhiping (周質平)(ed.) 《胡適未刊英文遺稿》(A Collection of Hu Shi Unpublished Papers) (Taipei: udngroup, 2001), pp. 374–381.

<sup>15</sup> H. G. Nicholas, *The United Nations as a Political Institution* (London: Oxford University Press, 1959), pp.164-179. China believed that a limitation of membership to peace-loving states" would strike a desirable balance between the idea of a universal organization and that of a closed organization. When the suggestion was made at San Francisco Conference that the acceptance of the obligations of the United Nations Charter and the ability and willingness to carry out these obligations should be added as conditions for admission, China found itself in apposition to accept it. *China and the United Nations*, Report of a Study Group set up by the China Institute of International

The member States of the UN were divided into the “original members” and the “newer members”, both being equal in terms of the Charter and in terms of their actual rights and duties, but being different in as far as a non-“founding member State” had to apply for membership and was subject to an approval procedure.

### *The Original Members*

Article 3 of the Charter defines “all States which, having participated in the United Nations Conference on International Organization at San Francisco, or having previously signed the Declaration by United Nations of 1 January 1942, sign the present Charter and ratify it in accordance with Article 110” as the “original Members of the United Nations”. By 8 February 1945, 36 States fell under the first category, 11 under the second.

After the Polish Government had been created and Ukraine, Belarus, and Argentina had been admitted, the UN had 51 original members, which may be categorized as follows:

- The Five Sponsoring Powers: the Republic of China, the United States of America, the United Kingdom, France, and the Union of Soviet Socialist Republics;
- Eleven European States (not already belonging to the first category): Belgium, Belarus, Czechoslovakia, Denmark, Greece, Luxembourg, the Netherlands, Norway, Poland, the Ukraine, and Yugoslavia;
- Five States of the Middle East / Arab world: Egypt, Iraq, Lebanon, Saudi-Arabia, Syria;

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Affairs (New York : Manhattan Publishing Co., 1959), p. 44; Liang, Yunli [Liang Yuen-Li] (梁鑿立), 〈中國對聯合國之貢獻〉 (Contributions of China in the United Nations), Wang Yuxiu (王聿修等著) (ed.) 《紀念崔書琴先生政治學術論文集》 (Collections in Memoriam of Cui Qin About the Art of Politics), (Taipei: Zhonghua congshu weiyuanhui yinhang, 1958), pp. 89–95.

- Five States of the British Commonwealth of Nations: Australia, Canada, India, New Zealand, South Africa;
- Two African States (not already belonging to another category): Ethiopia, Liberia;
- Three Asian States (not already belonging to another category): Iran, the Philippines, Turkey;
- Twenty Latin American States: Argentina, Bolivia, Brazil, Chile, Columbia, Costa Rica, Cuba, Dominica, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay, and Venezuela.

Among the original members of the UN, the overwhelming majority had actually or nominally joined the Anti-Axis Alliance of World War II. At the end of 1955, the UN totalled 76 States, the added members for the most part<sup>16</sup> being newly emerged Asian or African countries. This trend later brought about a majority of seats for the newly emerged Asian and African States, sufficient to influence the casting of votes on any international issue.

### ***The Newer Members***

The requirements for admission of a State to the UN and the admission procedure are regulated by Article 4 of the Charter. According to paragraph 1 of article 4, membership in the UN is open to all peace-loving States which accept the obligations contained in the Charter and, in the judgment of the Organization, are able and willing to carry out these obligations. This implies that, firstly, an individual, a tribe or an Non-Governmental Organization (NGO) is not eligible for UN membership. Secondly, a “non-independent country” cannot become a non-founding member of the UN. Whereas the group of original (i.e. founding) member States includes the then Soviet constituent republics of Belarus and Ukraine as well as the then not yet completely independent British

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<sup>16</sup> Cf. <http://www.un.org/Overview/growth.htm> (31 July 2005).

colony of India, later applicants had to be completely sovereign States. All protected or vassal States were excluded from admission.

Whether or not a candidate is able and willing to carry out the obligations contained in the Charter is decided by the General Assembly and the Security Council. Therefore, while the substantive requirements for admission to the UN relate to the applicant States themselves, decisions concerning the procedural requirements rest with the Security Council and the General Assembly.

### **The Procedure for Admission to the United Nations**

According to the Charter's Article 4, the admission of new member States is effected by a decision of the General Assembly upon the recommendation of the Security Council. Consequently, when the UN has to deal with the question whether or not a candidate meets the requirements specified in Article 4, paragraph 1, and especially whether or not this candidate is able and willing to carry out the obligations contained in the UN Charter, two considerations concerning the admission procedure have to be taken into account:

Firstly, the application may only be forwarded to the General Assembly for discussion and voting after a favourable recommendation by the Security Council has been obtained. This recommendation for membership belongs to the non-procedural items. In order for it to be issued, nine Security Council members have to vote in favour, without any of the Council's permanent members voting against it. And since, according to the UN Charter, any State applying for membership has to obtain such a recommendation, the admission of a State is in fact controlled by the great powers enjoying the right of veto. Their recommendation can be taken as a good word put in for the candidate (as a matter of fact, the Security Council by no means always issues a "favourable recommendation").



Secondly, after the recommendation has been obtained, the application for membership has to be accepted by two thirds of the members of the General Assembly. But the Security Council's recommendation is the prerequisite for the application to be passed on to the General Assembly for discussion. Unless the Security Council issues a "favourable recommendation", the General Assembly has no right to vote on an application for membership.

In Resolution 36 adopted on 19 November 1946, at the first session of the General Assembly, the Security Council was requested "to appoint a Committee to confer with a Committee on procedure of the General Assembly, in view of preparing rules governing the admission of new Members [...]"<sup>17</sup> Soon after this resolution was accepted by the Security Council, the General Assembly appointed the following members to serve on its committee on procedure: India, Australia, Cuba, Norway and the Union of Soviet Socialist Republics, with India serving as chairman. The countries appointed to serve on the Security Council's committee on procedure were China, Brazil and Poland, with China in chairing. From 28 May to 21 June 1947, the two committees met four times, and finally their resolutions were adopted by the General Assembly as its rules of procedure 134 to 138, and by the Security Council as its rules of procedure 58 to 60, respectively.

In 1947, no State except Pakistan and Yemen was admitted, because after none of the applications of Hungary, Romania and Bulgaria had achieved the nine-vote majority, the USSR vetoed the admission of Jordan, Ireland, Portugal, Italy, Austria, Finland, New Zealand, South Korea and Nepal. Thus, the General Assembly was simply not even given the chance to consider the applications of these nine States.

In 1948, the UK and the USA jointly declared that in case a candidate State's application should obtain the approval of at least

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<sup>17</sup> GA Res. 11/19/1946. P.O. Humber, "Admission to the United Nations," *British Year Book of International Law*, 24 (1947), pp.90-115.

seven Security Council members, they would abstain from vetoing. In 1949, the 4<sup>th</sup> session of the General Assembly adopted a resolution to request the five great powers to refrain from the use of the veto in connection with the recommendation of States for membership in the UN.

But although the number of applicant States gradually increased over the following years, the stalemate situation could not be overcome before 1955. After the admission of Israel in 1949 and of Indonesia in 1950, the USSR exercised its veto power 15 times in succession, with the result that not only the vetoed candidates, but its own favourites as well were denied admission.

Membership to the UN often becomes a political issue, and the only way to resolve it is compromise. For a long period of UN history, the members with the most conflicting views concerning membership were the USA and the USSR, and many small and medium-sized States took a keen interest in questions of membership, believing that the only way for weak countries to wield influence in the international community was by relying on their number. Quite naturally, they were generally most opposed to the use of veto power by the permanent members of the Security Council in membership matters.

The way the UN has dealt with the question of membership is manifested in its serious trend towards Afro-Asianization, which has as its most obvious consequence brought about a shift of the power centre. The developed countries have lost some of their power to control the international situation, and the multitude of small member States is being sought after by bigger nations to win support for their respective cases. After some of the newly emerged States had become independent, favourable circumstances facilitated their admission to the UN. Because of their sheer number of votes, their power to influence decisions soon became grossly disproportional to their otherwise humble stature in the international community.

## **THE ADVICE OF THE INTERNATIONAL COURT OF JUSTICE ON THE CONDITIONS OF ADMISSION OF A STATE TO THE UNITED NATIONS AND THE COMPETENCE OF THE GENERAL ASSEMBLY**

Interpreting the UN Charter, the International Court of Justice once issued its advisory opinions on the “Conditions of Admission of a State to Membership in the United Nations” (1948)<sup>18</sup> and on the “Competence of the General Assembly for the Administration of a State to the United Nations” (1950)<sup>19</sup>. Let us look at them briefly.

On 17 November 1947 the General Assembly adopted a resolution which requested the International Court of Justice to give an advisory opinion on the “Conditions of Admission of a State to Membership in the United Nations.”

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<sup>18</sup> International Court of Justice Report 1950, pp.4-57. United Nations General Assembly, Memorandum on the Historical Background of the Question of the Administration of New Members, UN Doc. No.A/AC.64/L.1 (22 April 1953). Tetsuo Sato, *Evolving Constitutions of International Organizations: A Critical Analysis of the Interpretative Framework of the Constituent Instruments of International Organizations* (The Hague/London/Boston: Kluwer Law International, 1996), pp.48-59.

<sup>19</sup> The International Court of Justice may give an advisory opinion on any legal question at the request of whatever body may be authorized by or in accordance with the Charter of the United Nations to make such a request. Article 65(1) of the Statute of International Court of Justice. The General Assembly and the Security Council are authorized to request advisory opinions. Article 96(1) of the Charter of the United Nations. See J.K. Keith, *The Extent of the Advisory Jurisdiction of the International Court of Justice* (Leyden: A.W. Sijthoff, 1971); M. Pomerance, *The Advisory Function of the International Court in the League and the United Nations Eras* (Baltimore & London: 1973); Shabtai Rosenne, *The World Court: What It is and How it Works*, 3<sup>rd</sup> ed. (Leiden: A.W. Sijthoff, 1973), pp.80-84; Ruth Donner, *International Adjudication: Using the International Court of Justice with special reference to Finland* (Helsinki: Academia Scientiarum Fennica/Suomalainen Tiedeakatemia, 1988), pp.112-39.

This request is to be seen against the background of the confrontation between the camps of the free and the communist world. The free world could not only count on three permanent members of the Security Council (the USA, the United Kingdom, and France) enjoying veto power, but also controlled the majority of seats in the General Assembly, which altogether made it easy for it to prevent the Eastern European States supported by the USSR from joining the UN. So the USSR adopted the “package deal” method, by which a “package” of communist as well as non-communist States should be granted admission to the UN simultaneously. Refusal of the free world to accept this deal would result in the USSR’s veto against the admission of the non-communist States.

The US and other western States, however, were of the opinion that a candidate’s application for admission should be examined according to the applicant’s specific situation. Since this conflict of views could not be resolved, the USSR for many years used its veto power to block the admission of Italy and other States, until finally in 1955 the free world countries accepted the deal. The advisory opinion requested from the International Court of Justice in 1947 concerned the following two legal questions:

(a) “Is a Member of the United Nations which is called upon, in virtue?

of Article 4 of the Charter, to pronounce itself by its vote, either in the Security Council or in the General Assembly, on the admission of a State to membership in the United Nations, judicially entitled to make its consent to the admission dependent on conditions not expressly provided by paragraph 1 of the said Article?”

(b) “In particular, can such a Member, while it recognizes the conditions set forth in that provision to be fulfilled by the State concerned, subject its affirmative vote to the additional condition

that other States be admitted to membership in the United Nations together with that State<sup>20</sup>?”

Having dealt with this dual question according to the pertinent stipulations and rules, the International Court of Justice on 28 May 1948 rejected the motion by nine votes to six. In its advisory opinion, the Court recognized the exhaustive nature of the five conditions of admission enumerated in Article 4, paragraph 1, of the Charter, namely, that a candidate must be (a) a State; (b) peace-loving; (c) must accept the obligations of the Charter; (d) must be able to carry out these obligations; and (e) must be willing to do so. The interpretation that these conditions represent “an indispensable minimum in the sense that political considerations could be superimposed on them” was dismissed on the grounds “that it is inconsistent with paragraph 2 of the Article, which provides for ‘the admission of any *such* State’, and ‘would lead to conferring on members an indefinite and practically unlimited power to impose new conditions’, which could not be reconciled with the character of a rule which ‘establishes a close connection between membership and the observance of the principles and obligations of the Charter, and thus clearly constitutes a legal regulation of the question of admission’. However, ‘the Article does not forbid the taking into account of any factor which it is possible reasonably and in good faith to connect with the conditions laid down. [...] No relevant political factor, that is to say, none connected with the conditions of admission, is excluded.’ The Court also ruled out that an argument against the exhaustiveness of the conditions in Article 4 could be drawn from paragraph 2 of the article, ‘which is only concerned with the procedure for admission’, or ‘from the political character of the organs of the United Nations dealing with admission. For this character cannot release them from observance of the treaty provisions by which they are governed, when these provisions constitute limitations on their power.’”

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<sup>20</sup> GA Res. 11/17/1947

As regards the second part of the dual question (concerning the subjection of a member's affirmative vote to the condition that other States be admitted to membership), the Court arrived at the conclusion that "such a demand constitutes a new condition; for it is entirely unconnected with those prescribed in Article 4. It is also in an entirely different category, since it makes admission dependent not on the conditions required of applicants, but on extraneous considerations concerning other States. It would, moreover, prevent each application for admission from being examined and voted on separately and on its own merits. This would be contrary to the letter and spirit of the Charter<sup>21</sup>."

## **THE GENERAL ASSEMBLY OF THE UNITED NATIONS**

In August 1950, the holding president of the Security Council, the representative of the Soviet Union, proposed to put the recognition of the Central Government of the People's Republic of China as Chinese representation on the agenda of the Security Council. This was rejected by five votes in favor, five against and one abstention. In four later meetings (10 November 1951; 31 January 1955; 8 September 1955 and 24 May 1967) the Security Council discussed the representation of China in the UN, as well. The Security Council followed the suggestion of the United States not to consider any draft resolutions to exclude the representatives of the Republic of China or any draft resolutions replacing the representatives of the Republic of China by representatives of the Central People's Government of the PRC<sup>22</sup>. After careful

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<sup>21</sup> <http://www.icj-cij.org/icjwww/idecisions/isummaries/iasunsummary480528.htm> (10 October 2005).

<sup>22</sup> Security Council, Official Records, 6<sup>th</sup> Year, 566<sup>th</sup> Meeting, 11/10/1951:1; 10<sup>th</sup> Year, 689<sup>th</sup> Meeting 01/31 1955:1-27; 700<sup>th</sup> Meeting, 09/08/ 1955:1-5; 22<sup>nd</sup> Year, 1341<sup>st</sup> Meeting 05/24/1967:8-59.

consideration committee members reported that the General Assembly to be the proper institution to decide issues concerning the representation of China and to come up with suggestions for the Security Council. The Security Council later accepted these recommendations and did not lead or push decisions concerning the representation of China. Until 9 February 1971, when Somalia raised the issue of excluding the representatives of the Republic of China and to replace them with representatives of the Central Government of the People's Republic of China, the discussions had not come to any conclusions<sup>23</sup>. During this time, the government of the ROC represented China in the main bodies of the UN and its special agencies, but the government of the PRC denied them the right of representation in the UN. In order to safeguard its position as the only legitimate representation of China, the government of the ROC used the "Stimson Doctrine of Non-Recognition"<sup>24</sup> in order to

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<sup>23</sup> Security Council, Official Records, 26<sup>th</sup> Year, 1565<sup>th</sup> Meeting 02/09/1971, paras.51–101; UN Doc. S/10378 10/26/1971 and S/10382, 11/02/1971 (both mimeo.).

<sup>24</sup> "The Stimson Doctrine is a policy of the US government, enunciated in a note of 7 January, 1932 to Japan and China, of non-recognition of international territorial changes effected by force. Named after Henry L. Stimson (1867–1950), United States Secretary of State in the Hoover Administration (1929–1933), the policy followed Japan's unilateral seizure of Manchuria in north-eastern China following action by Japanese soldiers at Mukden (now Shenyang), on September 18, 1931. (On Active Service in Peace and War) (1948). For details, see Arnold D. McNair, "The Stimson Doctrine of Non-Recognition: A Note on Its Legal Aspects," *British Year Book of International Law*, 14 (1933), pp.65-74; H. Lauterpacht, *Recognition in International Law* (Cambridge: Cambridge Univ. Press, 1947), pp. 415-417; Ti-Chiang Chen, *The International Law of Recognition* (London: Stevens & Sons, 1951), pp. 75-76, 417 ; Charles Callan Tansill, *Back Door to War: The Roosevelt Foreign Policy 1933-1941* (Chicago: Henry Regnery Co., 1952), pp.104-22; Robert Langer, *Seizure of Territory: The Stimson Doctrine and Related Principles in Legal Theory and Diplomatic Practice*, Reprint ed. (New York: Green Wood Press, 1969), pp.50-66 ; John Dugard, *Recognition and the United Nations* (Cambridge: Grotius Publications, 1987), pp.27-36, 133-135; Han Suk-jung,

hinder other countries from recognizing the government of the People's Republic as legal representation of China. The ROC argued that Soviet aggressions and violations of the Sino-Soviet Treaty of Friendship and Alliance<sup>25</sup> after the capitulation of Japan had threatened the political integrity of China, because their actions had strengthened the Chinese communists. This argument was asserted on November, 29 1949 by the General Assembly adopting a resolution based on the ROC's point of view.

From 1949 to 1951, the issue of the right for China's representation in the UN had become a regular issue in the UN. The 22 years of dispute after 1951 can be divided into three periods:

### ***1951 – 1960: The Era of the Moratorium Device***

After the retreat of the Republic of China to Taiwan, the political future of China remained unclear until 1953. The USA suggested a moratorium. The UN was to postpone all considerations and draft resolutions concerning the right to represent China. From 1954 to 1960 the General Assembly decided not to consider any draft resolution concerning the representation of China. This strategy of a "Moratorium Device" was relatively unquestioned, because the US had a strong influence over the majority of votes in the General Assembly<sup>26</sup>.

In 1960, when the number of member States had increased to 98, the resolution submitted by the USA to prolong the moratorium was adopted with 42 votes in favor, 34 against and 22 abstention

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"Puppet Sovereignty :The State Effect of Manchukuo, from 1932 to 1936," Ph.D. dissertation (University of Chicago, 1995); Drasenjit Duara, *Sovereignty and Authenticity: Manchukuo and the East Asian Modern* (Lanham, Maryland: Rowman & Littlefield Publishers, 2003), pp. 59-61.

<sup>25</sup> GMD: 295–300; Chiang Kai-Shek, *Soviet Russia in China*, Rev. ed. (Taipei: China Publishing Co., 1969), pp. 254 – 255.

<sup>26</sup> Baehr/Gordenker 1999:47).



votes. Thus the resolution was approved with a majority of only 8 votes.

### ***1961 –1970: The Era of an “Important Question”***

By 1960, many countries were gaining independence and joined the UN. The US domination had diminished. Washington reversed its former strategy and in order to prevent the replacement of the ROC by the government of the PRC, it submitted a draft resolution every year considering the question of the representation of China to be handled as “Important Question” according to Article 18 of the UN Charter. Decisions were to be approved by a two-third majority of members present and voting. When the General Assembly decided on 7 October 1961 during its sixteenth session that any resolution to change the representation of China was an important question, this US-resolution passed with 61 votes in favour, 34 against and 7 votes in abstention. The resolution of the Soviet Union to expell the Government of the ROC and replace it with the Government of the PRC was rejected by 48 votes to 37, with 17 abstentions.

In 1962 this resolution was submitted by Albania (the so called “Albanian Resolution”) and rejected. Due to the financial crisis of the UN there was no discussion or voting regarding the question of the representation of China in 1964 after the general debate.

In 1965, after France had granted diplomatic recognition to the PRC, the situation in the General Assembly changed. During its 20<sup>th</sup> session of 1965 for the “Albanian Resolution” gained 47 votes in favor and 47 against with 20 abstentions, two members not voting (Benin and Thailand) and one member (The Congo) not attending.

Although the US resolution to affirm the existing resolution about the Chinese representation as an important question was adopted in 1965 with 56 votes against 49 votes, 11 abstentions and one non-voting, the draft resolution of Albania and Algeria “to

restore all its rights to the PRC and recognize the PRC as the only lawful representative of China” received already 47 votes, with 20 abstentions. The number of votes for and against the “Albanian Resolution” was equal in number. In 1966 the Important Question Resolution was passed with 66 members in favor, 48 against with 7 abstentions. The “Albanian Resolution” was rejected with only 48 votes in favor, 57 against and 17 in abstention and one non-voting (Thailand).

During the 24<sup>th</sup> session of the General Assembly in 1969, the votings for the two resolutions were as follows: The Important Question Resolution was passed by 71 votes in favor, 48 rejected and three votes in abstention, 3 member States did not vote.

During the same session the “Albanian Resolution” to restore the legitimate rights of the PRC in the UN was rejected by 56, 48 States voted in favor, 11 in abstention and one non-voting (India).

The “Albanian Resolution” for the expulsion of the ROC and replacement by the PRC was already supported by a majority of the member States’ votes, however their draft resolution did not gain a two-thirds majority of the members votes. Therefore, there was an urgent need to revise the policy of an “Important Question.”

In the beginning of 1967, the US changed her strategy towards the PRC: In a need to counter-balance the Soviet Union by establishing a Sino-US alliance, the USA considered that she could not exclude the PRC completely from the international community. This change of strategy had a negative impact on the perspectives for the government of the ROC to represent China in the UN.

After the Ussuri River incident in 1969 the PRC and the Soviet Union had become enemies. The White House saw this as a golden opportunity to contact the government of the PRC. Based on global considerations, President Nixon ordered Secretary of State William Pierce Rogers in March 1970 to transfer the China issue from the State Department to the White House. The State Department could no longer intervene in the issue of Chinese representation in the UN.

In June of the same year, President Richard Nixon visited Beijing and discussed the issue of diplomatic relations. The US proposed to agree to admit the PRC to the UN. The right of representation of the ROC would be merely nominal, as Washington not only planned to admit the PRC to the UN and to the Security Council, but also to keep a seat for the ROC in the General Assembly.

After Canada and the PRC had established diplomatic relations on 13 October 1970, Italy announced on 6 November the establishment of diplomatic relations with the PRC. Both countries canceled their diplomatic relations with the ROC. During the 25<sup>th</sup> session of the General Assembly the communist and communist-friendly members proposed to decide on the resolution about the “Restoration of the lawful rights of the People’s Republic of China in the United Nations”. The voting results of the resolutions were as follows: The resolution to reaffirm the “Important Question” was approved by 66 votes in favor, 52 votes against, 7 votes in abstention, one member not attending (the Maldives) and one not voting (India).

The resolution to replace the government of ROC by the government of the PRC was approved by 51 votes in favor, 47 against and 25 votes in abstention, again the Maldives did not attend and India did not cast its vote. The situation for the ROC was deteriorating. However, the question of representation was put to vote before the “Albanian Resolution”. Thus a two-third majority for the approval of the “Albanian Resolution” was needed. This resolution was rejected.

Previously the ambassador of the US, Walter McConaughy had held a reception celebrating the approval of the resolution every year in his residence located on Zhongshan Street in Taipei, but not in 1970<sup>27</sup>.

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<sup>27</sup> Qian Fu (錢復), 《錢復回憶錄,卷一》 (Memoirs of Qian Fu, Vol. 1). (Taipei : Tianxia wenhua, 2005) p. 145.

### ***1971: The Question of Dual Representation of China***

Since the dual representation of China in the UN had a bearing on US and Japanese interests, frequent consultations were held between Taipei, Washington, and Tokyo. In early February 1971 Xue Yuqi (薛毓麟), the former permanent representative of the ROC to the UN, went to Tokyo for talks with top officials of the Japanese Ministry of Foreign Affairs on how to handle the representation issue. Japan still intended to stick to the “Important Question” approach, but during the talks Xue found out that the Japanese officials differed in their assessment of its chance of success – if they expressed a clear point of view at all.

By the end of February, the Department for International Organizations of the Ministry of Foreign Affairs in Taipei had made a catalogue of the most feasible strategies concerning the representation issue:

- The “Two-China Plan”, proposed by both the USA and Japan. This plan maintained that China consisted of two sovereign political entities, each with its own territory, and that the UN, should therefore consider them as two separate States and consequently admit both to membership.
- A plan drafted by Belgium in 1970 (but not presented before the UN), according to which the PRC as well as the ROC, each representing the territory under its jurisdiction, should be granted membership to the UN, with the PRC replacing the ROC in the Security Council.
- A draft resolution deliberated by the Japanese Ministry of Foreign Affairs, in which was stated that in compliance with the UN’s principle of universal membership all parts of a divided country should be admitted to the UN as long as they possessed the characteristics of a State.

- A resolution by the Tunisian government to request the Secretary-General to place the issue of the admission of the PRC on the provisional agenda of the next regular session of the General Assembly, to take on exploring possible paths for solving the issue and to submit the findings to the General Assembly.
- A resolution by the government of the Netherlands to leave discussion on the Chinese representation question to the Security Council, which would hopefully first recommend to accept the ROC as a new UN member representing Taiwan and then recommend to admit the PRC representing China<sup>28</sup>.

In mid-March the US expressed concerns regarding the possibility to sustain the status quo of the Chinese representation by merely relying on the “Important Question Resolution”. Washington felt the need to come up with a “Dual Representation Resolution”. Taipei, however, had objections to this idea and suggested that the White House should send a top official to discuss the matter<sup>29</sup>.

When the US ambassador to the ROC, Walter McConaughy, met with Vice-Premier Chiang Ching-kuo (Jiang Jingguo), he used this occasion to mention the issue of representation in the UN and the necessity to develop new strategies to prevent the adoption of Albania’s draft resolution. He clarified that the “Dual Representation” formula should be given due consideration in this context. Chiang expressed neither disagreement with McConaughy’s description of the situation nor the conviction that the old strategy would again lead to victory.

On 9 April, the ROC foreign minister-designate Zhou Shukai (周書楷), accompanied by the ROC ambassador to the United Nations Liu Kai (劉鏞), called on Marshall Green, the US Assistant

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<sup>28</sup> Qian, Fu (錢復), 《錢復回憶錄,卷一》(Memoirs of Qian Fu, Vol. 1). (Taipei: Tianxia wenhua, 2005), pp. 145–146.

<sup>29</sup> Qian Fu (錢復), 《錢復回憶錄,卷一》(Memoirs of Qian Fu, Vol. 1). (Taipei : Tianxia wenhua, 2005) p. 146.

Secretary of State for East Asian and Pacific Affairs. Green told Zhou that Washington had not yet made its final decision on its policy concerning the question of the Chinese representation, but also pointed out that the situation regarding the “Important Question” approach had continued to deteriorate and that, as all alternative measures to safeguard the ROC’s seat in the UN were hard to go along with, one would have to find the least intolerable among the feasible ones.

Liu emphasized that no matter what kind of deal would finally be agreed on, the “Important Question” resolution should in any case be put forward again, to act in accordance with the UN Charter was a matter of law, logic and the UN’s usual practice<sup>30</sup>. He held that even in case a third resolution<sup>31</sup> aiming to seat both Taipei and Beijing in the UN (i.e. the “Dual Representation Resolution”) was going to be the deal, one could still try to get the “Important Question Resolution” through.

Green drew attention to the fact that the main objective was to safeguard the membership of the ROC and that one should therefore not give priority to the “Important Question Resolution”, but judge the hour and then decide on an appropriate strategy. If for instance the great majority of UN members regarded the “Important Question” approach as creating a stalemate to the solution of the problem, this might perhaps increase the chance of success for the Albanian and not for the third draft resolution.

Zhou requested having the latter put in writing and to present it to the ROC side. He promised to try to persuade Taipei to accept it if the adoption of the “Albanian Resolution” could be effectively

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<sup>30</sup> Cf. G. G. Fitzmaurice, “The United Nations and the Rule of Law,” *Transactions of the Grotius Society*, 38 (1952), pp. 135-150; N.V. Boeg, “Review of the Charter of the United Nations,” *ibid.* 40 (1954), pp. 5-23.

<sup>31</sup> I.e. a resolution in addition to the “Important Question Resolution” and the resolution drafted by Albania.

prevented and the ROC, be granted the protection the Charter afforded to a member.

President Nixon sent Robert D. Murphy<sup>32</sup>, a retired senior ambassador, on a special trip to Taiwan for talks on the question of representation in the UN. During his audience with President Chiang Kai-shek (Jiang Jie-shi) on April 23, he presented the U.S. plan to replace the “Important Question” approach by a “Dual Representation” scheme, which did not contain any explicit reference as to which side was to be the sole representative of China. Thus, it was hoped, discussions about the Chinese seat on the Security Council could be avoided so that the ROC would be able to retain it. Confronted with this plan, Chiang pointed out that the admission of the PRC to the UN should be regarded as an important question and that the “Important Question Resolution” should be the main instrument for preventing the admission of the PRC. As to the “Dual Presentation” scheme, he insisted that it had to contain provisions to guarantee the ROC’s seat both in the General Assembly and in the Security Council, and suggested that the U.S.A. should rework it accordingly. Finally, Chiang candidly remarked that the various overtures the White House had made to placate Beijing had reached a point beyond which any further steps would bring disaster<sup>33</sup>.

For more than a month after Ambassador Murphy’s return to the USA, the American side remained inactive. On 25 May Foreign

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<sup>32</sup> Robert Murphy (1894-?), born in Milwaukee, entered the civil service in 1915 as clerk in the Post Office Department and transferred to the State Department when the U.S. entered World War I. He had pursued a conventional diplomatic career for twenty-three years, serving in Switzerland, Germany, and France, when President Roosevelt summoned him to the White House in 1940. Since his retirement in 1959 he and his wife have lived in New York City. Publication: *Diplomat Among Warriors: The Unique World of a Foreign Service Expert* (New York: Doubleday & Co., 1964).

<sup>33</sup> Qian, Fu (錢復): 《錢復回憶錄,卷一》(Memoirs of Qian Fu, Vol. 1). (Taipei : Tianxia wenhua, 2005), pp. 147–148.

Minister Zhou Shukai informed US Ambassador McConaughy about his government's firm and uncompromising position that it would by no means agree to abandon its seat on the UN Security Council, he clarified that this was not mere rhetoric, but his government's true position. On 26 May Zhou requested Ambassador Shen Jianhong (沈劍虹) to urge the USA to continue the talks.

On the same day, US Secretary of State Rogers met with President Nixon to present his recommendation on how to deal with the question of Chinese representation. He suggested to table a "Dual Representation Resolution" at the 26<sup>th</sup> session of the General Assembly, which was to call for seating the PRC and, in the same text, stipulate that any draft resolution to expel the ROC should require a two-third vote, a formula which would give the ROC the protection of the "Important Question" procedure and at the same time allow for Beijing's admission. In Roger's opinion, such a "Dual Representation Resolution" was the only remedy against the expulsion of the ROC at the 26<sup>th</sup> session through adoption of the "Albanian Resolution" and defeat of the "Important Question" strategy. As to the Chinese seat on the Security Council, the State Department suggested not mentioning it in the resolution, but expected that an amendment would be put forward from the floor stating that the seat should go to Beijing.

On 28 May, Rogers met with the ROC ambassador to the US, Shen Jianhong, to discuss the representation question. He confronted Shen with his assessment saying that no matter how much effort was put into it, the "Important Question" formula would be defeated at the 26<sup>th</sup> session and that for this matter his country was seriously considering a revision of its policy on the Chinese representation question. Upon Shen's question whether this was mere tactics or the US's genuine wish for the PRC to join the UN, Rogers emphasized that in the face of the current situation sticking to the present formula would lead to defeat. President Chiang had indicated, Shen went on to say, that if a failure of the "Important Question Resolution" was anticipated, the ROC would not stand in the way of



a new resolution which preserved the essence of the “Important Question Resolution”. For example, under a new formula the PRC might be admitted by majority vote, but a two-third vote would be required to expel the ROC<sup>34</sup>.

On 1 July Ambassador Shen called on the Assistant for National Security Affairs to the US President, Henry A. Kissinger, for a discussion on how to preserve the ROC’s UN seat at the 26<sup>th</sup> session of the General Assembly. Kissinger was about to leave for a trip to Asia, including a secret visit to Beijing. He did not disclose anything, but instead gave Ambassador Shen all kinds of guarantees. He reassured him that Washington’s position on the representation issue was quite close to that of Taipei, and that the USA still intended to proceed in the way discussed during Ambassador Murphy’s visit to Taiwan. But in reality, the USA had already made plans to transfer the ROC’s UN seat to the PRC.

The same day, the ROC’s deputy permanent representative to the UN, Ambassador Zhang Chunming (張純明), returned to Taiwan to deliver his report. Upon his arrival, he was invited by Foreign Minister Zhou Shukai to take part in a consultation on the representation question, which was also attended by other top officials of the ministry. During the meeting, Zhang expressed his view that unless the seat on the Security Council was transferred to the PRC the “Dual Representation Resolution” would probably not be adopted, and Zhou was very concerned about Washington’s persistent inactivity on the matter.

On 3 July, McConaughy advised Foreign Minister Zhou to make timely preparations for a possible loss of the ROC’s Security Council seat. In mid-July, President Nixon informed the public that on 11 July Kissinger had returned from a visit to Beijing, and announced that he himself would visit the Chinese mainland before May 1972. Acting on behalf of Foreign Minister Zhou, who was away on official business, his deputy Yang Xikun (楊西崑)

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<sup>34</sup> Wang 2000:340

summoned Ambassador McConaughy to strongly protest against Nixon's planned trip, which the ROC regarded as a most unfriendly act. When Ambassador Shen called on Secretary of State Rogers on July 20, the latter did not offer any explanation concerning Kissinger's trip to the mainland. Instead he remarked that the ROC was bound to fail at the 26<sup>th</sup> session of the General Assembly if it attempted to retain its Security Council seat, but that otherwise the US might be able to lend Taipei a helping hand. Only now did the ROC government realize that the USA above all wanted to press the ROC to relinquish its Security Council seat to the PRC.

Shocked by Nixon's planned trip to the Chinese mainland and the US refusal to support Taipei in its defence of the Security Council seat, the ROC gradually changed its attitude and adopted a more moderate position. Ambassador Shen received a telegram approved by President Chiang, which contained the following key points: (a) The government has already revised its former proposition to safeguard its right to representation in the UN by use of the "Important Question Resolution"; (b) it agrees to the modified "Important Question Resolution" suggested by the US and Japan, which declares the expulsion of an original member of the UN to be an important question as defined in the Charter; (c) it requests the US to prevent the adoption of the "Albanian resolution" demanding the expulsion of the ROC and the admission of the PRC.

The telegram also contained the following three confidential points (i.e. the USA should treat them as confidential and not divulge them to other governments)<sup>35</sup>: (a) if there is a need to accompany the modified "Important Question Resolution" by a

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<sup>35</sup> "Shen stated that foregoing three points constituted GRC [= Government of the ROC] formal reply to USG [= US Government]. In addition, he was instructed to make following points which he asked be treated as confidential and not divulged to other governments." Cf. "Telegram from the Department of State to the Embassy in the Republic of China" (document number 382). <http://www.state.gov/r/pa/ho/frus/nixon/v/42666.htm> (August 19, 2005)

“Dual Representation Resolution” to ensure its adoption, the government insists that nothing be said in such a resolution concerning the Security Council seat; (b) if other States put forward amendments to such a resolution aiming at transferring the ROC’s Security Council seat to the PRC, the government hopes that the US and Japan will not<sup>36</sup> co-sponsor or vote for such a resolution; (c) officially, the government will have to speak against any formula providing for dual representation. When Ambassador Shen Jianhong and Ambassador Liu Kai met with US Secretary of State Rogers on July 26, the latter responded quite positively to the content of the telegram. When he asked what the ROC’s position would be in case the so-called “Dual Representation Complex” (D.R.C.)<sup>37</sup> was adopted by the General Assembly, Ambassador Liu replied: “We shall fight on as long as the circumstances permit<sup>38</sup>.”

On 2 August Rogers issued a statement in which he announced that in the General Assembly the US would support the admission of the PRC, but at the same time oppose any action aimed at depriving the ROC of its right of representation in the UN. The statement included the following formal declaration of the US position on the ROC’s right of representation: (a) the USA will put forward a draft resolution called “Important Question Variation” (I.Q.V.), which will declare the expulsion of the ROC to be an important question, but will not touch upon the admission of the PRC; (b) the US will accompany the I.Q.V. by the “Dual Representation Resolution” to make the admission of the PRC possible; (c) the General Assembly

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<sup>36</sup> “Shen replied that his instructions were [...] to ask US [...] not to co-sponsor or vote for resolution affecting GRC’s [= Government of the ROC’s] SC [= Security Council] seat.” “Telegram From the Department of State to the Embassy in the Republic of China” (document number 382). <http://www.state.gov/r/pa/ho/frus/nixon/v/42666.htm> (August 19, 2005)

<sup>37</sup> A variant of the “Dual Representation Resolution” explicitly demanding the transfer of the Security Council seat to the PRC.

<sup>38</sup> Qian, Fu (錢復), 《錢復回憶錄, 卷一》 (Memoirs of Qian Fu, Vol. 1). (Taipei : Tianxia wenhua, 2005), pp. 149–151.

shall decide by vote whether the PRC or the ROC shall occupy the Chinese seat on the Security Council<sup>39</sup>. (Qian Fu 2005:151).

The “Dual Representation Resolution” was intended not to mention the Security Council seat. In case other States should put forward amendments, the US planned to oppose them on the grounds that the General Assembly had no right to deal with the Security Council seat question. If the “Dual Representation Resolution” passed and the ROC, as a result, did not lose membership, Washington reckoned that Beijing would probably refuse to join the UN, which would give the US the opportunity to argue that the question of the Security Council seat did not arise.

In a subsequent meeting with US government representatives Shen pointed out that, in the opinion of the ROC, the Security Council seat was inseparably linked to the General Assembly seat and that Taipei hoped the US would preserve the Security Council seat for the ROC. At the end of the meeting, the US side summarized the discussion into four key points for consideration by the ROC government: (a) Without a change of policy, the “Important Question Resolution” will fail at the 26<sup>th</sup> session of the General Assembly; (b) the “Dual Representation Resolution” may perhaps be able to preserve the ROC’s membership in the General Assembly; (c) as long as the ROC remains in the UN, the PRC will most likely choose to stay outside; (d) the US will do its best to safeguard the ROC’s seat on the Security Council, but cannot guarantee success (Wang 2000:344–345).

On 20 August, the Foreign Ministry of the PRC issued an official statement in which it reaffirmed its position not to accept a “Two Chinas” or a “One China, One Taiwan” arrangement, under either of which it would definitely refuse to be a member of the UN. The PRC reckoned that all it needed to bring about the failure of the US strategy was to wait another one or two years. In a conversation

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<sup>39</sup> Qian Fu (錢復), 《錢復回憶錄,卷一》(Memoirs of Qian Fu, Vol. 1). (Taipei : Tianxia wenhua, 2005), p. 151.

with the head of the ROC Foreign Ministry's Department for North American Affairs, Qian Fu (錢復, Frederick F. Chien), the US Embassy's deputy head of mission, William Gleysteen, conceded that Beijing's statement was obviously aimed at strengthening support for the "Albanian Resolution" and would probably cause some States to insist even more firmly on raising the Security Council seat question.

On 26 August, Liu Kai met with the US representative to the UN, George HW Bush. He expressed his relief at the Secretary of State's plan to leave out the Security Council seat question for the time being, and disclosed that Taipei had instructed its embassies to request their respective host countries to support the "Dual Representation Resolution" – but not to require them to co-sponsor the said resolution, for Taipei deemed it more appropriate that the resolution be put forward by the US only.

On 28 August, Qian told the US Embassy in Taiwan that his government had already given instructions to its embassies in Australia and New Zealand to request these countries to support the simple "Dual Representation Resolution" (which in contrast to the "Dual Representation Complex" mentioned earlier would not touch on the Chinese Security Council seat). The instructions pointed out that by then several states which advocated the continuation of the ROC's membership were already vehemently opposing the "Dual Representation Complex", i.e. that variant of the "Dual Representation Resolution" which would explicitly demand the transfer of the Security Council seat to the PRC. The inclusion of a provision on the Security Council seat would perhaps repel advocates of the simple "Dual Representation Resolution" and hinder the ROC from reaching its ultimate goal. The government of the ROC hoped that Australia and New Zealand could "at the present stage" support the simple "Dual Representation Resolution" – a position which was not meant to rule out later amendments to the resolution.

On August 31, Ambassador McConaughy warned Taipei in a meeting with Foreign Minister Zhou Shukai that although the USA did not wish to cover the issue of the Security Council seat in the initial resolution, it might perhaps be forced to do so, because it had to take into account the views of its major allies. So instead of a promise to avoid tabling the “Dual Representation Complex”, all Zhou Shukai got was a guarantee from McConaughy to take the position of the ROC into consideration. Later in the conversation, McConaughy expressed his conviction that in case the US should conceive it unavoidable to include the Security Council seat question from the beginning and therefore decide to table the “Dual Representation Complex”, the ROC would nevertheless be willing to tolerate such a move if properly notified in advance, the only reason being that Taipei would surely realize the bleak prospects of a draft which left the Security Council seat question to be introduced by way of amendment.

On 8 September<sup>40</sup>, Ambassador McConaughy received a telegram from the US Department of State, in which Rogers asked for immediate delivery of a message to Foreign Minister Zhou contained in the telegram. The message chiefly consisted of an explanation why the US had arrived at the conclusion that it would have to propose the transfer of the Chinese Security Council seat to the PRC, the information that the USA had already decided to muster co-sponsors for the “Dual Representation Complex”, and a request for understanding and continued cooperation.

On 10 September, Foreign Minister Zhou handed over his government’s official written response, which called the American decision “particularly regrettable” and reiterated Taipei’s position that admission of the PRC to the UN would violate the UN Charter. It also stated that once such a resolution was tabled, the government

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<sup>40</sup> <http://www.state.gov/r/pa/ho/frus/nixon/v/42667.htm>, “Telegram from the Department of State to the Embassy in the Republic of China” (document number 404) (August 23, 2005).

of the ROC would have to issue a public statement objecting to it. In addition to the written response, however, Zhou indicated that the Government of the ROC did want the US “Dual Representation Resolution” to succeed.

On 11 September, Vice-Premier Chiang Ching-kuo summoned Qian Fu for a discussion on the representation resolution. During this discussion, Qian received the following three instructions: (a) Investigate the sincerity of the US offer to help the ROC. (b) Keep a close watch on the moves of the USSR. (c) The position of the ROC is: If the US resolution succeeds and the PRC refuses to join the UN because of the ROC’s membership, the ROC shall stand its ground, but if there are signs that the “Albanian Resolution” to admit the PRC and expel the ROC will be adopted, then the ROC shall withdraw from the UN on its own initiative before the “Albanian Resolution” is put to a vote<sup>41</sup>.

The same day, US Secretary of State Rogers presented a memorandum to President Nixon, in which he reported on the ROC’s response to his new suggestions regarding the Chinese seat on the Security Council. He pointed out that although he expected pro forma opposition from the government of the PRC, he believed that Taipei would not oppose the US resolution on Chinese representation behind the scenes. He even felt that in case of a close vote Taipei might well support the US initiatives in its private representations to other governments.

Two resolutions concerning the question of Chinese representation were submitted for discussion on the occasion the 26<sup>th</sup> session of the General Assembly which began on September 21, 1971:

- The resolution tabled by 18 (later increased to 23) States including Albania and Algeria to restore all its rights to the

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<sup>41</sup> Qian, Fu (錢復): 《錢復回憶錄,卷一》(Memoirs of Qian Fu, Vol. 1). (Taipei : Tianxia wenhua, 2005) pp. 152–153.

PRC and to expel forthwith the ROC from the UN. It was placed on the agenda by a vote of 17 to 2 with 4 abstentions.

- The “Dual Representation” resolution tabled by 17 (later increased to 19) States including the USA and Japan demanding the admission of the PRC to the UN and its appointment as a permanent member of the Security Council without expelling the ROC from the United Nations, which would require the UN to recognize both the PRC and the ROC.

The US representative to the UN, George HW Bush, put forward an extempore resolution to combine the two above-mentioned resolutions into one big resolution with the sub-resolutions (a) restoration of the PRC’s legitimate rights in the UN, and (b) maintenance of the ROC’s right to representation. His resolution was however rejected by a vote of 9 to 12 with 3 abstentions<sup>42</sup>.

The “Important Question Variation” draft resolution, which declared the expulsion of the ROC to be an important question requiring a two-third majority (instead of the admission of the PRC as in the original “Important Question Resolution”) was tabled by 19 (later increased to 22) States including the USA and Japan, made it into the agenda by a vote of 11 to 9 with 4 abstentions.

In a speech held on 4 October during the general debate of the 26<sup>th</sup> session, Secretary of State Rogers declared that his government had decided to support the admission of the PRC to the UN as a permanent member of the Security Council, because it deemed the long-time exclusion and isolation of a great power and a large portion of the world’s population undesirable. Rogers added that he earnestly hoped that China would assume all responsibilities, obligations and rights of membership.

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<sup>42</sup> Qian Fu (錢復), 《錢復回憶錄,卷一》(Memoirs of Qian Fu, Vol. 1). (Taipei : Tianxia wenhua, 2005) p. 154.



Although Mexico at that time still maintained diplomatic relations with the ROC, the Mexican president Luis Echevarria in his speech on 5 October expressed his hope that the PRC representing a quarter of the world's population would be admitted to the UN and appointed a permanent member of the Security Council in the 26<sup>th</sup> session. He reminded that his country had advocated the principle of universal membership ever since 1945, and presented his government's view that both the sovereignty and the territory of China were legally undividable wholes.

At five o'clock in the afternoon of the same day, Foreign Minister Zhou, accompanied by Qian Fu, went to the US delegation's office to meet with Rogers. He complained that Kissinger had scheduled his next visit to the PRC to take place in mid-October, which was exactly when the UN delegates would begin their discussions, criticized Kissinger's decision as inevitably damaging the joint efforts of the ROC and the US, and wondered why the US had to make this announcement now. Rogers answered insincerely that he also believed the discussions to be an important matter, and he assured Zhou that Kissinger's upcoming China visit would in no way affect the decision process concerning Chinese representation.

Later, facts proved the contrary. In Qian Fu's opinion, Rogers' words were either a sign of his exclusion from the inner policy-making circle or a deliberate, albeit by no means clever deceit<sup>43</sup>.

On October 14, Foreign Minister Zhou, the ROC representative to the UN, Liu Kai, and Qian Fu met with Rogers once again and suggested to him that President Nixon himself should publicly declare his government's active support for the preservation of Taipei's UN seat. Rogers agreed. When asked whether Washington had a fall-back position in case its draft resolutions failed to obtain

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<sup>43</sup> Qian Fu (錢復), 《錢復回憶錄,卷一》(Memoirs of Qian Fu, Vol. 1). (Taipei : Tianxia wenhua, 2005) pp. 155–156.

the necessary number of votes, Rogers replied that such a position was currently under consideration at the highest level<sup>44</sup>.

On 16 October, Zhou, accompanied by Qian Fu and two secretaries, went to the Department of State for another meeting with Rogers. At this meeting, which was held in a rather unfriendly atmosphere, Zhou brusquely told the Secretary of State that in the eyes of some the US was in fact not fulfilling its responsibility when it declared, as it had repeatedly done before, Japan's position to be the key to resolving the issue<sup>45</sup>.

On the same day, Kissinger deceived Ambassador Shen by telling him that the Taiwan issue was not on the agenda of the talks between Washington and Beijing and that the Taiwan-US relations were non-negotiable. During his conversation with Ambassador Shen, Kissinger pretended to be optimistic about the ROC's chances of retaining its UN seat, but actually he had long before informed Zhou Enlai of Nixon's intention to force the ROC in to a withdrawal from the UN. Kissinger feared that in case Taiwan was not expelled from the UN the PRC might perhaps detect the USA's double tactics. Therefore he urged Ambassador Shen to suggest to his superiors that the ROC should keep silent during the debate on the Chinese representation question at the UN General Assembly<sup>46</sup>.

On October 18, the US Embassy in Taipei reported to the State Department that the US shift towards support of the "Dual Representation Complex" resolution had resulted in a low-key

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<sup>44</sup> According to the pertinent US document, the "Secretary said he did not think there was one [i.e. a fall-back position]", but at the end of the conversation it "was agreed that we would give future consideration to possible fall-back positions if our present program fails". Cf. <http://www.state.gov/r/pa/ho/frus/nixon/v/42667.htm> (August 26, 2005), "Telegram From Secretary of State Rogers to the Department of State" (document number 419).

<sup>45</sup> Qian Fu (錢復): 《錢復回憶錄,卷一》(Memoirs of Qian Fu, Vol. 1). (Taipei : Tianxia wenhua, 2005) p. 153.

<sup>46</sup> Tyler 2000:132-133)

reaction of the ROC's government and media, with only some fairly mild criticism of the US. The report also mentioned a statement issued by the ROC's Ministry of Foreign Affairs which declared that the government firmly opposed the PRC's admission to the UN and any arrangement to transfer the ROC's Security Council seat to the PRC.

By October 21, the US State Department had devised a contingency plan, in which two scenarios were discussed:

- Adoption of the “Important Question Resolution”, rejection of the “Albanian Resolution”, but majority for “Dual Representation Resolution” was uncertain. Under this assumption, two actions were considered in the contingency plan: (1) a deferment of vote could be sought to allow time for further canvassing; (2) because the “Albanian Resolution” demanding the expulsion of the ROC would have been rejected in this scenario: the “Dual Representation Resolution” could be shortened rendering it into a resolution for the sole purpose of admitting the PRC.
- Rejection of the “Important Question Resolution”. Under this assumption, the contingency plan considered: (1) seeking to adopt the amendments put forward by the Saudi Arabian representative to the UN, Jamil M. Baroody<sup>47</sup>; (2) seeking to delete the clause demanding the expulsion of the ROC from the “Albanian Resolution”; (3) following the ROC's proposal to rely on the Charter's article 6 (recommendation by the

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<sup>47</sup> Baroody proposed a series of amendments to the “Albanian Resolution”. The most important of these would have the General Assembly decide on a “one-China, one-Taiwan” policy (admission of the PRC, transfer of the Security Council seat to the PRC, preservation of the ROC's UN seat) and would justify the latter on the basis of self-determination (by plebiscite). Cf. the author's note on Baroody in the Chinese original and <http://www.state.gov/r/pa/ho/frus/nixon/v/42667.htm>, “Telegram from the Mission to the United Nations to the Department of State” (document number 421) (September 10, 2005).

Security Council required for the expulsion of a member persistently violating the principles of the Charter) and article 18, (two-third majority of the members present and voting required for an important question such as the expulsion of a member). The US side held the opinion that in Scenario B the ROC could live with the “Albanian Resolution” as amended by the Baroody proposals, which would allow for the preservation of the Taipei’s UN seat.

After the ambassador of the ROC to Canada Xue Yuqi had arrived at the estimation that the “Important Question Resolution” would be defeated by four votes, he tried to convince the US side that the time for a contingency plan had already come. But the members of the US delegation to the UN pretended that they were still striving for the success of the “Important Question” and “Dual Representation” resolutions, and that they had not yet decided on a contingency plan.

On 21 October, the Japanese government announced that it was going to co-sponsor both the “Important Question Variation” and the “Dual Representation Complex” resolutions put forward by the US.

On 22 October, when the agenda for the plenary session of 25 October was set by the General Committee of the General Assembly, it was decided that the voting on the “Albanian Resolution” should take place prior to the voting on the “Dual Representation Complex” resolution.

The same day, Secretary of State Rogers told Ambassador Shen during a meeting at the White House that in the afternoon President Nixon would order his press secretary to express the president’s interest in safeguarding the ROC’s right of representation in the UN. When asked by Ambassador Shen about contingency plans in case the “Important Question Variation” resolution should fail, Rogers indicated that it was impossible to make a perfect contingency plan<sup>48</sup>.

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<sup>48</sup> Qian Fu (錢復): 《錢復回憶錄,卷一》(Memoirs of Qian Fu, Vol. 1). (Taipei : Tianxia wenhua, 2005) pp. 157–158.

On 23 October, the US State Department sent an urgent telegram to 23 US missions abroad in which it informed them that the ROC government's statement criticizing the US "Dual Representation Resolution" was issued for domestic purposes only and should not be misinterpreted as an indication of any action on behalf of the ROC against the transfer of the UN Security Council seat to the PRC.

The PRC's news agency Xinhua, which covered and commented on the events for three consecutive days from 24 to 26 October, declared that the PRC would by no means join the UN unless Chiang Kai-shek's delegates were expelled from the UN and the rights of the PRC were restored<sup>49</sup>.

On 25 October, the "Important Question Variation" resolution, which the US had put forward in order to safeguard the ROC's seat in the General Assembly, was rejected by 55-59-15 (i.e. a vote of 55 to 59 with 15 abstentions)<sup>50</sup>.

Then, in a last-ditch effort the US representative George Bush senior proposed to split up the "Albanian Resolution" and vote on the passage demanding Taipei's expulsion separately, but his motion was defeated by 51-61-16.

At 23:15, when it became evident that all attempts to prevent the adoption of the "Albanian Resolution" were bound to fail, Foreign Minister Zhou took the floor and declared Taipei's immediate withdrawal from the UN.

Finally, after the delegation of the ROC had left, the "Albanian Resolution" was adopted by 76-35-17<sup>51</sup>. Thus, the 22-year struggle for the Chinese seat of the PRC in the UN finally drew to a close.

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<sup>49</sup> Ibid. Qian, Fu (錢復): 《錢復回憶錄,卷一》 (Memoirs of Qian Fu, Vol. 1). (Taipei : Tianxia wenhua, 2005) p. 162.

<sup>50</sup> The delegates from two newly admitted members, Oman and the Maldives Island, were absent.

<sup>51</sup> Of 18 African States entertaining diplomatic and/or consular relations with the ROC, 15 supported Taipei in the votes on the "Important Question Variation" and the "Albanian Resolution" (General Assembly Resolution

In its effort to maintain Taipei's right to representation in the UN by means of the "Dual Representation Resolution", the US had initially planned not mentioning the Security Council seat, but later found it necessary to include a passage demanding the transfer of the Chinese Security Council seat to Beijing ("Dual Representation Complex"). Because of its motto that "gentlemen cannot coexist with thugs" the ROC publicly opposed this variant of the resolution, but in the face of international trends favourable to the PRC eventually had no choice but to consent in secret<sup>52</sup>.

Taipei looked upon the "Dual Representation Complex" resolution from a tactical point of view. It hoped to preserve its right to representation in the UN by the manoeuvre of "admitting China without expelling Taiwan", and even speculated that the PRC's "One China" policy would hinder it from joining the UN, thereby enabling the government of the ROC to continue its exclusive occupation of the Chinese UN seat. But because the 26<sup>th</sup> session of the General Assembly adopted the "Albanian Resolution" demanding "the expulsion of Taiwan and the admission of China", the "Dual Representation Complex" resolution was never put to a vote.

After Taipei's withdrawal from the UN the Nixon administration was somewhat plagued by a guilty conscience. On 29

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2758), respectively. What enabled the General Assembly to adopt the "Albanian Resolution" was the growth in the membership of the United Nations. The Secretary General reported to the Security Council that he was satisfied under rule 15 of the Rules of Procedure, and the Council welcomed the PRC on 21 November 1971. *Security Council, Official Records*, 26<sup>th</sup> year, 1565<sup>th</sup> Meeting. 09/02/1971, paras. 51–101; see also UN Doc. S/10378 10/26/1971, and S/10382 02/11/1971 (both mimeo.).

<sup>52</sup> Qian Fu (錢復): 《錢復回憶錄,卷一》 (Memoirs of Qian Fu, Vol. 1). (Taipei : Tianxia wenhua, 2005) pp. 146–148.

October<sup>53</sup>, Secretary of State Rogers sent a telegram to Ambassador McConaughy, in which he instructed him to deliver the message contained therein orally to President Chiang Kai-shek (or in the case of his unavailability to Vice Premier Chiang Ching-kuo), to leave an aide-mémoire consisting of the orally presented text, and to conclude the oral presentation with the statement, “I have been instructed to inform you that these views have the full support of the President of the United States” (lacking a reference as to who had authorized the message, and not to be included in the aide-mémoire)<sup>54</sup>. One should suppose that if Nixon had really been sincere in his support of the views expressed in the message, he would have sent a telegram in his own name and would have ordered it to be dispatched to President Chiang Kai-shek. This not being the case, the formula “have the full support of the President of the United States” cannot but be regarded as mere diplomatic courtesy (Although a copy of the draft telegram had been sent to the President’s Deputy Assistant for National Security Affairs Haig, perhaps even Kissinger had not seen it, let alone that Nixon would have been asked to overlook it).

In his telegram, Rogers criticized the UN for depriving the ROC of its right to representation in the General Assembly, called this action a serious mistake and expressed the US government’s deep regret about it. He claimed that the defeat of the “Important Question Resolution” had come as a surprise to the US government, guaranteed that the result of the UN General Assembly’s vote would in no way affect the close Taiwan-US relations covering a wide variety of fields, expected these relations to continue to prosper, and

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<sup>53</sup> Cf. <http://www.state.gov/r/pa/ho/frus/nixon/v/42667.htm>, “Telegram from the Department of State to the Embassy in the Republic of China” (document number 434) (September 18, 2005).

<sup>54</sup> <http://www.state.gov/r/pa/ho/frus/nixon/v/42667.htm>, “Telegram from the Department of State to the Embassy in the Republic of China” (document number 434) (September 18, 2005).

also guaranteed that the defence commitment of the USA to the ROC would remain unchanged. He further stated that the representatives of the US government, who had worked closely with their colleagues of the ROC Government during the previous few months on this difficult question, had been uniformly impressed with both the adherence to principle and tactical flexibility reflected in the ROC government's decisions. Finally, McConaughy was instructed to take the opportunity of this representation to mention Rogers' personal appreciation for the great effort of Foreign Minister Zhou Shukai in their common cause at the UN. The US intent to shift the responsibility for the decisions in the struggle for Chinese representation onto President Chiang Kai-shek is clearly revealed in the telegram<sup>55</sup>.

On 26 October, Rogers told the press that the USA accepted the result of the UN General Assembly's vote and that the admission of the PRC to the UN was in keeping with US policy. He expressed his regret about the deprivation of the ROC's right of representation in the UN, but declared that the US neither intended to speak up against this development nor planned to stop payments to the UN in retaliation.

When conferring with Rogers on the questions of how to safeguard the ROC's membership in UN-related specialized agencies and how to maintain its bilateral relations with the US, he urged Rogers to make a public statement affirming the US unswerving support for the ROC promised by McConaughy on the occasion of his audience with Chiang Kai-shek on 29 October<sup>56</sup>.

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<sup>55</sup> Wang Jinghong (王景弘) (2000). 《採訪歷史：從華府檔案看台灣》 (Interviewing History: The View on Taiwan from the Files in the White House) (Taipei: Yuanliu, 2000) p. 390-391.

<sup>56</sup> Cf. <http://www.state.gov/r/pa/ho/frus/nixon/v/42667.htm>, "Telegram from the Embassy in the Republic of China to the Department of State" (document number 437) (September 20, 2005).



Zhou felt that such a statement was necessary in the current situation, but Rogers did not respond enthusiastically<sup>57</sup>.

From 4.15 to 6 p.m. on 19 October 1971, Zhou, Shen und Qian met Kissinger and John Holdridge, Director of the Office of Research and Analysis for East Asia and Pacific at Bureau of Intelligence and Research (INR) in the National Security Council in the basement of the White House. Analyzing the reasons for failure, Zhou asked what would happen? Kissinger assured: "The US will not abandon you, they will have to keep their treaty obligations and they will definitely not abandon their treaty obligations and hold normal and friendly relations with your country." Zhou pointed out that the US had to declare this guarantee in public in order to reassure the Taiwanese public. At this moment Kissinger looked around and said something else. Zhou said that President Nixon could make a strong declaration of continuous support of the ROC. Kissinger replied that the journalists would clarify all unnecessary misunderstandings within the next week to come<sup>58</sup>.

Bilateral relationships should not be influenced by multi-lateral decisions. But in reality, if one country leaves the UN, this has an immediate effect on bi-lateral diplomatic relationship: The withdrawal from the UN set off a chain reaction in diplomatic relations: Within one year 15 States broke-off diplomatic relations with the ROC and established relations with the PRC: Belgium, Peru, Lebanon, Ruanda, Senegal, Cyprus, Malta, Mexico, Argentina, Greece, Togo, Japan, the Maledives, Madagascar and Luxembourg.

## CONCLUSION

The UN officially came into existence in 1945. China is one of the original members and one of the permanent members in the

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<sup>57</sup> Qian Fu (錢復): 《錢復回憶錄,卷一》(Memoirs of Qian Fu, Vol. 1) (Taibei : Tianxia wenhua, 2005) p. 162.

<sup>58</sup> Qian Fu (錢復): 《錢復回憶錄,卷一》(Memoirs of Qian Fu, Vol. 1) (Taibei : Tianxia wenhua, 2005) p. 162.

Security Council. After the PRC was founded in 1949, the Communists requested the Chinese seat in the UN. From the 5<sup>th</sup> session of the General Assembly onward, the USSR, India and Albania submitted to every year's session a resolution concerning the Chinese representation trying to exclude Taiwan and admit the PRC. These efforts were opposed by the allies of the USA and other States. From the 6<sup>th</sup> session of the General Assembly in 1951 until the 15<sup>th</sup> session in 1960 the ROC using the "Memorandum" resolution prevented that the question of Chinese representation was put onto the agenda of the General Assembly. Starting with the 16<sup>th</sup> session in 1961, the ROC secured the adoption of a procedural resolution defining every draft resolution trying to change the current Chinese representation as an "important question". According to Article 18 of the UN Charter, this required at least a two-third vote for approval as opposed to a non-"important question resolution" which needed only a simple majority of member States present and voting.

It is not easy to understand why the ROC voluntarily left the UN. In fact, it was forced, because there is only one seat for China. After 22 years the PRC started to represent China as a consequence of a resolution adopted in the General Assembly during its 26<sup>th</sup> session. Since 1971 the PRC has represented China, has taken the Chinese seat in the UN and has gradually established diplomatic relations with the US. It is also becoming more and more important in several international issues.

Besides the approaches of a Memorandum, Important Question Resolution or the expulsion of the ROC and replacement by the PRC another alternative was put forward by Italy and other States proposing from 1966 to 1970 to establish a committee aimed at researching the question of Chinese representation. Taken into consideration the principle of universal membership and the real political situation, the aim of this committee would have been to find some fair and feasible way to include the PRC and not to touch the membership of the ROC. If this were submitted to vote to the

General Assembly, this would imply two Chinas<sup>59</sup> within the UN. This alternative was heavily opposed by Taipei and three times rejected, so it was never submitted to vote.

Liu Kai, the ROC ambassador to the United Nations, acknowledged that the USA had not strongly supported the ROC and that the politics against the ROC had undergone obvious change. Additionally, more and more Asian and African countries as well as small States were admitted to the UN and their decision power started surpassing their actual weight in international politics. The result of this tendency in the UN is that old member States are losing their power in international politics.

There are several reasons why communist-friendly States united with communist States voting in favor of the resolution of the expulsion of the ROC and of admission of the PRC:

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<sup>59</sup> From the PRC's perspective, there were two Chinas, a "democratic China," meaning areas under Chinese Communist control, and a "feudalistic China," meaning areas under the Nationalist Government control. Thus, the refrain of "two Chinas" that one hears nowadays is the echo of an old tune first sung by the American Communists (see Bisson 1943; Chiang Kai-Shek 1969:119). The Government of the People's Republic of China is the legal successor to the pre-1949 Government of the Republic of China, and of permitting its accredited representatives of China to sit among the Permanent Members of the Security Council; and admitting the Government of the Republic of China *de novo*, and allowing its accredited representatives to be seated in the various organs. The Italian Resolution, 1966–1968 which had US support, was deemed as a way to gain formal consideration of 'two Chinas' solution that would allow membership for both Taipei and Peking with the People's Republic of China presumably in the Security Council seat. Not until the US in 1971, specifically put forward the resolution that there were 'two Chinas,' and that both in their respective territories should be members of the UN and both represented in that Organization. The solution of two Chinas is unacceptable to both the Nationalist Government and to the Soviet bloc. They asserted that there were not two Chinas, but only one, the rightful government of which was represented as the Central Government of China.

Reality must be acknowledged first. The point of view of General-Secretary Lie concerning the Chinese representation was as follows: If a government could, within its borders, assume power and there is little resistance to its authority, the UN could admit this new government as national representative into the UN. This was a juridical argumentation, so the PRC was admitted. Lie's view has prevailed even since and is still one of the convincing reasons for the admission of the PRC into the UN.

The actual political situation in the UN must also be considered. At that time, the government of the PRC represented 600 million people. China's population exceeded the total number of the populations of the US, Great Britain, and France. Moreover the immense territory of China was as big as Europe. Asia and the Far East were seen as one of the strategic important areas in world politics and the participation and interests of China could no longer be neglected.

Additionally, the principle of universal membership of the UN must not be neglected. There was no reason to exclude the PRC, because among the UN member States there were communist and anti-communist nations, countries with different political, social and belief systems.

Regarding the UN Charter, the right to represent China in the UN involves many issues such as the question of membership and of assumed right to represent a State, the one-vote principle of every State, and the admission into or expulsion from the UN. International law differentiates between membership of States in the UN and the right of representation: membership in the UN relates to States and the right to representation relates to governments. In Article 2 of the UN Charter there are formulations regarding the membership, but there is no regulation concerning the right of representation. The question of Chinese representation in the UN is not a problem of the validity of credentials, but of the juridical status of the government issuing these credentials. Membership in the UN and the right of representation touch upon the "recognition of State",

“continuity of States,”<sup>60</sup> “recognition of government”<sup>61</sup> and the “succession of government”. The problem of Chinese representation is related to the two principles of the “continuity of a State” and the question of the “recognition of a new government”.

The question of Chinese representation could be analyzed on the basis of the two principles of international law, “recognition of government” and “succession of government”. According to international law, if a revolutionary government recognized by other countries establishes bilateral relations and has signed treaties with the old government, the new government inherits these rights or obligations. Here the principle of “succession of State” is to be applied. But there are two preconditions: First, the new government fully replaced the former government and is executing control over the whole territory. Second, this principle is limited to bilateral treaties; multilateral treaties are not considered. The problem of the Chinese representation in the UN does not meet these preconditions, because it is a case of a multilateral treaty (UN Charter) and the former government is still in existence.

In international organizations, the problem of recognizing a *de facto* government, as the representative of the member State within the UN, arises when two governments claim to represent it. The UN Charter does not provide any special procedure for ascertaining a State’s succession in membership of international organization. In such cases, the problem may be treated as one of credentials. It is only with decisions regarding credentials in accordance with the rules of procedure of the various constituent bodies of the organization that the UN can resolve the problem whether one government may succeed to another. The UN recognizes as the

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<sup>60</sup> Swift, Richard N. (1969): *International Law: Current and Classic* (New York & London: John Wiley & Sons, 1969) p. 68.

<sup>61</sup> Talmon, Stefan (1992): “Recognition of Governments: An Analysis of the New British Policy and Practice”, *British Year Book of International Law*, 63 (1992), pp. 231–297.

government of the State in question the one that obtains the required majority of votes of the member States. Voting is a highly political solution, it is assumed that member States having voted in favour recognize the government for which they have voted, and, conversely, indicates that a vote against implies non-admission of the government accepted as the representative of that State. Indeed, the majority vote of the member States does not create an obligation to establish bilateral diplomatic relations. In law and practice, each body is entitled to come to a decision in accordance with its own rules of procedure, although, in general, it is the decision taken by the body in which all member States are represented and voted that is accepted. The only difficulty that may arise is that the General Assembly and the Security Council, within their respective power to decide on credentials, may behave differently when faced with the same case, that is, they may each maintain that a different government has the right to occupy the same seat. This drawback will find a solution only in an agreement between these two organs. It is connected with a more basic theme, that of possible divisions between the Assembly and the Council due to the possible differences in the political forces that prevail at the same time in each of the two organs. Political, rather than legal, complications posed the main obstacle to the solution of the question of Chinese representation in the UN. The question of Chinese representation in the UN, on its merits, is neither a problem of the validity of credentials, nor of the juridical status of the government issuing these credentials, but is decided on the basis of power politics.

From 1950 to 1971 the ROC was recognized as the sole government representing China in the UN, but after the approval of General Assembly Resolution 2758, the representatives of the government of the PRC replaced the representatives of the ROC and have since held the seat in the General Assembly, the Security Council, as well as in all organs and specialized agencies of the UN.

This paper has shown that all strategies in dealing the question of Chinese representation depended on the voting situation in the

Security Council and the General Assembly. If an “Important Question Variation” or “Dual Representation Resolution” had been approved and the resolution promulgated by Albania would have failed, the PRC would have been seated in the General Assembly and in the Security Council. But as long as Taiwan retained a seat in the UN, the PRC would not join the UN (Mao Zedong 06/13/1961; Mao Zedong [no date])<sup>62</sup>. Their allies, however, would continue to find ways to exclude the ROC from their right to represent China (Qian Fu 2005:166–167)<sup>63</sup>.

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<sup>62</sup> Mao, Zedong (毛澤東) (13/6/1961), <毛澤東同印尼總統蘇加諾談話> (Talk of Mao Zedong with Indonesia’s President Suharto). 中共中央文獻研究室 (Zhonggong zhongyang wenxian yanjiushi) (ed). 《毛澤東外交文選》 (Selections of Mao Zedong’s Texts about Foreign Policy) (Beijing: Zhongyang wenxian chubanshe, shijie zhishi chubanshe, no date), pp. 468–469.

<sup>63</sup> Qian, Fu (錢復), 《錢復回憶錄, 卷一》 (Memoirs of Qian Fu, Vol. 1) (Taipei: Tianxia wenhua, 2005), pp. 166–167.

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