

**NORMALIZATION OF RELATIONS WITH THE PEOPLE'S
REPUBLIC OF CHINA: PRACTICAL IMPLICATIONS**

HEARINGS
BEFORE THE
**SUBCOMMITTEE ON
ASIAN AND PACIFIC AFFAIRS**
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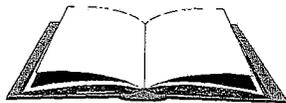


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AN OLD ALLY

The Republic of China has its faults like any other government; it certainly has some. It is the oldest ally the United States has in Asia.

The French ended relations with it in 1964 in order to normalize relations with the People's Republic of China, and they have not benefited particularly from doing so. I once heard an informed talk by a French official, off the record, of course, and the only possible conclusion one could draw from his talk was that he regretted that France had recognized the People's Republic of China at the expense of Taiwan.

Japan has not benefited particularly from following the same course in 1972, and clearly the current Government of Japan does not want the United States to follow its example. This reminds one of Sam Houston's remark at the temperance meeting.

The United States has no obligation to normalize. We owe Peking nothing. It allied, after all, with the Soviet Union in 1949, then our bitterest adversary, and supported both the North Koreans and the North Vietnamese in their undeclared wars against the United States. The Shanghai Communique is not binding on the United States. The Carter administration has decided that the Vladivostok Communique is not binding on the United States as worked out by the Ford administration, and I fail to see why the Shanghai Communique is any more sacred than the Vladivostok Communique.

We have no interest in normalizing with the People's Republic of China at the expense of Republic of China. What will we gain if we have that that we have not got now? I can see nothing really except perhaps somewhat closer cultural relations with the People's Republic of China—a very meager gain.

What will happen if we do not normalize? Nothing that I can see. I entirely agree with Ray Cline, and we are by no means alone in this view, that Peking's dispute with Moscow goes far deeper than the question of whether or not its relations with the United States are normalized. In short, there is very little real pressure on the United States to normalize except for Peking's exhortations and other pressures of the United States own creation.

I would end by summarizing this way. The United States at the present time has a good and unique China policy, in my opinion: continuing de jure relations with the Republic of China on Taiwan and de facto relations with the People's Republic of China on the mainland. I see no reason to change this until and unless the two Chinas alter their relationship with each other, which I think in time will occur.

Thank you very much.

Mr. BEILENSON. Thank you, Professor.

Professor Chiu.

STATEMENT OF DR. HUNGDAH CHIU, PROFESSOR OF LAW,
UNIVERSITY OF MARYLAND LAW SCHOOL

BIOGRAPHY

Mr. Hungdah Chiu received his Doctor of Juridical Science (S.J.D.) degree from Harvard Law School in 1965. He is now a Professor at the University of Maryland School of Law. Among his many publications are "China and the

Question of Taiwan: Documents and Analysis" (Praeger, 1973) and "People's China and International Law" (co-author) (2 vols., Princeton University Press, 1974). In 1976 he was awarded a certificate of merit by the American Society of International Law.

Mr. CHIU, Mr. Chairperson and members of the subcommittee, it is indeed a great honor to be invited here to testify before this distinguished committee. My paper will deal with the following questions concerning normalization; namely, (1) whether the 1972 Shanghai Communique, which is the basis of United States-People's Republic of China relations, does commit the United States to accept the People's Republic of China's three conditions for normalization of relations; (2) the legal status of Taiwan and an evaluation of the People's Republic of China's claim to Taiwan in the light of principles of modern international law and practice; (3) the impact of normalization on the Republic of China; and (4) possible options for the Republic of China on Taiwan in response to a U.S. move toward normalization of relations with the People's Republic of China.

I have prepared a 40-page paper setting forth in detail my analyses and conclusions, and now I present to you only a summary of my paper which will take about 10 to 12 minutes.

On the first question concerning the Shanghai Communique, since Dr. Cline and Professor Hinton have dealt with this question I have nothing more to say. I just want to say I entirely agree with their analysis. So I start with the second question.

On the question of the People's Republic of China's claim to Taiwan, some China experts have kept asking the United States to accept the People's Republic of China's claim to Taiwan without questioning whether the PRC has a valid claim toward the island in accordance with principles of modern international law.

TAIWAN SOVEREIGNTY

Although Taiwan was placed under the Republic of China's administration in 1945, technically its sovereignty problem was not solved until the 1951 San Francisco Peace Treaty and the 1952 Republic of China-Japanese Treaty in which Japan renounced "all rights, title, and claim to Taiwan." After the Japanese renunciation, legally the island became an "abandoned land" in international law so the Republic of China could convert its belligerent occupation into definite sovereignty over the island.

How about the People's Republic? The People's Republic has denounced both Japanese peace treaties as "illegal and void," so it cannot claim benefit from the Japanese renunciation of sovereignty over Taiwan as provided in those two treaties.

After the Japanese renunciation of its claim to Taiwan, the People's Republic of China could not acquire title over Taiwan through the international law principle of occupation because it did not have physical control over the island at that time. Nor could the People's Republic of China act through the Republic of China's occupation to claim title over Taiwan because the People's Republic considers the Republic of China as an "illegal group" or even "bandits."

In the Shanghai Communique, the United States only committed itself "not to challenge" the belief of "all Chinese" in one China. Any-

one with an elementary knowledge of international law should know that "does not challenge" is not equivalent to accepting or recognizing the People's Republic's claim to the island.

Now let me turn to the impact of normalization on the Republic of China. Direct foreign investment and technological inflow are indispensable to the economic viability of Taiwan. Past experience indicates that foreign direct investments in Taiwan have apparently been very sensitive to political events. The rate of American investments in Taiwan dropped sharply in 1971 and 1972, most probably as a result of the Republic of China's international setbacks during those years and doubt about its future status.

The same thing happened with Japanese investments. Soon after Japan recognized the People's Republic of China and severed its diplomatic relations with the Republic of China, Japanese investments dropped sharply and never recovered to catch up with the earlier rate. Therefore, if the United States normalizes its relations with the People's Republic and at the same time severs its diplomatic and treaty relations with the Republic of China, economic development in the Republic of China would suffer a serious setback, thus causing serious social problems and ensuing political instability in Taiwan.

AN "UNOFFICIAL OFFICE"

Some China experts suggest that the United States should accept the three People's Republic's conditions but still maintain an "unofficial office" in Taiwan, coupled with continued arms sales, OPIC investment guarantee and Export-Import Bank loans. In addition, they also say that a unilateral presidential declaration to continue to defend Taiwan against outside attack should be issued after normalization. After a careful study of the proposal I believe that it is simply not workable for several reasons.

First, when the U.S. terminates diplomatic relations with the Republic of China, most of the remaining 23 states that continue to recognize the Republic of China would probably follow suit, thus weakening fundamentally the Republic of China's international status.

Second, by maintaining only an "unofficial office" in Taiwan, the United States would at least tacitly be recognizing the People's Republic's territorial claim to Taiwan. Thus, in the future, if the People's Republic chose to interfere with the U.S. economic, trade, government loan, or arms sales relations with the Republic of China, the United States would be in a poor position to resist the People's Republic's interference. The *China Airline* case between Japan and Taiwan in 1973-74 is a vivid recent example.

Third, the Republic of China Government and people have no confidence in a Presidential declaration or a congressional resolution to replace the defense treaty. Most of them would view this as face saving measures or a trick to fool the American people, and that the Congress and the U.S. administration has no intention to honor such a commitment to defend Taiwan in case of a People's Republic's attack. Under such circumstances, domestic investors would at least take a wait and see attitude and there would certainly be some capital flight from Taiwan.

Foreign investors, similarly, would be reluctant, at least for a considerable period of time, to invest in Taiwan. Also, some foreign capital in Taiwan may withdraw right after normalization. Therefore, normalization on the PRC's terms would have a severe damaging effect on the economy of the Republic of China with ensuing social unrest and political instability. If that happens, radical groups in Taiwan may rise into power and demand that the Government take drastic "secondary options" such as manufacturing nuclear weapons, declaring independence, or allowing the Soviet Union to use port or other military facilities in Taiwan, thus greatly disturbing the stability of East Asia.

The reason why I use the word "secondary" here is that none of these options would be a happy one for the Republic of China to choose. However, the Republic of China, nevertheless, may be compelled to take one or more of these options if the people of the Republic of China feel that the United States is in fact going to abandon them.

Some China experts argue that the internal difficulties of the People's Republic in the foreseeable future would prevent it from taking military attack against Taiwan. This view is questionable. For instance, despite the great difficulties of famine and economic dislocation as a result of Mao's "Great Leap Forward" in 1959-62, the People's Republic of China under the leadership of the so-called "moderate group" of Liu Shao-ch'i, Chou En-lai, and Teng Hsiao-p'ing nevertheless launched a surprise military attack against India in 1962.

Some China experts have argued that the People's Republic of China will never bargain away its principles but is flexible in making concrete arrangements to implement the principles. For that reason, they argue that in dealing with the People's Republic the United States has to accept the three People's Republic's conditions for normalization and then work out so-called "concrete arrangements" to preserve Taiwan's "security." After making extensive research on the People's Republic's foreign policy, I can hardly agree with the above theory. To say that the People's Republic has always taken an uncompromising stand on its so-called principles in international relations is certainly not true.

I have given several examples in my paper to explain this point. In my view, the People's Republic's so-called principles become immutable only when the other side believes them to be so. If the other side is patient, then there is a good chance to persuade the People's Republic to change its alleged immutable position.

The assertion that the People's Republic is willing to be flexible in working out concrete arrangements in implementing principles is similarly not true. As a matter of fact, by accepting the People's Republic's so-called principles one has already been placed in an unfavorable position in dealing with the People's Republic. The People's Republic can reopen the issue at any time on the ground that a particular act taken under the concrete arrangements is in violation of the agreed principles, thus putting the other side in a defensive position.

Moreover, the People's Republic's explicit or implicit consent to a given concrete arrangement does not mean it has abandoned its goal. In the People's Republic's view such a consent merely postpones the

ultimate total solution and leaves the issue to be reopened at an appropriate time to be chosen by the People's Republic.

In conclusion, I believe that in dealing with the People's Republic of China on normalization the United States side should not always be on the defensive but should take an offensive approach by informing the People's Republic that under no circumstances would the U.S. compromise its fundamental principles of respect for human rights and self-determination. Moreover, the United States should realize that the present relations with the People's Republic are nothing but a marriage of convenience. The ultimate goal of the People's Republic of China's national objective remains the ultimate elimination of the so-called American imperialism.

Thank you, Mr. Chairperson.

[Mr. Chiu's prepared statement follows:]

PREPARED STATEMENT OF HUNGDAH CHIU, PROFESSOR OF LAW, UNIVERSITY OF MARYLAND LAW SCHOOL

1. INTRODUCTION

This paper discusses some practical and legal problems concerning Taiwan in connection with the U.S. government's move toward normalization of relations with the People's Republic of China (PRC). Despite the existence of a voluminous literature on the question of normalization, some important problems concerning Taiwan have not yet been adequately explored, namely: (1) Whether the 1972 Shanghai Communique, which is the basis of U.S.-PRC relations, does commit the U.S. to accept the PRC's three conditions for normalization of relations; (2) The legal status of Taiwan and an evaluation of the PRC's claim to Taiwan in the light of principles of modern international law and practice; (3) The impact of normalization on the Republic of China (ROC); and (4) Possible options for the ROC on Taiwan in response to a U.S. move toward normalization of relations with the PRC.

2. THE SHANGHAI COMMUNIQUE AND THE PRC'S THREE CONDITIONS FOR ESTABLISHING DIPLOMATIC RELATIONS

On February 27, 1972, when President Nixon concluded his visit to the PRC, a joint communique was issued at Shanghai in which both countries, while still disagreeing on many issues, stated that "progress toward the normalization of relations between China and the United States is in the interests of all countries." Since then, some China specialists in the U.S. have been arguing for speedy normalization of U.S. relations with the PRC under the latter's three conditions, namely, that the U.S. abrogate its security treaty with the ROC, remove all troops from Taiwan, and sever diplomatic relations with the ROC. These specialists have even argued that in the Shanghai Communique the U.S. has already pledged to take these steps. The validity of such an interpretation of the Communique appears to be questionable.

So far as the relations between the ROC and the U.S. are concerned, the Shanghai Communique is a document of both clarity and ambiguity: clarity, because the PRC and U.S. both maintain that all U.S. forces should ultimately be withdrawn from Taiwan; ambiguity, because the two sides have not agreed on how the Taiwan question should be settled. The PRC insists that the "liberation of Taiwan is China's internal affairs in which no other country has the right to interfere." On the other hand, the U.S. "affirms its interest in a peaceful settlement of the Taiwan question by the Chinese themselves." These statements are both silent as to the U.S.-ROC security treaty and as to the U.S.-ROC diplomatic relations.

President Nixon explained the U.S. position before he went to the PRC as follows:

"In my address announcing my trip to Peking, and since then, I have emphasized that our new dialogue with the PRC would not be at the expense of friends. * * * with the Republic of China, we shall maintain our friendship,

our diplomatic ties, and our defense commitment * * *." (Emphasis added.) ("U.S. Foreign Policy for the 1970's, The Emerging Structure of Peace, A Report to the Congress by Richard Nixon," (February 9, 1972), in Department of State Bulletin, Vol. LXVI, No. 1707 (March 13, 1972), p. 330).

This position was affirmed by Secretary of State Henry Kissinger at a press conference held on February 27, 1972 after the issuance of the Shanghai Communiqué. The pertinent colloquy is as follows:

"Q. Why did not the United States Government reaffirm its treaty commitment to Taiwan, as the President and you have done on numerous occasions?

"Dr. Kissinger: * * * Let me * * * state in response to this and any related question—and let me do it once and not repeat it: We stated our basic position with respect to this issue in the President's world report (of February 9, 1972) in which we say that this treaty will be maintained. Nothing has changed in that position * * * the position of the world report stands and has been unaltered." ("President Nixon's Visit to the PRC—News Conference of Dr. Kissinger and Mr. Green," (Shanghai, February 27, 1972), in Department of State Bulletin, Vol. LXVI, No. 1708 (March 20, 1972), p. 428).

Since the issuance of the Shanghai Communiqué, the U.S. has made 50 to 60 assurances to the ROC that the treaty commitment will be kept. This further confirms the conclusion that the U.S. made no commitment in the Shanghai Communiqué to terminate diplomatic relations and the security treaty with the ROC.

Furthermore, under the Shanghai Communiqué there is no legal or political basis under which the U.S. would be obliged to accept the three conditions of the PRC in normalizing relations. Some commentators, however, have argued that there was a tacit, implicit pledge in the Shanghai Communiqué or by President Nixon or Secretary of State Kissinger to accept the three conditions. Even so, then, this raises two very serious questions: (1) Has the U.S. government clearly explained this point to the American people and American allies? (2) Does the U.S. President or the Secretary of State have the constitutional authority to commit the U.S. to such a secret agreement? In other words, would such an agreement be binding? Needless to say, the answer to these questions must be negative.

In 1975, the U.S. State Department publicly declared that any explicit commitment made by the President toward a foreign country has no legally binding force. The Department indicated that it does not even keep records of exactly how many commitments are made by American Presidents or of their terms. (See "A President's word not legally binding," The Sun [Baltimore], July 9, 1975, p. A2). If an explicit commitment made by a President alone is not legally binding, how can a secret declaration of intention or agreement, if any, made by any President, have any political or legal meaning at all in the eyes of the American people?

In summary, it is clear that the U.S. is presently neither politically nor legally committed to terminating diplomatic and treaty relations with the ROC. One must, therefore, determine the merits of the various proposed solutions to the "Taiwan question," not by a pat reference to the Shanghai Communiqué, but in light of current international law and practice and in view of the political and strategic realities of U.S. relations with the PRC, the ROC, Japan and East Asia as a geopolitical unit.

3. THE LEGAL STATUS OF TAIWAN AND AN EVALUATION OF THE PRC'S CLAIM TO TAIWAN IN THE LIGHT OF THE PRINCIPLES OF MODERN INTERNATIONAL LAW AND PRACTICE

The PRC considers Taiwan to be a part of China and insists that the "liberation" of Taiwan is an "internal affair" of China which is not subject to any outside "interference." The United States, on the other hand, considers Taiwan's status as "undetermined" and has so far insisted on a "peaceful settlement of the Taiwan question." Therefore, it is of crucial importance to analyze the legal status of Taiwan. If Taiwan is, as the PRC claims, a part of China, then there is no legal ground for the U.S. to insist on the "peaceful settlement" of the Taiwan question in its dealing with the PRC.

Although Chinese settlement in Taiwan can be traced back to the 6th century, the Chinese did not set up an administration there until 1661 when Cheng Ch'en-Kung (Koxinga), a general of the defunct Ming Dynasty (1368-1644), captured the Island from the Dutch and set up a government there. General Cheng and later his son, Cheng Ching, used Taiwan as a base to restore the Ming Dynasty.

In 1883, Cheng's grandson surrendered Taiwan to the Ch'ing Empire (1644-1911), which then administered the island as a part of the mainland's Fukien Province. In 1886, Taiwan was made a separate province of China. In 1895, after China was defeated in the First Sino-Japanese War (1894-95), the island was ceded through the Treaty of Shimonoseki to Japan.

On December 9, 1941, the Republic of China government, then on the mainland, made a formal declaration of war against Japan and declared "that all treaties, conventions, agreements, and contracts regarding relations between China and Japan are and remain null and void." On November 26, 1943, at the Cairo Conference, President Chiang Kai-shek of the ROC, President Franklin D. Roosevelt of the U.S. and Prime Minister Winston Churchill of the United Kingdom (U.K.) issued a joint communique declaring, in part, that "all the territories Japan has stolen from the Chinese, such as Manchuria, Formosa [Taiwan], and the Pescadores [Penghu], shall be returned to the Republic of China." (The communique was released to the Press on December 1, 1943). On July 26, 1945, the heads of the governments of the U.S., the ROC, and U.K. declared in the Potsdam Proclamation that "the terms of the Cairo Declaration shall be carried out." On September 2, 1945, Japan signed the instrument of surrender and accepted the provisions of the Potsdam Proclamation. On October 25, 1945, the ROC took over Taiwan from the Japanese and soon made it a province of the ROC. On December 8, 1949, the ROC moved its capital "provisionally" to Taipei.

Despite the fact that the ROC began to exercise jurisdiction over Taiwan from October 25, 1945, technically the sovereign question was not solved until the early 1950's. According to international law and practice, the transfer of territories between states occurs through a treaty or by a unilateral renunciation of the territorial sovereignty by the transferor and the establishment of de facto control by the transferee over the territory concerned. So far as Taiwan was concerned, this was not done until the 1951 San Francisco Peace Treaty.

On September 8, 1951, at San Francisco, the Japanese Peace Treaty was signed; it provides in Article 2 that "Japan renounces all rights, titles and claim to Formosa and the Pescadores." Because the victorious powers at that time could not agree on which government of China—the PRC or the ROC—should be invited to participate in the peace conference, the Conference decided not to invite either of them. On the other hand, Japan signed a bilateral peace treaty with the ROC on April 28, 1952 which in Article 2 provides: "It is recognized that under Article 2 of the Treaty of Peace with Japan signed at the City of San Francisco in the United States of America on September 8, 1951, Japan has renounced all rights, title and claim to Taiwan [Formosa] and Penghu [the Pescadores] * * *."

Because neither the San Francisco Japanese Peace Treaty nor the ROC-Japanese Peace Treaty explicitly provides for the return of Taiwan to China, the question of the legal status of Taiwan has become a complex and controversial issue among some scholars and several countries. The U.S. position on the status of Taiwan is, as stated by the late Secretary of State Dulles in a press conference held on December 1, 1954, "that technical sovereignty over Formosa and the Pescadores has never been settled" and that "the future title is not determined by the Japanese peace treaty [signed at San Francisco], nor is it determined by the peace treaty which was concluded between the Republic of China and Japan" (See Whiteman, Digest of International Law, Vol. IV, p. 546).

Some Western scholars, however, have argued that the ROC could in fact acquire lawful territorial sovereignty over Taiwan. For instance, Professor D. P. O'Connell of Australia, a well-known authority on international law, wrote that after the Japanese renunciation of the island, it is "doubtful * * * whether there is any international law doctrine opposed to the conclusion that China appropriate the terra derelicta [the abandoned land] of Formosa by converting the belligerent occupation into definite sovereignty" (See his "The Status of Formosa and the Chinese Recognition Problem," American Journal of International Law, Vol. 50, No. 2 (April 1956), p. 415). Professor O'Connell refers vaguely to China without specifying whether he means the ROC or the PRC; however, because the PRC has no physical control over Taiwan, there is no room to argue that it could acquire sovereignty over Taiwan through the theory suggested by Professor O'Connell.

Similarly, American Scholar Arthur Dean, now Honorary President of the American Society of International Law, also argued: "Since Japan renounced all right, title and claim to Formosa and the Pescadores * * *. Nationalist China

[the ROC] may have already acquired legal title to Formosa and the Pescadores by occupation or possibly by subjugation * * *. Until the coming into force of the Japanese Peace Treaty on April 28, 1952, there was a formal obstacle to Nationalist China's acquiring legal title to Formosa by occupation, in that technical sovereignty over Formosa and the Pescadores remained in Japan. There were, accordingly, not *terrae nullius* capable of being acquired by occupation. However, when Japan renounced all right, title and claim to Formosa and the Pescadores this obstacle was removed * * *." (See his "International Law and Current Problems in the Far East," Proceedings of the American Society of International Law, 49th Year (1955), cited from Whiteman, Digest of International Law, Vol. II, p. 1230.)

This interpretation of the legal status of Taiwan is confirmed by several Japanese court decisions. For instance, in the case of *Japan v. Liao Chin Jung*, decided by the Tokyo High Court on December 24, 1956, it was stated that "Formosa and the Pescadores came to belong to the Republic of China, at any rate on August 5, 1952, when the [Peace] Treaty between Japan and the Republic of China came into force * * *." (Cited from Materials on Succession of States, U.N. Doc. ST/LEG/SER. B/14, New York: The United Nations, 1967, p. 70.)

Now, let's turn to the PRC's claim to Taiwan. While the reasonings of international law stated above would support the ROC's claim to Taiwan, the same reasonings would not support the PRC's claim to Taiwan for several reasons. In the first place, the PRC has denounced the validity of both Japanese peace treaties. For instance, on August 15, 1951, before the San Francisco Treaty was signed, PRC Premier and Foreign Minister Chou En-lai denounced the the proposed treaty as "illegal, and therefore null and void." On May 5, 1952, after the said treaty entered into force, Chou again denounced the treaty as "completely illegal." One can hardly claim any benefit from a document which one considers as "illegal and void."

After the Japanese renunciation of its claim to Taiwan, the PRC could not acquire title over Taiwan through the international law principle of occupation because it had no physical control over the island. Nor could the PRC act through the ROC occupation to claim title over Taiwan because the PRC considers the ROC an "illegal group" or even "bandits." Clearly, a government can no more claim benefits through a group which it does not recognize as legal than it can through a document which it has declared illegal and void.

Some PRC writers have argued that because Taiwan was originally Chinese territory, therefore a peace treaty to transfer the title back to China is not necessary. For instance, Shao Chin-fu wrote:

"After the Sino-Japanese War of 1894 the government of the Ching Dynasty by signing the Treaty of Shimonoseki ceded Taiwan and Penghu to Japan. With the outbreak of China's War of Resistance Against Japan in 1937, in accordance with international law, the treaties between the two countries became null and void. The Treaty of Shimonoseki was no exception. In 1945 after China's victory in the Anti-Japanese War, China recovered these two places from Japan. No question has ever been raised about the legal status of Taiwan. Since Taiwan has always been Chinese territory, it is a matter of course for China to take it back like a thing restored to its original owner. It is not a case of China taking a new territory from Japan which must be affirmed by a peace treaty. Particularly since the United States and Britain signed the Cairo Declaration which clearly recognizes that Taiwan and the Penghu Islands are territories Japan has stolen from the Chinese and 'shall be restored' to China, they are still less in a position to raise the so-called 'question of the legal status of Taiwan.'"

(See his "The Absurd Theory of 'Two Chinas' and Principles of International Law," in *Kuo-chi wen-t'i yen-chiu* (Studies in international problems), No. 2 (Peking, 1959); translated in *Oppose the New U.S. Plots to Create "Two Chinas"* (Peking: Foreign Languages Press, 1962); excerpts reprinted in *Hungdah Chiu, China and the Question of Taiwan: Documents and Analysis*, Praeger, 1973, p. 138).

International practice, however, does not support the Chinese position. For instance, the provinces of Alsace and Lorraine were originally French territory but were ceded to Germany in 1871. Subsequently they were returned to France only through the Treaty of Versailles signed between the Allied and Associate Powers (including France) and Germany on June 28, 1919; in other words French sovereignty over its former territory did not automatically revert, but required the formal treaty mechanism. There does not appear to be any

precedent or principle of international law supporting the PRC position that on October 25, 1945, Taiwan was restored to China *de jure* and *de facto*.

If this is the case, then the PRC's claim is primarily based on the theory of historical irredentism. PRC writers and officials have frequently argued that Taiwan was historically Chinese and that during the Japanese occupation (1895-1945) the people of Taiwan longed for a reunification with China. While this historical fact is true, it can hardly support the PRC's claim to Taiwan today for several reasons.

In the first place, during the period of Japanese occupation, China was run by a government which permitted free enterprise and the society was relatively free. If the people of Taiwan knew at that time that China would become the totalitarian and highly regimented society it is today, it is unlikely that they would have longed for a unification. The fact that very few people from Taiwan participated in the Communist movement in China during the Japanese occupation period seems to support this point. And today, it is self-evident that the people of Taiwan do not want to be united with the PRC.

Second, according to Edgar Snow, a close friend of Mao Tse-tung, in an interview with Mao at Yen-an on July 16, 1936, Mao did not include Taiwan in China's "lost territories" to be regained from Japan. Mao said: "If the Koreans wish to break away from the chains of Japanese imperialism, we will extend them our enthusiastic help in their struggle for independence. The same thing applies for Formosa * * *." (See his *Red Star Over China*, New York: Grove Press, 1961 p. 96). Therefore, the PRC's historical claim to Taiwan not well-founded even in accordance with its leader's view, in other words, Mao himself acknowledged Taiwan's independence.

Third, the principle of self-determination is now an accepted principle of international law and one that has not been opposed by the PRC. This principle would certainly overrule any historical claim of the PRC toward Taiwan, since the great majority of the people of Taiwan now oppose unification with the PRC.

In the 1972 Shanghai Communique, the United States declared:

"The United States acknowledges that all Chinese on either side of Taiwan Strait maintain there is but one China and Taiwan is a part of China. The United States government *does not challenge* that position." [Emphasis added]

Some people have argued that the U.S. has accepted the PRC's claim to Taiwan in the Shanghai Communique, but this is certainly not true. Elementary principles of international law make it clear that the phrase "does not challenge" is not equivalent to a recognition of the PRC claim. This interpretation is also confirmed by a high official of the U.S. government. Soon after the issuance of the Shanghai Communique, Assistant Secretary of State for East Asian Affairs Marshall Green denied that the communique represented any change in the position held by the U.S. since 1950 that the status of Taiwan is as yet undetermined ("Transcript of ['Meet the Press'] T.V. Interview with [Marshall] Green," *Mainichi Daily News*, March 29, 1972, p. 2).

Moreover, it was disclosed recently that at the time of negotiating the Shanghai Communique, then Secretary of State Kissinger wanted to accept the PRC's position on Taiwan by stating in the Communique that the U.S. "accepts" rather than "does not challenge" the belief of "all Chinese" in one China. But he was rebuffed in that attempt, possibly by President Nixon. (See Stanley Karnow, "Our Next Move on China," *The New York Times Magazine*, August 14, 1977, p. 34).

Furthermore, the term "China" mentioned in the Communique has a different meaning to people of either side of the Taiwan Strait. To the people of Taiwan, the term "China" means the Republic of China, i.e., a country whose social system is based on individual freedom and private enterprise. There has not been the slightest evidence that the people of Taiwan want to be a part of China if the term "China" means the People's Republic of China, that is, a country whose social system is based on totalitarianism and collectivism. If the policy makers in the U.S. and the PRC had the moral courage to accept the challenge of an internationally supervised plebiscite or poll conducted in Taiwan, it can be assured that the great majority of the people there would reject any proposal to make them a part of the PRC. Thus, even in accordance with the Shanghai Communique there remains absolutely no legal, moral or political basis for the U.S. to accept or acquiesce to the PRC's claim to Taiwan; the Communique does not imply, either in law or in its plain meaning, a US acquiescence in the PRC's claims to Taiwan.

A question closely related to the legal status of Taiwan is the ROC's claim to the mainland of China. If the ROC made an unconditional sovereign claim to the mainland controlled by the PRC, then, despite the special legal status of Taiwan, there would be no reason to condemn the PRC for making a similar unconditional sovereign claim to Taiwan. However, since its removal to Taiwan, the ROC has gradually imposed an important limitation on its sovereign claim to the mainland by taking a series of steps. Firstly, treaties which were formerly applicable to all China were tacitly revised to limit their application to Taiwan. For instance, the 1946 Treaty of Friendship, Commerce, and Navigation between the US and the ROC has not been applicable to mainland China since the early 1950's. (See *Treaties in Force*, 1793, p. 52, same in later editions of same book published by the State Department.) Similarly, new treaties or agreements concluded since 1950 have all been limited in their application to the Taiwan area. For instance, the 1954 Mutual Defense Treaty between the US and ROC provides in Article VI: "For the purposes of Articles II and V, the terms 'territorial' and 'territories' shall mean in respect of the Republic of China, Taiwan and the Pescadores * * *."

Second, the ROC has pledged not to use force against the mainland without the consent of the US in an exchange of notes accompanying the 1954 Mutual Defense Treaty with the U.S. The pertinent part reads as follows:

"The Republic of China effectively controls both the territory described in Article VI of the Treaty of Mutual Defense between the Republic of China and the United States of America signed on December 2, 1954, at Washington and other territory. It possesses with respect to all territory now and hereafter under its control the inherent right of self-defense. In view of the obligations of the two Parties under the said Treaty and of the fact that the use of force from either of these areas by either of the Parties affects the other, it is agreed that such use of force will be a matter of joint agreement, subject to action of an emergency character which is clearly an exercise of the inherent right of self-defense."

Third, in a Joint Communique issued by President Chiang Kai-shek and U.S. Secretary of State John Foster Dulles on October 23, 1958, the ROC publicly pledged not to use force against the mainland. The Communique says in pertinent part that:

"The two Governments reaffirmed their dedication to the principles of the Charter of the United Nations. They recalled that the treaty under which they are acting is defensive in character. The Government of the Republic of China considers that the restoration of freedom to its people on the mainland is its sacred mission. It believes that the foundation of this mission resides in the minds and the hearts of the Chinese people and that the principal means of successfully achieving its mission is the implementation of Dr. Sun Yat-sen's three people's principles (nationalism, democracy and social well-being) and not the use of force."

(*American Foreign Policy, Current Documents*, 1958, p. 1185) This pledge of non-use of force to achieve national unification was confirmed recently by a statement of the ROC Foreign Minister Shen Chang-huan on July 1, 1977, in which Shen said:

"It has been the consistent position of the Government of the Republic of China to carry out its responsibility of delivering our 800 hundred million compatriots from Communist tyranny by political means, while the Chinese Communists have never given up their design to 'liberate' Taiwan by force. The 'peaceful settlement' theme being harped by the Chinese Communists is but an attempt on their part to forcibly impose their tyrannic rule on the 16 million Chinese on Taiwan."

In view of the above analysis, it appears clear that the ROC has in fact suspended its claim to the Chinese mainland by renouncing the use of force to achieve China's unification. The PRC, however, still insists on the use of force to "liberate" Taiwan—a territory to which it does not have a clear legal title. Such "liberation" by force is prohibited by international law and by the United Nations Charter as an attempt to settle a claim to territory by force.

4. THE IMPACT OF NORMALIZATION ON THE ROC

The U.S. normalization of relations with the PRC would have an important political and economic impact on the ROC. However, whether such a move on

the part of the U.S., if it did happen, would have a significant adverse impact on the future development of the ROC depends on:

- (1) The pattern of U.S.-ROC relations after the normalization.
- (2) The ROC's response to this drastic diplomatic setback.

Before discussing the impact of alternative patterns of U.S.-ROC relations on the ROC, it is necessary to give a brief description of the peculiar features of the ROC economic and political situations. Since its removal to Taiwan in late 1949, the ROC government's ability to maintain political stability has surprised many political scientists. The stability is maintained primarily because of the ROC's government's ability to maintain steady impressive economic growth for almost three decades and because of the increasingly equitable distribution of the fruits of economic development. The ROC's economy is an export-oriented one and at present the ROC is the only country in the world which exports more than half of its GNP. Direct foreign investment and technological inflow are indispensable to the economic viability of Taiwan. Foreign investments in Taiwan now amount only to 1.5 billion U.S. dollars and in theory could be replaced by domestic investment. In practice, however, the importance of foreign investments lies, not on their amount, but in their psychological impact on domestic investors. Without foreign investments in Taiwan, the domestic investors would not feel confident of their investments there. Thus, if foreign investments slowed down, then domestic investments would also slow down. Similarly, if foreign investments begin to withdraw from Taiwan, domestic capital flight would ensue.

Past experience indicates that foreign direct investments in Taiwan have apparently been very sensitive to political events. As Dr. Yuan-li Wu, former U.S. Deputy Assistant Secretary of Defense in charge of international security planning, and Dr. K. C. Yeh, Senior Economist at the Rand Corporation, point out in a recent study:

"The rate of US investment in Taiwan dropped in 1971 and 1972 probably as a result of the ROC's international setbacks during those years and doubt about its future status. Between 1972 and 1973 there was a sharp increase in new US investment in Taiwan, which seemed to reflect some recovery of confidence on the part of US investors. However, the increase was smaller in real terms if price increases are discounted. Investments fell again in 1974 because of the general recession and postponement of investment plans by many firms.

"The flow of direct investment from Japan, including investments by 'overseas Chinese' resident in Japan, rose steadily during 1965-70, immediately after the establishment of the export processing zones. The rate of flow fell in 1972, reflecting the same concern felt by U.S. investors. Following Japan's transfer of diplomatic recognition from Taipei to Peking in 1972, another decline of new Japanese investment in Taiwan occurred in 1974 and 1975 although the cause of the decline is again somewhat ambiguous because it coincided with the recession."

(See their "Economic Impact of Alternative U.S.-ROC Relations," in *International Trade Law Journal*, Vol. 3, No. 1 (Fall, 1977), also published in Hungdah Chiu and David Simon, editors, *Legal Aspects of U.S.-ROC Trade and Investments* (Occasional Papers/Reprints Series in Contemporary Asian Studies, No. 10, both published by University of Maryland School of Law.)

In theory, there are five possible patterns of alternative U.S.-ROC relations after normalization of relations with the PRC. The first one is that the U.S. chooses to continue to maintain diplomatic and all treaty relations with the ROC. This pattern, if carried out, would have minimum adverse impact on the ROC. The ROC government and people may not like such a two-Chinas approach, but they will be realistic enough to know that this is the best deal they could get under the circumstances. Economically, the ROC would even benefit from this stabilization of its relations with U.S. The present uncertainty in the U.S.-ROC relations has not only slowed down the flow of foreign investments to Taiwan, but also made many domestic investors reluctant to invest in any long-term projects. Internationally, the ROC may also restore diplomatic relations with some countries. However, it does not appear that the PRC at present is willing to accept such an arrangement.

The second pattern which the U.S. may choose for its relations with the ROC after normalization is to maintain official liaison office relations with the ROC and also to continue the treaty relations (including the security treaty) with it. While this is a less desirable alternative to the ROC government and people, it is believed that it would have no serious adverse economic and political impact

on the ROC. Even if there were some adverse impact, the ROC should have the ability to overcome them.

The third alternative form of U.S.-ROC relations is to maintain official liaison relations with each other, but to replace the security treaty by a Congressional Resolution or a Presidential declaration. Presumably, under such a pattern, other U.S.-ROC treaties would be replaced by unilateral U.S. domestic legislation. This approach would have a significant adverse impact on the ROC, both politically and economically. From the ROC's point of view, if a treaty formally signed and ratified by two countries and made public to the world could be so easily terminated, it is clear that a mere Congressional resolution enacted unilaterally could be terminated even more easily. The validity of a Presidential declaration is even more dubious. As pointed out earlier in this paper, in 1975 the U.S. Department of State publicly declared that any commitment made by the President toward a foreign country has no legally binding force. The Department of State even indicated that it does not keep records of exactly how many commitments are made by the President or of their terms. Moreover, even if the President did issue a declaration to commit the U.S. to defend Taiwan, he could not be prevented from cancelling the commitment at any time if he later changed his mind, regardless of the reason. It is also highly unlikely that such a commitment could be binding on a subsequent President.

Under such circumstances, it is likely that the people in Taiwan and foreign investors would take a wait and see attitude. The economic development would therefore slow down, thus causing serious social problems and ensuing political instability for the ROC.

The fourth pattern is similar to the third one except that the liaison office would be replaced by a consular office. The adverse effect of this pattern on the ROC would be similar to the third one. It is believed that the status of a consular office is lower than an official liaison office, and therefore the adverse effects would be more serious.

The fifth pattern is the so-called Japan formula, i.e., the U.S. accepting the three conditions of the PRC and maintaining only an "unofficial office" in Taiwan. Some China specialists have suggested that if the U.S. applied the Japan formula, then the U.S. should also take additional measures to guarantee the stability of Taiwan. Specifically, these Sinologists recommend that the U.S. guarantee the continuation of arms sales, Overseas Private Investment Insurance Corporation investments guarantees, and Export-Import Bank Loans. Moreover, they also suggest that the security treaty could be replaced by a unilateral Presidential Declaration or Congressional Resolution. Even with these additions to the Japanese formula, this pattern of U.S.-ROC relations, if adopted, would have severely damaging effects on the ROC for several reasons.

First, when the U.S. terminated diplomatic relations with the ROC, most of the remaining 23 states that continue to recognize the ROC would probably follow suit, thus weakening fundamentally the ROC's international status.

Second by maintaining only an "unofficial office" in Taiwan, the U.S. would at least tacitly be recognizing the PRC's territorial claim to Taiwan. Thus, in the future, if the PRC chose to interfere with U.S. economic, trade, government loan, or arm sales relations with the ROC, the U.S. would be in a poor legal position to resist the PRC's action. The China Airline dispute between Taiwan and Japan in 1973-74 is a vivid example. In that case, the PRC forced Japan to provoke the ROC to terminate the air service between Taipei and Tokyo by making insulting remarks on the ROC flag.

Third, as stated above, the ROC government and people have no confidence in a Presidential Declaration or a Congressional Resolution to defend Taiwan. It is clear that if the security treaty were terminated, domestic investors would take a wait and see attitude and there would certainly be some capital flight from Taiwan.

Fourth, foreign investors would be reluctant to invest in Taiwan, at least for a considerable period of time, and some foreign investments in Taiwan may also gradually withdraw, thus causing damaging effects on the economy of the ROC.

It is believed that if the Japan formula (even with the suggested additions) were adopted as the pattern of U.S.-ROC relations after normalization, there would be economic stagnation or depression, social unrest, and political instability in Taiwan. Under such circumstances, radical groups in Taiwan may rise into power and demand the government to take drastic measures such as manufacturing nuclear weapons, declaring independence, or leasing a naval base

to the Soviet Union, thus greatly disturbing the stability of East Asia. These options are discussed in the next section of this paper.

5. SECONDARY OPTIONS OF THE ROC IN RESPONSE TO NORMALIZATION

From the ROC's point of view, the ideal situation would be for the U.S. to maintain the status quo of U.S.-ROC and U.S.-PRC relations, as a matter of explicit, articulated policy. If this is not possible, then the second ranked situation would be for the U.S. to make a proposal of normalization to the PRC and then be rejected by the latter, thus again leaving the U.S.-ROC relations unchanged. If the U.S. chose the above stated first or second pattern of U.S.-ROC relations (in section 4) after normalization, it would be unlikely that the ROC would consider any secondary options in response to normalization. U.S.-ROC relations are very close in political, legal, economic, cultural and all other aspects, and so far as possible the ROC would like to continue them despite its displeasure with the U.S. move toward closer relations with the PRC. Only when the ROC felt that the U.S. was going to sell it down to the river either immediately or in the long run, would the ROC be willing to consider secondary options. For instance, some China specialists have suggested that the PRC will remain unable in the foreseeable future to launch a military attack on Taiwan, and therefore that the ROC should not be worried about the abrogation of the security treaty. They also argue that the U.S. should at least tacitly recognize the PRC's claim to Taiwan in order to make the PRC happy and that, again, the PRC is unlikely to take over Taiwan in the foreseeable future. Some even go so far as to suggest that in the proposed Presidential Declaration or Congressional Resolution concerning the security of Taiwan, the document should not mention "Taiwan" but only vaguely refer to "stability or peace in the Western Pacific" so as not to offend the PRC.

All these suggestions, from the ROC's point of view, are nothing but a clear cut "selling out" of Taiwan. If the PRC's sovereign claim to Taiwan were even tacitly recognized, the U.S. could scarcely provide military assistance to Taiwan in case of a PRC attack because that would be an intervention in Chinese internal affairs. Without outside assistance and nuclear weapons, it would be extraordinarily difficult for a small nation of 17 million to resist the onslaught of a nation of 900 million armed with nuclear weapons and missiles. Under such circumstances, the existence of Taiwan, similarly to Hong Kong, would entirely depend upon the toleration of the PRC, which could take the island at anytime it wished.

The ROC also disagrees with the view of some China specialists that the internal difficulties of the PRC in the foreseeable future would prevent its military adventures against Taiwan. For instance, despite the great difficulties of famine and economic dislocation as the result of Mao's "Great Leap Forward" in 1959-1962, the PRC government under the leadership of the so-called "moderate group" of Liu Shao-ch'i, Chou En-lai, and Teng Shao-p'ing nevertheless launched a military attack against India in 1962.

In view of the above analysis, if the ROC considered itself to have been in fact "abandoned" by the U.S. it is possible that the ROC may resort to secondary options to maintain its national survival. Before turning to these options, it is necessary to dispose of the possibility of a negotiated settlement between the ROC and the PRC.

When a PRC official talks about "negotiation," he invariably refers to what the PRC calls "peaceful liberation," i.e., the eventual reintegration of Taiwan into the Communist controlled mainland. This differs from the former West German offer to enter into relations with East Germany, since that offer was pre-conditioned on the West German recognition of the legitimacy of the German Democratic Republic within the territory under its control. Unless the PRC is willing to offer the ROC a solution of the Taiwan problem on the German model, whereby the PRC would recognize the legitimacy of the ROC, there can be no reason for the ROC to enter into negotiations with the PRC if the ROC does not want to surrender.

Some scholars and PRC officials have suggested that Taiwan could be made an autonomous region of the PRC. This offer is equally unacceptable to the ROC for the simple reason that the PRC's credibility in this connection had long been undermined in its dealings with Tibet. Tibet signed an agreement with the PRC in 1951 by which the PRC promised to grant autonomous status to Tibet. However, the PRC later sent a large occupation force to be stationed in Tibet, moved

many Han Chinese to settle there, and finally massacred five percent of the Tibetans in the name of suppression of "rebellion" in 1959. The atrocities committed by the PRC in Tibet were condemned by the International Commission of Jurists as constituting "genocide." (See *The Question of Tibet and the Rule of Law*, published by the Commission in 1959.)

Moreover, the internal situation of the ROC would also preclude the ROC leaders from entering into negotiations with the PRC, unless the negotiations were based on the German model. The great majority of the people in the ROC are Taiwanese-Chinese or Taiwan-born mainlanders. If the ROC leaders want to negotiate with the PRC for a so-called "peaceful liberation," then almost all of the ROC citizens would fear a sell-out by their leaders and there could be a widespread rebellion on the island against the government.

In view of this, it is conceivable that any U.S. attempt to pressure the ROC to negotiate with the PRC would be categorically rejected by the ROC because any negotiation, in the ROC's view, would be equivalent to surrender or suicide. This is because none of the U.S. arranged negotiations with the Communists, such as in Vietnam and Laos, has been successful; each ended in surrender of the non-Communist side. The only place where a U.S.-arranged negotiation has succeeded is Korea, but this is because the U.S. continued to station several divisions of troops there after the signing of the armistice agreement and has also maintained a security treaty with the Republic of Korea.

Now let us turn to the possible secondary options of the ROC in response to normalization. It is generally agreed that there are three possible secondary options for the ROC; declaration of independence, going nuclear, or seeking a relationship with the Soviet Union. The reason why the word "secondary" is used here is that none of these options would be a happy one for the ROC to choose. The ROC, however, may nevertheless resort to one or more of these options if it feels that the U.S. is going to "abandon" it in fact and that all the post-diplomatic and security treaty arrangements are nothing but a trick to fool the American people and the Congress.

The first option for the ROC in response to a drastic U.S. policy change toward it is to declare Taiwan an independent state. While it is unlikely that the present ROC leaders would pursue such a policy, which would result in their being labeled as "traitors" in Chinese history, this possibility should not be ruled out as an increasing number of Taiwanese-Chinese continue to move to the decision-making level of the ROC government, especially if the PRC increases its military, political or economic pressures on Taiwan.

Be that as it may, the present ROC leaders may take a less drastic action within the framework of the present ROC structure; though the implication here is similar to a declaration of independence. For instance, the ROC may hold an absolutely honest plebiscite on the issue of negotiation with the PRC on "peaceful liberation or unification." Needless to say, the result would without doubt be overwhelmingly against such a move. Under these circumstances, the U.S. would be placed in an embarrassing position if it disregarded the genuine aspirations of the ROC people for self-determination.

Another possible action within this option is for the ROC to formally declare the suspension of its claim to the sovereignty of mainland and to declare itself the government only within the territory under its effective control. Since all ROC-U.S. treaties since 1949 have been modified or drafted to apply to the territory actually under ROC control, the proposed ROC declaration would have no effect on the validity of the existing treaty relations. On the other hand by taking this position, the ROC would be likely to gain a good image and strong support among the U.S. general public. This would make it more difficult for the U.S. to abandon the ROC.

A second option for the ROC is to begin to manufacture nuclear weapons; the ROC is unlikely to exercise this option for the moment. While there is no doubt that the ROC has the technological knowhow and industrial base for manufacturing nuclear weapons, there is one serious problem for making such a move, namely, the ROC's concern that the U.S. could retaliate by cutting off the future supply of nuclear fuels for the nuclear power plants in the ROC. To cope with this eventually, the ROC, after a sharp policy debate among the leaders, decided to establish diplomatic relations with the Republic of South Africa, which has rich uranium deposits. On the technical level, it is reported that the ROC has close cooperation relations with Israel, though they do not maintain diplomatic relations.

The last option open to the ROC is to enter into relations with the Soviet Union. The strategic importance of the Island of Taiwan does not need any elaborate explanation. In this connection, it is sufficient to quote a passage from former PRC Foreign Minister Ch'iao Kuan-hua's speech, delivered at Tientsin on May 20, 1975:

"From the geographic point of view Taiwan is very important. Hence, the Soviet Union is watching this area and attempts to avail itself of an opportunity to set its foot on it. On the other hand, Taiwan is taking advantage of its important position to play political maneuvers between the United States, Soviet Union and Japan."

Taiwan would be especially useful for the operation of the Soviet navy in the Western Pacific. A Soviet base on Taiwan would be able to threaten the sea lanes to the south of Japan and the security of the Philippines. Similarly, if the PRC gained control over Taiwan, it could do the same thing toward Japan and the Philippines, thus greatly shifting the strategic balance to the disadvantage of the Soviet Union. It is unlikely that the Soviet Union would remain idle and let the PRC gain control of the strategic island. It is true that the present Soviet political leaders would seriously consider the political cost in developing a relationship with the ROC. However, one must recall that the Soviet Union, at the insistence of its military leaders, intervened in Hungary in 1956 and in Czechoslovakia in 1968, despite the enormous political costs incurred. Therefore, in the event of a pending PRC takeover of Taiwan, it is likely that the Soviet Union military leaders, especially those from the navy, would urge the Soviet government to intervene in the Taiwan situation, at least secretly, or to increase the tension in the Sino-Soviet border to prevent the PRC from gaining control of Taiwan.

At present, the ROC is officially ruling out any relations with the Soviet Union though this policy is criticized privately by some intellectuals. Recently, the Taiwan Garrison Command discovered that a Soviet bank in Singapore had issued many letters of credit for trade with the ROC. It immediately instructed ROC businessmen not to accept such letters of credit in the future. On the other hand, a recent order of the ROC Board of Foreign Trade prohibiting trade with Communist countries only listed eight such countries. Trade with the Soviet Union is prohibited, but Poland, Hungary, and the German Democratic Republic do not appear on the list of prohibited trade partners. The implication seems interesting. It is reported recently by some travellers that goods made in Taiwan were appearing in the markets of some Eastern European countries. Some travellers even reported that they saw Taiwan products in the Soviet Union.

In projecting the ROC's possible choice of options in response to a U.S. termination of diplomatic relations and the security treaty, one should bear in mind that, because of the ROC's different cultural background and experience in dealing with Communists, the ROC's perspective or identification of its national interests and its choice of options may not be the same as those envisaged by the policy-makers in this country. For instance, some China specialists have suggested that if the PRC is willing to make a verbal or even written assurance that it would not use force against Taiwan, the U.S. should accept the three PRC conditions for establishing diplomatic relations. From the ROC's point of view, such an assurance does not make much sense because the ROC considers that the Communists will break their commitments whenever they become certain that there will be no forceful response from the U.S. The Vietnam peace settlement is a vivid example.

From the ROC's point of view, the U.S.-ROC security treaty is the cornerstone of U.S.-ROC relations: it cannot be replaced by a Congressional Resolution or a Presidential Declaration or both. The termination of the treaty would have a serious psychological effect on the ROC people and government, and would likely cause the ROC to exercise one or more of its secondary options. Such a situation would, in the short and long run, be detrimental to U.S. interests in the Far East.

6. CONCLUDING OBSERVATIONS

Since the U.S. began to normalize its relations with the PRC, many U.S. government officials from the President on down have made verbal assurances to the American public or the ROC that the U.S. will not "abandon" Taiwan. However, the behavior of the U.S. officials does not demonstrate the sincerity of such assurances. There are many instances to support this point. For example, Henry Kissinger went to Peking in October 1971 at the time when the United

Nations (U.N.) was debating the Chinese representation question, thus sabotaging the effort of the U.S. Delegation to the U.N. to save a seat for the ROC in the U.N. General Assembly. The Secretary of State refused to see the ROC ambassador for three years for fear of offending the PRC. Furthermore, there has been a recent disclosure that President Ford even "promised" to accept the three conditions of the PRC if he were elected President. Incidents like these would certainly strengthen the suspicion of the ROC that the U.S. administration is intending to abandon it to the mercy of the PRC after normalization. If the U.S. administration is so afraid to offend the PRC even when it still has formal diplomatic and treaty relations with the ROC, then how can the ROC believe that after the termination of such relations the U.S. administration would stand up to help the ROC against the PRC aggression. Thus, any proposed post-diplomatic and security treaty arrangements for the ROC will be viewed by the latter as just face-saving measures or political tricks to fool the American people and Congress—tricks which the administration has no intention to honor.

Some China specialists have argued that the PRC will never bargain away its principles, but is flexible in making concrete arrangements to implement the principles. For that reason, they argue that in dealing with the PRC, the U.S. has to accept the three PRC conditions for normalization, and then work out so-called "concrete arrangements" to preserve Taiwan's "security." The U.S. administration appears to have accepted that advice in pursuing its policy of normalization.

After making extensive research on the PRC's foreign policy, one can hardly agree with the above theory. To say that the PRC has always taken an uncompromising stand on its principles in international relations is certainly not true. To mention only two cases, during the Korean armistice negotiation in 1951-1953, the Communist side (including the PRC through the so-called Chinese People's Volunteers, which was in every aspect Regular PRC army) insisted that the U.N. side repatriate all Chinese prisoners-of-war, despite the fact that 75 percent of the Chinese POWs refused to return to the PRC. Eventually, because of the patience and strong stand taken by the U.N. side (in which the U.S. played a dominant role), the Communist side gave up its unreasonable demand.

Another case relates to the PRC's relations with Chile. After the Allende's government was overthrown by the rightist elements in Chile, the PRC consistently refused to grant asylum to political refugees, most of them were leftists. In fact, the PRC continued its diplomatic relations with the new rightist government, and even granted military and economic aid to Chile, in total disregard of the principles of Marxism, Leninism and socialist internationalism.

The PRC's so-called principles become immutable only when the other side believes them to be so. If the other side is patient, then there is a good chance to persuade the PRC to change its allegedly immutable position. For instance, since 1955, the PRC had insisted that unless the Taiwan question were solved, it would not deal with the U.S. In the early 1970s, it was willing to drop the Taiwan question for the moment and to talk to the U.S. on other matters of common concern.

The assertion that the PRC is willing to be flexible in working out concrete arrangements in implementing principles, is similarly not true. As a matter of fact, by accepting the PRC's so-called principles one has already been placed in an unfavorable position in dealing with the PRC. The PRC can reopen the issue at any time on the ground that a particular action taken under the concrete arrangements is in violation of the agreed principles, thus putting the other side in a defensive position. Moreover, the PRC's explicit or implicit consent to a given concrete arrangement does not mean it has abandoned its goal. In the PRC's view, such a consent merely postpones the ultimate total solution and leaves the issue to be reopened at an appropriate time to be chosen by the PRC.

In 1954, when the PRC concluded an agreement with India on trade and intercourse between India and Tibet and issued a joint communique on peaceful coexistence, Prime Minister Nehru wished to raise the Sino-Indian boundary issue, but Premier Chou En-lai assured India that this would not be an obstacle in the relations between two countries. However, after the PRC consolidated its control in Tibet, it then reopened the boundary issue and used force against India.

On September 10, 1955, the U.S. and the PRC concluded an "Agreed Announcement on Repatriation of Civilians" in which the PRC "recognizes that Americans in the PRC who desire to return to the U.S. are entitled to do so."

Later, when the time came to implement the agreement, the PRC insisted that only those Americans who were not in Chinese prisons would be allowed to go home. Also, it demanded that the U.S. provide a name list of all Chinese in the U.S. in exchange for the PRC's providing a name list of all Americans in mainland China. At the time of the conclusion of the agreement, there were fewer than 100 Americans in China, while there were more than 200,000 Chinese in the U.S. and most of them were, and are, pro-ROC. These Chinese in the U.S. almost universally oppose the supplying of their names to the PRC, for fear of subjecting their relatives in mainland China to PRC pressure. This tricky manipulation of concrete arrangements by the PRC to implement a principle already agreed upon was vividly described by late Ambassador Kenneth T. Young in his book "Negotiating with the Chinese Communists: The United States Experience, 1953-1967" (New York: McGraw-Hill, 1968).

In conclusion, it is believed that in dealing with the PRC on normalization, the U.S. side should not always be on the defensive, but should take an offensive approach by informing the PRC that under no circumstances would the U.S. compromise its fundamental principles of respect for human rights and self-determination. Moreover, the U.S. should realize that the present relations with the PRC are nothing but a marriage of convenience. The ultimate goal of the PRC's national objective remains the elimination of the so-called "American imperialism." This is the same as the Soviet Union: despite the establishment of diplomatic relations with the U.S. in 1933 and the receipt of massive aid from the U.S. during World War II, the Soviet Union has never changed its national objective of "burying the USA."

In summary, it is clear that, as a matter of domestic and international law, the U.S. is in no way obliged to yield to the three demands set forth by the PRC as preconditions to normalization. Furthermore, as a matter of international law, it is clear that the PRC has no valid basis on which to claim sovereignty over Taiwan, while at the same time the ROC's claim to the Island is sanctioned by traditional principles of international law as well as by the modern, humanistic principle of self-determination. As a policy matter, U.S.-ROC relations are of prime importance to the stability not only of the Western Pacific but of the entire world. A drastic shift in U.S.-ROC relations—a shift which resulted in serious disturbances of Taiwan's economic or political development—would be likely to have serious repercussions with regard to the ROC's foreign policy. The exercise of these "secondary options," in turn, would affect the strategic balance of the Far East in ways that would likely be detrimental to U.S. interests and to Free World interest as a whole. One hopes, therefore, that the U.S. will continue and bolster its present support of the ROC, in accordance with President Carter's principled approach to pursuing a foreign policy that is simultaneously humane and beneficial to U.S. interests and to the interests of free people everywhere.

Mr. BELLENSON. Thank you, Mr. Chiu.

The gentlelady from New Jersey has to leave very shortly to meet another appointment. So, Mrs. Meyner, if you have some questions at this time, please proceed.

SHANGHAI COMMUNIQUE

Mrs. MEYNER. Yes. Thank you very much, Mr. Chairman. I want to thank you three gentlemen for very interesting testimony. I might have all three of you, if you care to, comment on this thought. How do you think Taiwan perceives the Shanghai Communique; that is, is it seen as a legally binding document in Taipei and further, a document in which the United States has accepted the People's Republic of China claim that Taiwan is a part of China? How do you feel they would look upon the Shanghai Communique in Taipei? Mr. Hinton or Mr. Chiu.

Mr. CHANG. Officially voided but at the same time Taipei has considered Taiwan part of China and that there is only one China. But the Shanghai Communique has left something open. It says that Chinese on either side of the Taiwan Strait have made that claim, but,