

# JAPAN'S CHINA PROBLEM—MARGINAL POSITION AND ATTITUDE DURING THE IKEDA PERIOD (1960-1964)

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## CONCLUSION

## INTRODUCTION

In the present study, the writer attempts to do three things. First, he tries to know the peculiar restrictions, if any, upon Japan's freedom of action in the China Problem, so as to engrave Japan's action-radius as against her international social environment. Secondly, the present author endeavours to discover some consensus about the China problem as among Japanese people by and large, and consensus within and among the responsible influential groups (relevant social strata), in order to understand the anatomical aspect of Japan's complicated feelings toward the China problem. Thirdly, through analysing the views of the Japanese Government, he will observe the basic attitude it assumed toward the China problem in the Ikeda Administration, and change of/in such attitude, even in nuance, as a result of unexpected situational alteration concerning the China problem. The last will be done in the context of Japan's action-radius (Marginal Position) and consensus which, respectively, restricts Japan's policy-making, and determines the success or failure of Japan's China Policy. This writer does not intend to prove anything; he only wishes to find out something existing and gives them explanations.

What occupies the cardinal position therefore is not a value judgment of whether certain action of Japan was or was not internationally legal, but is a description of how the Japanese Government strived, as every government would do under similar circumstances if other things being equal, to increase freedom of action of its State, or to minimise the risks invited by its action/inaction—matters concerning political wisdom in terms of Japan's Marginal Position (action-radius) as a result of the juridical restrictions peculiar to Japan, when she was confronted by a situation or change thereof, in or concerning China.

Consequently, to get rid of peril, this writer will make no predictions in this study. Nor will he make criticism, seeing that it is always easy for persons not responsible to a state or a people, to criticise an officially established policy line, but that it is too hard for a government to make a policy immune from arbitrary criticisms.

By saying the above, however, the present writer may in no wise be presumed as having by implication or otherwise endorsed Japan's policy line or the consensus that may be drawn from established facts. Nor, moreover, is he trying to justify the attitudes assumed by the Japanese Government through which to apologize to the consensus so found out, when a government attitude appears to be not in conformity with such consensus. He will state only what in his judgment are reliable facts. Only by so doing, it is submitted, can a certain degree of objectivity be maintained. National bias is the most dangerous thing in study of a problem of this sort; and it happens that the present writer is a Chinese by birth. The ideological nature of the China problem is too strong a temptation for him to resist, and when he evaluates Japan's policy line in this regard he is not so confident that he can remain faithful to his stand as a scholar.

Analogically, in the present study, the use of some terms signifying the two existing Chinese political entities without making ethical distinction, is to be understood as purely matter of convenience and bears no political or moral approval/disapproval. To use the terms "China" and "Taiwan" would be siding with the Mainland Regime, and to use "Communist China" and "Nationalist China" would hint for a two-China; both impress one as if the China Situation has been settled through *fait accompli*. Logically, the term "China" signifies the State of China as a whole.

The starting point of the present thesis is that the China

problem is for Japan more juridical than it is political. In other words, before it is a political question the China problem is for Japan a problem of international law. This may empirically be justified by the existence of the Sino-Japanese War (1937—1945) which was an international juridical situation; and by the consequences of the existence of a peace treaty (basis for re-establishment of peaceful relations destroyed by a war, between the states once at war) between Japan and one of the two Chinese entities, and the consequences of the non-existence of one between Japan and the other entities in China (and this to Japan is legally not representing "China"), both of which are juridical facts in positive and negative senses.

It stands to reason that Japan's such relations with the State of China are unique, and that hence Japan, once a defeated in the war with China, is under some peculiar restrictions before the China problem. Although political implications can not be ignored here, it remains true that at the pre-decisional stage the Japanese policy-makers no doubt take note of this fact and its consequences in the juridical context.

But here it is equally clear that all troubles come from the reality that there exists in China a plural-government phenomenon. And this is the source of the China problem in its present form.

From the above it follows that we have different senses of the term "China Problem" which is the subject matter of the present study, and have the meaning of the term "Marginal Position". All these are to guide any study of Japan's consensus, opinions, and government views on the China problem.

It seems superfluous to inquire into the 'senses' of the 'China problem'. As a rule the meaning of the China problem is presupposed as self-evident. But this perchance is the root of many pseudo-scientific studies on this problem: their conclusions have been pre-determined, through intentionally keeping the

meaning of the term "China problem" ambiguous so as to make it ideologically omnipotent. This again is an empirical fact. We prefer to clarify the meaning of the subject-term "China problem" at the outset, for this is necessary to keep the facts pure.

The China problem is ideologically magical and politically dynamic. It comes from the "China Situation", i. e., from the dual-government phenomenon in China (China problem in a narrow sense). It is an embracing concept, *i.e.*, a form representing the totality of the concrete issues (contents given birth by a situation and its changes in and concerning China). It necessitates foreign states to take note of, or to consider, with or without reactions, or even to contemplate a solution. In other words, it is the object, while its content the subject matter, of the China policies of all states and of policies of the two existing Chinese political entities *inter se*.

As is true of all problems in world affairs, so is it true also of the China problem that, when dealing with China, states differ in stand and attitude, hence in degree of urgency/need to handle the China problem. This is difference in "position". Such difference may come from an *ad hoc* result of the power-position of China as the policy-target state vis-à-vis that of a policy-making state or, what amounts to the same thing, from the power-relations between them at a given time in a certain concrete situation in and concerning China. Accordingly, for such policy-making state the China problem may exist only temporarily and may be conditional in nature. This state of affairs may be conceived as the 'relative category'. The China problem here is perhaps more properly termed 'a China problem' if the definite *status quo* be cut off from the historical continuation.

But such difference may instead come, in addition to or independent of the power-relation, from tradition and/or pre-determined conditions of states confronted by China, in terms

of geo-political, cultural, ethnic, ideological and commercial factors and of feelings of these states and their peoples toward China (political in the broad sense). Thus the China problem at once becomes an unending chain of issues and takes the form of many "a China problem" in the historical context. This condition may properly be conceived as the 'absolute category'. The China problem here cannot be cut into pieces (many "a China problem"), nor can it be solved in disregard of the pre-determined conditions of a specific state. This is a matter of fate and not question of chance. Position of a state in this category evidently differs in quality from positions of other states.

Naturally, within both categories, among states there may exist quantitative differences, that is, differences in degree of urgency/need to deal with the China problem. Between the two categories, furthermore, there are states standing in the middle. They are in all cases the Great Powers on the world political stage at a certain historical point of time. Being Great Powers they may belong to each of the two categories, or to both simultaneously, according as their positions may appear to be.

For policy-makers of some states belonging to the relative category, the China problem may be considered in the present tense only. Although it is always more desirable for such policy-makers to have a vision (*vista*) in making their foreign policies, such vision, indeed, is not absolutely required of them in their China policies.

For policy-makers of states belonging to the absolute category, on the other hand, in order to avoid engaging their states with serious risks, they must consider the China problem as an historical whole, and deal with it as such in the historical current, by referring, of course, to past experiences, to predictable changes of the China *status quo*, to world environment,



and to other factors which by destiny their states should not ignore, and especially to their national consensus or prevailing opinions on the China problem and their national feelings toward China, with changes thereof, if any (in fact, they have to discover all such changes and to adapt their policy lines to same accordingly). This amounts to saying that in this case weight is put rather on the future. This needs vision. Such states therefore are in a somewhat passive and, indeed, a far more difficult, position. Like the Great Powers of the time, even if they are no Great Powers these states are nevertheless required high prudence, for the sake of their respective national interests which may unexpectedly be at stake, and in the cause of peace in the Far East and of world peace in the last analysis (and this is more so if such states happen to be Great Powers of the time), through maintaining the international political balance (policy balance during a given period) at this corner of the earth. In this sense, states belonging to the absolute category bear more responsibility; their voices will be more determinative than that of other states with equal rank in world affairs but belonging to the relative category pure and simple. Their changes of policies toward China, that is, changes of attitude and decisional evaluation about the China problem, are therefore gradual, sometimes invisible. It goes without saying that comparison of policies of different states on the China problem should be made with great care. Analogy is in most cases not only useless but dangerous.

Consequently, a China problem, or the present China problem, being subject matter of policy, takes at least two different shapes before various groups of foreign states. The first may be termed "the *status quo*" (or the "power-relation") concept of the China problem; the second, the "historical" (or the "predestined position") concept of the China problem.

The *status quo* concept always and invariably refers to some

concrete situation: it is bound to have certain fixed content. The historical concept rather appears more to connect the present with the remote future. But for the present, a problem of the future has no definite content; it is subject to prediction by policy-makers in the abstract with image. This in other words tests their political wisdom. In terms of foreign policy, the historical concept involves "vista", and that is, vision.

Two points are immediately clear.

In the first place, since in diplomatic history for many reasons *time* may be considered the best means to solve a difficult international problem, the fact that policy-makers of certain states, when they conceive the China problem in the context of historical current, prefer to, and in fact are apt to, have their final decisions to take drastic actions conditioned by a vital change, may not always be disapproved without strong reasons and deep insight. For, such inaction is in fact one form of action; and the decision-makers may be justified, and sometimes even be considered wise, if after calculation positive action in a drastic way appears to be a source of unbearable risks at the expense of their primary national interest and/or of world peace at large, or if there is actually no solution for the time being to the satisfaction of majority of states concerned.

In the second place, *ipso facto* the solving of a *status quo* China problem does not in any sense signify that the historical China problem is also resolved accordingly; in fact, it only declares the birth of another *status quo* China problem.

Since a *status quo* China problem has, and should always have, some concrete content, change of the *status quo* of necessity produces change in the content of the China problem. But any *status quo*, and change thereof, should have some cause. Such cause may not be singular in number, nor may the number of issues composing the China problem. In reality, multiple-cause and plural-issue rather seem to be the rule.

And if the causes and/or the issues are multiple, in most instances they can not be separated. Both the causes and the issues here are the organic parts of the whole problem. *A fortiori*, this is true of the historical concept of the China problem. In such a case it is more desirable, and safer, that the China problem be solved as an inseparable whole, if it be susceptible of being solved at all.

But in some exceptional cases for some reasons a few states, which are subjectively not necessitated to deal with the China problem as matter of urgency (hence in their foreign policies the China problem may not occupy an important rank), or which are objectively not Great Powers nor states with great weight (hence they bear no corresponding responsibility to the world), may with no consequential risks confuse one single issue of the China problem with that problem itself, and solve, or try to solve, the China problem accordingly, without paying heed to the causes and/or other related issues at all. Such states are given more margin for choice; and that is, they are given broader margin in their freedom of action. For, in this case there would be no qualitative alteration in the world political balance (China-policy balance /*status quo* among states) as a result of their drastic actions.

This is not all. If the meaning of the term "China problem" varies from state to state, it follows that the content of the problem cannot be the same for different states. And this is so not only quantitatively but also qualitatively. To some states, for instance, some of the issues of the China problem may be so important that compromise is beyond question, as it may endanger their national survival; whereas to other states, action or inaction as a form of disposal of the same issue or issues may not be of relevance to their China policies, and other issues may not exist as issues at all. This picture is substantially decisive for measuring the desirability and

wisdom of a state's policy on the China problem.

In this sense, strictly theoretically speaking there is no "China problem" in general. Here lie special difficulties for study of the China problem as an international question.

Much more is it a difficult thing to study "Japan's" China problem. This is so because: first, facing the China problem, Japan is a state belonging to the absolute category by fate; secondly, it is a state belonging to the relative category by chance due to its power-relation with the State of China in the Far East; and thirdly, it happens to be a Great Power on the current world political stage, hence is responsible for the collapse of the present world balance of policies on the China problem as a result of its drastic action.

The above peculiarities are sufficient to remind Japan of her being restricted in freedom of action when confronted by the China problem. What makes Japan's position unique, and its freedom of action minimized, is the historical fact that Japan was once a defeated in a war while the State of China a victor in the same war. This calls forth the juridical question of existence/non-existence of a peace treaty between Japan and each of the two entities in China. This question takes precedence over other political considerations, and keeps Japan's reservoir of freedom of action always at the minimum point.

In other words, Japan meets restrictions everywhere with minimum breadth for choice of alternatives. In this sense, Japan's unique position is named the "marginal position". This necessarily determines a formal attitude/view of the State of Japan, and evaluation of Japan's China policy should take this as the compass if one is not to do injustice to the policy-makers.

Be this as it may, for the purpose of research, presuming that other things being equal, as far as the China problem is concerned we can see that there are some juridical restrictions

common to all states, and that is, general restrictions upon their freedom of action. To know the particular restrictions upon Japan, which put Japan in the marginal position, one must know these general restrictions; and this can be done only through analysis of each of the issues of the China problem in their juridical aspect. But since these issues, being juridical in nature and the component questions of the same problem, are interrelated, the logical order of the content of the China problem becomes the pre-requisite here.

The juridical situation in and concerning China is that there exist in a single state two rival governments engaging in continuous hostilities, whatever scale they be. This state of affairs is the aftermath, if not the continuation, of the Chinese Civil War of the 1940's (the Cause-Issue); whereas the continuing existence of the traditional government, which makes possible the plural-government phenomenon, depends on the legal status of Taiwan as territory (another Cause-Issue, in fact the nucleus of the China Situation (Problem)). In logic, the present condition of hostilities in the Taiwan Straits, which is the very genesis of the China problem, takes precedence over other issues.

By dint of the two cause-issues, there comes the question "One China or Two Chinas?" (the Object-Issue). And for the solution of this object-issue, there are two ways (means) in law: recognition by majority of states through accidental concert of their individual acts, or recognition by these states in an international organisation (UN). This brings forth the questions of Recognition and the UN Chinese Representation (the two Means-Issues). The logical order for approach in a discussion of the China problem is thus clear.

Parts One and Two (Chapters 1 to 4) will deal with the issues of the China problem in the above logical order. They are aimed at knowing the general juridical restrictions upon freedom

of action of states in the China Situation.

Part Three (Chapter 5) will give a picture of Japan's marginal position (particular freedom of action) through analysis of the restrictions peculiar to Japan in the China Situation (the Restrictive-Issues of Peace Treaty and War-Indemnity), and through comparison with states' freedom of action in general in the same situation as demonstrated in Parts One and Two.

Parts Four and Five will center on Japan's "attitude" during the Ikeda Administration (1960-1964). But while Part Four (Chapters 6 and 7) is about Japan's national consensus (public opinion, etc.) or basic line, Part Five (Chapters 8 and 9), about consensus (attitude/opinion) of the responsible groups, i.e., of the political parties and of the most vital pressure groups behind government attitude or policy-making, and about government views/attitudes for comparison with these consensus and with national consensus. All these will be done *in the context of Japan's marginal position as demonstrated in Part Three (Chapter 5)*; so as to understand how before the China Situation the Japanese Government, like other governments as a rule will do when confronted by serious international problems, strived between the exercise of maximum freedom of action, on the one hand, and pressures from certain group-opinions and criticisms claimed to have represented national consensus/public opinion, on the other hand.

PART ONE  
THE CHINA PROBLEM—LEGAL INTERPRETATIONS  
OF THE SITUATION

This Part is aimed at knowing the freedom of action of states confronted with the China Situation, through juristic reasoning, so as to mark Japan's marginal position in the China problem (in the broad sense, meaning the problem including all vital legal issues). The speciality of the China situation, therefore, is the point of departure.

The China situation, and that is the "China problem" in the proper (narrow) sense of the term, consists of two closely related issues. The one is the nature of the dual-government *status quo* in the Taiwan Straits (and this, needless to say, has much to do with the legal status of the two Chinese parties engaged in this situation); the other is the legal status of Taiwan as territory, which makes possible the dual-government phenomenon. The former is the "Situation" itself, the latter, the necessary condition for continuation of this situation. They are the cause-issues of the China problem (in the broad sense).

CHAPTER 1     *STATUS QUO* IN THE TAIWAN STRAITS

Lying between mainland and the island of Taiwan, the Taiwan Straits has long been considered one of the most dangerous explosive magnetic field in the Far East, and even a source of another world war. What is significant in this *status quo* which has been maintained for 17 years without remarkable alteration, is the fact that there exist two, instead of one, Chinese political entities, both using force to express their exclusive claims to legitimacy. What, however, is not clear, is the nature of this state of affairs—if it is not a peaceful situation (and in all

respects it is not), may it be considered a state of civil strife<sup>1)</sup> juridically relevant (hence having important bearing on the status of the two parties)?

It is widely believed that the Chinese Civil Strife of the 1940's was ended. But the two parties maintain that as between themselves up to the present there has been an armed struggle for final victory, that is, for extinction of the rival. There is no doubt that the present situation in the Taiwan Straits has deep root in the Chinese Civil Strife of the 1940's, nor is there denial that the former bears much similarity to the latter. However, the fact remains true that we have an endless dispute of whether the civil strife which was started sometime in 1946 has come to an end objectively. And this is the prerequisite for interpreting the present situation in the Taiwan Straits.

Here we have to inquire into the commencement, the continuation (existence) and the termination of a civil strife (or civil war). In addition, we have also the question of *animus belligerendi* (the intention to be in a state of war) of the parties. Discussion of these necessitates some knowledge of the history of the past(?) civil strife and its relation with the present *status quo*; on theoretical plane it requires a clarification of the concept of war.

### **I. Brief History of the Domestic Armed Struggle in China**

From as early as the 1930's, there have been many armed conflicts, local in nature, between the Nationalist Government and the Chinese Communists. During the Sino-Japanese War (1937-1945), although politically (and to some extent militarily) the latter submitted themselves to the formal command of the Nationalist Government, armed conflicts were nonetheless frequent, in spite of the immediate menace from their common enemy—Japan.

Immediately after World War II, from October 10, 1945 on-



wards, through efforts of USA there were held a series of peace conferences between the two parties, and some armistice agreements were made one after another. From July 12, 1946, however, full-scale armed contest broke out and a nation-wide civil strife began. It had never been formally recognised by foreign states as a war *de jure* (perhaps chiefly due to the fact that there had been no naval warfare nor effective blockade), though armed forces cast into this strife were three million men on the part of the Nationalist Government, and one million on the part of the Chinese Communists.

After three decisive battles fought between main forces of the parties, the Government Side suffered a total defeat. On April 23, 1949, the Communist Side occupied Nanking, the government capital; and the government retreated thenceforth, from Shanghai to Hangchow, next to Canton, next again Chungking and then to Chen-tu, with its enemy army running after it. At last, the Government Side evacuated the mainland and moved to Taiwan. It declared Taipei the temporary capital of the Republic of China (ROC) on December 7, 1949, and re-established itself in that island both politically and militarily. On the other hand, the Communist Side established the People's Republic of China (PRC) on mainland on September 21, 1949 (formally proclaimed on October 1 the same year).

From that time the two parties east and west of the Taiwan Straits, each recognised by a group of foreign states as the legitimate government of the Chinese State, have maintained this situation with armed struggle. Long period of time passed by. Due to the sporadical nature of armed engagements, this *status quo* of armed confrontation between the Island (Taiwan) and the Mainland (Communist regime) seems to have concretized itself day after day, up to the point of losing the hostile appearance and, in the eyes of ordinary observers, it looks like a state of peaceful co-existence and hence, curiously enough,

armed engagements are alleged to be something abnormal, that is, exceptional.

Armed forces used in actual struggle are about 100 thousand men on the part of the Island and 300 thousand, of the Mainland, with strengths of about half a million men and 2 million men respectively at the back. There were in this period several considerably furious battles at sea and in the air, with at least once or twice (September 1954 and after) of land warfare of considerable scale when the Mainland attempted to land an army on the Kinmen Island but failed. Armed engagements of smaller scale continued up to 1955. Sometime in the latter part of August 1958, there came a showdown between the two sides, and it led many to predict another world war, because the parties are in close alliance with USA and with USSR. Since then they have adopted quasi-war-time system within their respective controlling areas. For a period after August 23, 1958, furthermore, the Mainland shelled the Isle of Kinmen on an unprecedented scale. The Island shelled in return. However, from September 5 of the same year, they stopped the cannon fight.

On October 23, 1958, in the Chiang-Dulles (ROC-USA) Joint Communiqué, ROC expressed its intention to counter-attack mainland chiefly by political means, in contradistinction to counter-attack by military means adopted theretofore (with the reservation of an exception, often overlooked, of a "Hungarian type of rebellious situation"), in exchange for US re-assurance of support to legitimacy ("authentic spokesman" for the Chinese people, in the wording of the Joint Communiqué). Shortly after this event, the Mainland started a strange "even-day shelling" against Kinmen, avowedly leaving the odd days for the Island to supply the Kinmen and Matsu which are bases for counter-attack against mainland. Such situation, as a condition of domestic hostilities, is without precedent in history; but it has continued

to exist up to the present day, with sporadic armed contacts reminding one of its existence.

## II. Structure of War.

The situation is really not easy to understand. The point at issue is: Whether a state of hostilities with only seemingly accidental occurrences of armed conflict is or is not juridically relevant. This is matter of structure of the phenomenon "war".

As early as the ancient Roman period, Cicero conceived war as "a contest by force (*certatio per vim*)". Gentili developed this conception, by defining war as "a just and public contest of arms", and stressed that "war is nothing if not a 'contest'". War was here an objective phenomenon of actual fighting between two parties, and 'paper war', that is, a war declared but followed by no actual armed contest, was excluded from the concept "war".<sup>2)</sup>

At a later period, to meet with the curious reality of the fight-and-rest Thirty-Year War, Grotius interpreted Cicero's conception of war in the light of custom and practice of states of his time, departed from Gentili's "contest theory" and founded the state-of-war theory (or status theory of war). War to Grotius "is a (juridical) 'status' of contesting by force" (*Bellum sit status per vim certantium*). It was conceived more as state of affairs than as action (contest). It was a juridical fact, an abstraction of continuous unit of time, wherein peoples carried on a series of contest by force.<sup>3)</sup> A 'paper war' declared by a single state was made possible and juridically relevant.

The structural difference between these two theories of war originally lay only in the point of emphasis: the contest theory, putting stress on observable bilateral acts, did not at all exclude the subjective unilateral intention (*animus belligerendi*) which would make a state of war independent of actual armed contest; whereas the status theory, though it put the focus on the

*animus belligerendi* the declaring of which would be universally valid and would leave no room for choice by third states as to the existence or non-existence of a state of war (hence automatic operation of laws of war and neutrality), also took armed contest for granted. Thus both theories considered as elements the wills of the parties to war and the acts of war. In later periods, however, through juristic interpretations the two theories were made as if they had been antithetic; and from the beginning of this century, when paper war became frequent, once more juristic interpretations functioned, and this time with the result that the two theories were mixed into one, with equal weights being put on both elements. This theoretical condition has remained the same up to the present day.

War is therefore a status (state of affairs); it is also a contest (act of armed struggle). There is a war, when there is certain scale of armed contest, or when armed contests continue for so long a time that they become a single conceptual unit—a state of affairs (fight and rest).

Furthermore, a war (international), as a rule, begins when one of the parties so declares, and exists universally as a specific juridical state of affairs disregarding whether third states so recognize. Moreover, in our time when *debellatio*, genocide, and slavery have been prohibited by law, war, if one be waged, has an aim more or less limited: this aim is to impose, not boundlessly, the will of the victor on the defeated for the purpose of making peace. This means that the defeated is to be spared; and in fact its survival is necessary, because realization of the war-aim needs the defeated to come to terms with the victor about the conditions for recovery of peace.<sup>4)</sup> Coexistence is always presupposed here. And, again, war, in principle, is ended by a formal treaty of peace.

This is the case of a war in general (an international war). It applies to the case of armed struggle within a state (in ordi-

nary language, a civil war),<sup>5)</sup> though with some modifications. But what is a civil war?

### III. Characteristics of a Civil War

A civil war (strife) is always undeclared, and is begun by armed contest. It does not exist as a war *de jure* unless recognized as such by foreign states. Moreover, it is a struggle for the all-or-nothing aim of exclusive legitimacy, or of establishment of a new state; for the legitimate government at least; therefore, coexistence in future is beyond question, and unconditional surrender the rule. And, unlike an international war; it may be ended by factual termination of hostilities, by the appearance of a unified government, or, in some cases, by a treaty granting independence.<sup>6)</sup>

(1) Beginning of a civil war. A civil war is always fought between the sovereign and the rebels. In classic terms, it is a private war, and legitimacy is the most vital point. The rebels, not being a sovereign entity, have no right to declare a war; for the sovereign (legitimate government), on the other hand, it is impractical, if not absurd, to declare one at the beginning.<sup>7)</sup> In the last analysis, a declaration of war is valid (for giving rise to a state of war, hence to obligations of neutrality of third states independently of recognition by third states) only as between sovereigns. Thus the situation of 'paper civil war' or 'nominal (civil) war (Scheinkrieg)' *ab initio* is never possible. The subjective *animus belligerendi* loses its omnipotence here, hence a civil war is always, and without exception, begun by armed contest. The contest theory applies. A civil war, in other words, starts with observable phenomenon of armed contention (war *de facto*). To become a war *de jure*, that is, a quasi-international war, it needs recognition from foreign states.

(2) Existence of a civil war     Thus, it is a foreign state, and not the home state or its legitimate government, that declares the existence of a civil war *de jure*, in which case the status theory applies. But, whether recognized or not, a civil strife (armed contest) remains a civil war *de facto*. Recognition of belligerency (express or tacit) is as yet matter of policy (expediency), and is valid only for the parties at war and the foreign state granting recognition. Such recognition, in other words, has no universal validity. *A contrario* (and, as a matter of fact, accordingly), denial of the existence of a civil war by foreign states has nothing to do with the *de facto* existence of the civil strife for the parties.<sup>89</sup> In this sense the *animus belligerendi* is effective negatively.

(3) The aim of a civil war     For one party at least, a civil war is one for complete conquest, and that is, for the extinction of the enemy government (or group) in the form of unconditional surrender.<sup>90</sup> But a civil war may be one aimed at snatching the powers of the established government, or at separating from, hence independent of, the state represented by the legitimate government. The former may be termed revolution; the latter, rebellion (war of secession or of independence).

In case of rebellion, extinction of the legitimate government is not necessary for the realization of the war-aim of the rebels. But since civil wars are not, and never can be, prohibited by any law, aims in civil wars may be changed by the parties at will—from revolution to rebellion, or vice versa. Here comes the kernel of the question.

It may not be uncommon that a situation appears to be such, that extinction of the rival party in a war of revolution happens to be difficult, if not impossible, due to exhaustion, or to inter-

vention by foreign powers in concert or otherwise. Here change of war-aim becomes possible or expedient, and even necessary in some cases. It is not likely in our time that a rebellion, due to change of war-aim on the part of the rebels, takes the form of revolution, even if their victory be so swiftly won that final success is predictable. But it is reasonable that the contrary case is more likely to occur.

However, insofar as the parties insist on their original aim to revolt (or to put down the revolution) or the aim to rebel (or to suppress the rebellion), with certain scale of armed contest still going on, there would be no ground for third parties to say with effect that the civil war has come to an end. This is so, especially when the conditions laid down by international law are fulfilled: (a) the insurgent entity is in effective control of an important part of national territory, (b) the insurgents are able to conduct the war according to rules of warfare, and (c) they are organized under a responsible authority.<sup>10)</sup> Such conditions apply *a fortiori* to the case where the established government bears the external appearance of "rebels", for which no proper term may be used; for, the general rule is that presumption of legitimacy in a civil war is in favour of the established government.

(4) The end of a civil war The common factor for the endings of civil wars is extinction of one of the parties at war (loss of part of sovereignty over the newly independent state is considered one form of extinction). Survival of one, and only one, party is the *conditio sine qua non* for realization of the aim of a revolution and, in principle, for recognition of new government in particular. That is to say, provided that the parties do not change their war aims, and so long as armed contention goes on and fulfills the conditions laid down by international law, foreign states are of right not to recognize the termina-

tion of the civil war or a final victory.<sup>11)</sup> In a civil war, factual cessation of armed struggle is conclusive evidence for its termination.

In a revolution, therefore, if there is no compromise between the parties nor change of war-aim thereof, especially if both parties are recognized by two groups of states as *de jure* governments, the situation is unique, and is perhaps what Hershey once named "potential belligerency".<sup>12)</sup> In this event, it would be free for foreign states to determine for themselves, in the context of their recognition policy, as to whether or not the civil war has come to an end. Of course, it must be reminded that such determination is coupled by risks.

It is therefore safe, and reasonable, to assume that, since a civil war exists with armed contentions which are observable facts, its end would also be proved by the disappearance of armed contentions. *A contrario*, continuation of armed contests in a civil strife, *ipso facto*, shows that a civil war has not come to an end. And what may be considered conclusive is the case where a state of hostilities continues for considerably long period. Chance of victory for either party at war is not counted, and in fact this can not be presumed or guessed. For, this is exactly the point to be determined by arms.<sup>13)</sup>

What then amounts to an "armed contest (contention)" the accumulation of which may be considered a state of hostilities which, in turn, may prove the existence of a civil war? This is the decisive point. It, in terms of recognition of new government or new state, would impute international responsibilities of premature recognition to foreign states.

But question such as this involves extent and scale, and duration, of armed struggle, and can be answered only on a case-by-case basis.<sup>14)</sup> It is a matter of fact, the evaluation of which should take into consideration many factors, such as impact of



the armed struggle on world situation at large and on neighbouring states in particular, probability of development of the situation (but, to repeat, not probability of victory of one of the parties at war), and historical background of the struggle, etc. The state that admits (recognizes) or refuses to admit the existence of such a fact bears risks for its own judgement. In any case, one point is clear: recognition of the rebels or revolutionists as government *de jure*, accompanied by withdrawal of recognition of the established government, does not end the civil war so long as armed contest continues, and that is, so long as the established government continues to exist.

#### IV. The Chinese Civil Strife

The above statement shed light upon an understanding of the nature of the *status quo* in the Taiwan Straits.

It is of course not impossible to share with the common sense opinion that the Chinese Civil War of the 1940's came to an end when the Mainland Regime proclaimed itself the Central Government of the PRC. But with this the *status quo* between the two sides cannot be explained, except when it is considered a new civil strife, which would make the situation more complicated, and is not in line with historical facts of the Chinese Civil War originated in the 1930's—the present armed struggle in the Taiwan Straits is being fought between the same parties of the allegedly ended civil war of the 1940's, with the war-aim exactly the same as that of the armed struggle in that period.

As a matter of fact, the relation between the ROC and the Mainland Regime is not one of peace. This makes it difficult for one to maintain that the State of China as a whole is in a condition of order and tranquility, whether Taiwan be considered Chinese or non-Chinese territory and even the ROC be deemed a State-in-exile. This is more so, if one takes into account the fact that as between the two rival parties there

are nothing less than uncompromising antagonist attitudes which, in foreseeable future, will never disappear, and that there have been repeated, if intermittent, armed contests considerably large in scale expressive of such antagonist attitudes.

Thus, on the principle that any explanation of a social phenomenon is required to make that phenomenon better understood, and not to make it more confused, one may have no other choice if the *status quo* in the Taiwan Straits can be better explained by something in line with legal norms.

(A) There will be no doubt that there was in China once a civil war *de facto* if not *de jure* in the latter part of the 1940's. Many a states recognized the Mainland Regime after the establishment of the PRC; and "... seul ce fait de la guerre civil peut justifier la reconnaissance".<sup>15)</sup> And, once there is a civil war, there must be an end to it. When a state of things appears, and continues for a quite long period of time, whether one likes it or not the presumption is in favour of its continuation and not of its discontinuance. Facts in the Taiwan Straits do not supply us with valid proofs that there is no more civil strife: there is no factual cessation of armed contest, not to say formal cessation. On the contrary, the state of hostilities has continued for many years and is likely to exist for another many-years. Even if this is less than a civil war, it is of course something more than a gunfight between two bandit groups in China. Whether a state of war is or is not recognized by foreign states has no bearings whatsoever on the existence of that civil strife.

(B) Armed forces cast in the struggle is million in number. Although contests appear to be smaller in scale than those occurred in the 1940's, their impact on world situation is so seriously perilous, that there is constant probability of its being

developed into a major war, if not a world war, engaging many Great Powers. It is perhaps helpful to emphasize here, that probability of armed contest in a state of hostilities alone, is sufficient to prove the continuation of a civil strife. And the situation in the Taiwan Straits is more than probability: armed contests have been, and will be, actual.

The only reasonable doubt on the nature of this situation as a civil strife is perhaps this: at present, the form and scale of actual armed struggle are strange, because there is no land warfare. But land warfare is not at all a condition for the existence of a war, less is it one for a civil strife.<sup>16)</sup> Accordingly, it is more realistic to conceive that the Chinese Civil Strife, having continued for so many years, is now at its period of stalemate, behind which preparations, at least potential danger of same, of full-scale attack, for better or worse and by either or both parties, are under way;<sup>17)</sup> and that for many years all states concerned have been doing their best to prevent such full-scale armed contest.

(C) From viewpoint of war aim, a similar line comes into view.

For the Nationalist Government, maintenance of legitimacy, as a subjective aim, has never undergone change. As between success or failure of its counter-attack and its very existence there is in fact no equation for assumption. It is recognized by many states as the legitimate government of the State of China, and its existence is the deadly weakness of the Mainland Regime<sup>18)</sup>. But the fact that it has so far not been able to put down the revolution is nonetheless true.

On the part of the Mainland Regime, on the other hand, it has not changed its aim of snatching the sovereignty of whole China. However strong it be, the very existence of the Nationalist Government with nearly half a million men armed, proves that it too has not realized its aim.

In this way, subjectively, in terms of the *animus belligerendi* (note that both parties are recognized by many states, hence are both competent to exercise the *jus belli*), like it or not the present situation seems to be a continuance of the civil war of the 1940's. If it is not a civil war *de jure*, it is of course no less than one *de facto*. It is therefore impossible for one to name it a "paper civil war."

Needless to say, if both parties, or either of them, give up their original aim for legitimacy, and change it into one for separation, and if both sides be recognized as independent states, then we have a typical picture of two Chinas. But this within foreseeable future is likely to remain in the realm of hope and theory. There is no other way to follow in legal interpretation of this *status quo*, nor is there other means to mitigate, if not to prevent, cruelty of the will-be large-scale armed conflict, except the one analogical to Grotius' state-of-war theory, until the day comes when the end of this civil strife becomes real.<sup>19)</sup> One may not strain logic and assert the absurd or the unknown against objective reality, for the sake of ideology and/or preference.

The assertion that the Chinese Civil War came to an end in 1949 is understandable. This comes from either of the following reasons.

First is the confusion of formal establishment of the Mainland Regime with factual cessation of armed contest, due to ideological sympathy toward revolution or to misunderstanding of facts. The second is the prediction that the Nationalist Government, being defeated on mainland and retreated to Taiwan, could not have been maintained for long; and such prediction was based on an erroneous view about Chinese history, or on misjudgment coming from short-sightedness.<sup>20)</sup> Underlying both is the common feature that Taiwan is not, or at least not yet, Chinese territory and that, consequently, the Nation-

alist Government, being a government-in-exile (perhaps for them the term state-in-exile will be more appropriate), could no more fight down, not even fight with, its rival on the mainland. The latter part of the statement is a prediction which, though it may be good subject for arguments, has nothing to do with the existence or non-existence of the civil war *de facto*. The former part is a substantial judgement which raises many questions, theoretical as well as practical ones. This will be discussed in the next Chapter.

The above is a legal interpretation of the Situation. There is in the Taiwan Straits a civil war. In law, accordingly, freedom of action of foreign states in this situation is quite clear. Though as objective fact there is in existence of a state of civil strife in the Taiwan Straits, foreign states are free to or not to admit, or recognize, the factual existence of such a civil strife so as to make it relevant or irrelevant to international law. Their freedom of action is perhaps maximal here.<sup>21)</sup> Such recognition is matter more of policy than of law. Their judgments, naturally, are made at their own risks. But whether or not recognized as a war, the state of civil strife in the Taiwan Straits remains as it is. The Spanish Civil War, the Chinese Civil War, and many others, though they are far more furious than many international wars, were not, or have not been, recognised as civil wars *de jure*. However, they do not for this reason alone lose their nature of civil wars. And, being a civil war, the *status quo* in the Taiwan Straits, as all authorities have agreed, is not subject to prohibition by international law. Thus the significance of legal interpretation of the Situation lies not in the freedom of action of states, but rather in the independent and actual existence of the state of civil strife in the Taiwan Straits.

## CHAPTER 2 TERRITORIAL STATUS OF TAIWAN

The present issue must be kept distinct from the question of status of the two rival parties in China, on the one hand, and from the state of civil strife in the Taiwan Straits, on the other. What concerns us here is the question of title to, and sovereignty over, a territory, which is matter of international law proper.<sup>22)</sup>

### I. Background

Since 1683, Taiwan had been territory of the Chinese Empire. By Article 2 of the Shimonoseki Peace Treaty of 1895, it was ceded to Japan. During World War II, on December 1, 1943, the Cairo Declaration was made among the Principal Allies, in which Taiwan, referred to as Chinese territory stolen by Japan, was declared the territory which "shall be restored to the Republic of China". The Potsdam Proclamation of July 26, 1945 confirmed this point. On September 2, 1945, Japan signed the Instrument of Surrender, through which Japan "accepts the conditions put forth by the Allied Powers as co-victors" (Article 1), and "(shall) carry out the provisions of the Potsdam Proclamation" (Article 6). In this way Japan, in effect, promised to carry out the provisions of the Cairo Declaration. On the same day, General MacArthur, acting as the Supreme Commander for the Allied Powers in the Far East, issued the Directive No. 1, requiring, among other things, that Japanese armed forces on Taiwan surrendered to the Republic of China. The Japanese Government transformed this into its General Order No. 1 on the same day, ordering its armed forces on Taiwan to do accordingly.

On September 20 of the same year, the Government of the Republic of China issued a law proclaiming Taiwan a Chinese province. On October 25, it received surrender of Japanese armed forces

on Taiwan, thus physically took over this island. On June 22, 1946, the Chinese Government promulgated a law, making the inhabitants on this island Chinese nationals. No objection was raised from any of the co-victors.

On December 4, 1949, the Nationalist Government evacuated the mainland and re-established itself on this island, and since then it has been ruling stably.

On January 5, 1950, USA confirmed that Taiwan had been returned to China, without awaiting a formal cession.<sup>23)</sup> This reconfirmed the view theretofore held by USA. About 6 months later, however, due to the breaking out of the Korean War, USA changed its attitude. Simultaneous with neutralization of the Taiwan Straits, President Truman declared that Taiwan's future status would have to wait for recovery of security in the Pacific area, to be settled by a peace treaty with Japan (formal cession), or to be determined by the United Nations.<sup>24)</sup>

The San Francisco Peace Treaty with Japan (1951), however, did not settle this question; nor did the Peace Treaty (1952) between the Republic of China and Japan. Their stipulations go no further than Japan's renunciation of sovereignty over Taiwan, and no complete formal cession was made from Japan to any single state. On January 10, 1952, on the San Francisco Peace Treaty, J. F. Dulles, then advisor to US Secretary of State, made an official statement for records of the Senate, to the effect, *inter alia*, that Taiwan's status was yet undetermined, pending international determination in future.<sup>25)</sup> Since then, US has maintained this negative view.

In the case of the United Kingdom (UK) the condition is similar. Before 1950 when it recognized the Mainland Regime, UK had not objected to the claim that Taiwan had become Chinese territory. Thus it seemed to have adopted a position of acquiescence. As a matter of fact, "in September 1949, the British Government had made it clear that 'it believed that

strategic island of Formosa should remain Chinese—even if the Communist took over the control there’.”<sup>26)</sup> In the Korean War, UK, like USA, changed her view from the affirmative to the negative as against Chinese sovereignty over Taiwan.<sup>27)</sup> And this negative view has been maintained up to the present.

Against this view, quite naturally both Chinese entities have been consistently asserting China’s sovereignty over Taiwan. Their reasonings are not identical, and there is no agreement on the question as to when this island was restored to China. USSR and India endorse this affirmative view in favour of the Mainland Regime.<sup>28)</sup>

## II. The Antagonistic Interpretations

The crux of the issue, as seen from arguments given by both views, is whether a complete formal cession of Taiwan by Japan to China is necessary. This is determined in the first instance by the legal nature of the wartime arrangements, i.e., the Cairo Declaration, etc. USA and UK assert such necessity, with the reason that the wartime arrangements are not legally binding treaties.<sup>29)</sup> The Chinese entities, on the contrary, claim that no formal cession is required, because, among other things, the wartime arrangements have definite legal effect of transferring to China the sovereignty over Taiwan.<sup>30)</sup>

On theoretical plane, specialists split among themselves into two main groups, each developing new concepts and interpretations for this apparently traditional but novel issue to justify the antagonistic views held by two groups of states and by the Chinese entities referred to in the above.

### (1) The Negative View

Representing those who support the Anglo-American thesis is Schwarzenberger, who suggested the theory of ‘*condominium*’.

Schwarzenberger’s theory may be summed up as follows: (a)



On October 15 (*sic*, October 25?) 1945, in compliance with an order issued on the basis of consultation and agreement between Allied Powers concerned, Japanese forces in Taiwan surrendered to China; (b) with the consent of the Supreme Commander in the Far East, China undertook the administration of Taiwan; (c) hence China exercises only delegated authority in Taiwan, on behalf of those parties to the San Francisco Peace Treaty who recognise the Nationalist Government; (d) since there had been no formal cession of Taiwan from Japan to China, and since in the San Francisco Peace Treaty Japan renounced her title to Taiwan, this territory ceased to be Japanese, and the other parties to this treaty became co-sovereigns of Taiwan—*condominium*.<sup>31)</sup>

On the wartime arrangements, Schwarzenberger puts forth his arguments in the same Letter: (a) The Cairo Declaration was a joint communiqué or statement, and its contents, some understandings, were “at the most legal commitments... regarding their intention to restore ... Formosa to China”, and such intention was confirmed in the Potsdam Declaration; (b) so far as Japan was concerned, these understandings became legally binding, due to her acceptance of the Potsdam Declaration; and (c) whether these legal commitments were to be honoured, and which China was to have relation, were separate issues.

This interpretation is in line with the UK official view. But it is arbitrary as well as illogical. Among other things Schwarzenberger presumed the necessity of a formal cession, while formal cession, according to international law, though an affirmatively sufficient condition, is not a negatively necessary condition, for transfer of title to territory.<sup>32)</sup> Moreover, he confused surrender of the Japanese forces in Taiwan with other possible legal sources of China's rights to this territory.<sup>33)</sup> Again, when he said that the wartime arrangements were no sources of rights (not binding among the Allied Powers

making them) but were nevertheless sources of obligations (so far concerning Japan), he was self-contradictory even if his "legal commitments" be understood as *pacta de contrahendo*.<sup>34)</sup>

This is not all. Schwarzenberger was silent about the reason why the wartime arrangements were not legally binding; and this is the very basis of his suggestion of "condominium". He only so presumed. More fundamentally, his confusion of a state with its government<sup>35)</sup> deprives his theory of *condominium* of all validity. In short, Schwarzenberger's suggestion of "rule by delegation" is a fiction, and not wise fiction.<sup>36)</sup>

Be that as it may, similar line of interpretation, with various reasonings, was made also in the USA. Representing this group are Quincy Wright from viewpoint of international law and Walter Lippmann from that of international politics.

Wright's interpretation was based on the maxim *lex posterior derogat priori*. The result is that "the obligations undertaken by Great Britain and the USA in the Cairo Declaration of 1943" would have to give way to the UN Charter<sup>37)</sup> under which the principle of self-determination of peoples applies, and that therefore Taiwan is under *condominium*. On the other hand, Lippmann suggested the idea of "custody"<sup>38)</sup>. They both started from the two-China proposition<sup>39)</sup> and, like Schwarzenberger, presumed necessity of a complete formal cession and political/policy nature of the wartime arrangements.

## (2) The Affirmative View

This is the majority opinion. However, the reasonings are diversified.

Wang Si-kie, famous jurist and once Foreign Minister of the ROC, wrote early in 1947 on this issue. His line is in the main followed by the Chinese official view in later periods. His reasoning is as follows: (a) Taiwan is an historical territory of China, and the inhabitants are Chinese; (b) Japan's

domination had never been recognised, hence for China in 1945 there was no question of annexation or acquisition of new territory, but was only one of re-integration or restitution of a territory illegally robbed; (c) in the Instrument of Surrender there was no proviso that a formal cession would be necessary, and Japan's surrender on September 2, 1945 meant that it renounced her sovereignty over Taiwan in favour of China. In support of this thesis, Wang cited the case of Alsace and Lorraine as a precedent, which territories were returned to France through an armistice signed on November 11, 1918, and not through the Versailles Peace Treaty of June 28, 1919. Furthermore, he also raised the rule of estoppel against other Allied Powers.<sup>10)</sup>

Whereas the negative view must presume the requirement of a complete formal cession, hence logically deny the legally binding force of the wartime arrangements; the affirmative view cannot but deny any requirement of a formal cession, with the logical result that it must instead supply other source for Chinese sovereign rights to Taiwan in 1945, and that is, that it must prove the binding force of the wartime arrangements. But Wang seemed to have pushed from another angle. By so doing, however, he deprived his argument of all juridical force—he based his claim chiefly on moral grounds. Since his reasoning is read only fragmentarily, beyond this our criticism can not go lest we might do him injustice.

If Wang be considered representative of the position of the Government of Republic of China, Mei Ru-au, formerly judge of the (Tokyo) Military Tribunal for the Far East, may be considered that of the Mainland Regime.

Mei's thesis may be outlined thus: (a) Before the war between China's Ch'ing Dynasty and Japan (1894), Taiwan had continuously been Chinese territory; (b) China was pressed to make the Shimonoseki Treaty as a result of that aggressive war,

and since that time Taiwan had been occupied by Japanese aggressor; (c) on December 8, 1941, at the time when China formally declared war on Japan, she solemnly declared all treaties (including the Shimonoseki Treaty) made between China and Japan null and void; (d) in consequence, from that day Japan's domination over Taiwan lost its basis, and during the years of the Sino-Japanese War, Taiwan was under Japanese occupation; (e) from legal standpoint, China had the right to consider that her sovereignty over Taiwan had been recovered as of December 8, 1941; and (f) victory in the war against Japan guaranteed to China that (the effects of) her declaration (of nullification of the Shimonoseki Treaty, etc.) be realized, and on October 25, 1945 when the Chinese Government accepted Japan's surrender on Taiwan, China declared that 'from now on Taiwan and Penghu formally become Chinese territories anew', which was only the practical action taken by China to carry out her own declaration and, as a matter of fact, Taiwan was returned to China on October 25, 1945.<sup>41)</sup>

This thesis, indeed, is only a restatement of the view given by the Mainland Regime formally. It is also similar to Wang's view on some vital points, especially when Mei made moral appeal regarding Japan's war against China in 1894. Instead of basing Chinese sovereignty over Taiwan on the legally binding force of the wartime arrangements alone, Mei founded such sovereignty on the effect of China's declaration of war against Japan in 1941.<sup>42)</sup> But since the convincing power of legal reasoning is not necessarily matter of quantity, when his assertion of the "effect" of a declaration of war is discovered to be mistaken in law, the thesis loses its juridical basis and breaks down as a whole.

More concretely, to say that the Shimonoseki Peace Treaty was made under pressure (duress) as a result of the war of 1894, hence that, despite the fact that cession of Taiwan had

been made, this island remains Chinese historical territory, will meet with approval from no international lawyer.<sup>43)</sup> The cession of Taiwan from China to Japan in 1895 was legal, because at that time war was extra-judicial, and conquest legal means of obtaining title to territory.

In addition, the view that a declaration of war could annul all kinds of treaty and obligations deriving therefrom, is not at all correct statement of law. This is especially so, when a peace treaty is involved, and obligations (in our case, cession of Taiwan from China to Japan in 1895) under it had been executed, hence transfer of title to territory completed. A unilateral declaration of war (and even a war), though it, once made, will leave no room for choice on the part of the state which has been declared war, may not have the legal effect of altering the *status quo* established by a former peace treaty. This is why the status of Manchuria differs from that of Taiwan after World War II.<sup>44)</sup>

Thus, due to many reasons there appears no well-grounded agreement on the exact date for China's recovery of sovereignty over Taiwan: it may be 1895, or 1941, or 1945, or 1952, or even 1943 when the Cairo Declaration was made. This, to repeat, is the most vital point, seeing that it dominates the answer to the question as to whether or not the Mainland Regime has any claim to Taiwan at all. If at the very date of recovery of sovereignty by China over Taiwan the Mainland Regime had not come into existence, then the answer to this question must be in the negative. Actually, this is perhaps the root of disputes about the present issue.<sup>45)</sup>

There are many specialists in the field of international law who hold the affirmative view, but we can only raise those whose demonstrations are more convincing, and mention them in passing.

Thus, we have O'Connell (acquisition by occupation), Phillips

(subjugation), and Zemanek (original acquisition).<sup>46)</sup> Their concurrent point is that this issue, though a juridical one, could not be cut off from the recognition policy (toward China) of foreign states.<sup>47)</sup> In this way, their theories, though plausible, become impracticable and misleading at the last moment—they tend to find their shelter in the “two - China” theory, going the same way with the negative view by confusing the state with its government.

### III. Another Possible Interpretation

It must be confessed that all the theories examined in the above are seriously defective, hence that in objective law none of them is satisfactory.

To begin with, the deadly weakness common to all these interpretations is that some really fundamental points are missed. For instance, perhaps the answer might be more agreeable, if an interpretation be the logical conclusion of a more profound study of the legal nature of the “Alliance” in World War II. In other words, if this alliance was legally based (e. g., by tacit agreement (treaty) of alliance), there might exist a common will, organic in nature, which decision (the Cairo Declaration, for example) would be legally obligatory and binding upon all the parties to the alliance; but if there was no such agreement, not even one presumed, then what was reached at Cairo would be nothing more than “expression of intention”, as Churchill and Eden called it.

But in this hypothetical case, it is pregnant to see that China’s claim would seem to be in the right: if there was a legally based alliance, etc., the Cairo Declaration, whatever its form, would be legally binding, hence the parties (USA, UK) could not negate Chinese sovereignty over Taiwan if they would not at the same time violate their legal obligations;<sup>48)</sup> and if there was no such legally based alliance, then as the victor over

Japan (in this case the term 'co-victors' or co-belligerents would lose legal relevance) China would be legal to take over Taiwan by dint of her own belligerent right (*jus belli*) and independently of the Cairo Declaration. And since in such a case no other state might have any source of right concerning Taiwan, Japan's renunciation of rights, titles, etc. to Taiwan in the San Francisco Peace Treaty of 1951 (and in the Sino-Japanese Peace Treaty of 1952) would clearly imply also nominating China as the ceded state, and thus the cession, even if it be necessary for transfer of sovereignty, would become complete. In either case, the law sides with the affirmative view in favour of Chinese sovereignty over Taiwan.

There are therefore some other possible interpretations. But we do not have space to give details. With the material at hand, objectively it is rather hard to see why the affirmative view is not better grounded in law.

In the first place, a formal cession, as having been mentioned, is not an absolute condition for valid transfer of title to territory. It is only in case of doubt that formal cession is required; and indeed the concept of formal cession—renunciation of title and nomination of the new sovereign to the territory intended to be ceded—was made to function in ambiguous cases, and not otherwise. To insist that a formal cession is yet not complete (and in our case, this would mean that the latter half of a formal cession (nominating the new sovereign) has not been done), and that hence there is no cession, even if the ceded state is clear and even the territory has in fact been transferred, is to strain a legal norm for political purposes and to complicate the situation.

Secondly, international law does not require that an accord, be it named a treaty, an agreement, an arrangement or even a declaration, to be legally binding, must take a specific form.<sup>49)</sup> This is again a general principle to which no international

lawyer will raise objection.

The above two points are the components of the watershed between the two antagonistic groups about Taiwan's territorial status. After all, it is unbelievable that the heads of state at Cairo and at Potsdam intended that the declarations they would make would not be legally binding among themselves at all; although, it must be admitted that at the time of their being made these documents were of no legal concern of Japan. *Pacta tertiis nec nocent nec prosunt*.

So conceived, the issue may be interpreted in a different way. Let us expound in the sequence.

(A) The Potsdam Proclamation (with the Cairo Declaration as its part), being an ultimatum toward Japan, derived its legal validity from Japan's acceptance of it. That is to say, at least as among the Allied Powers who had made these documents the legally binding force of the Potsdam Proclamation was conditional. This was so, because before the Imperial Rescript of August 15, 1945 was made to the Japanese public by the Japanese Government with which Japan accepted the provisions of the "Joint Declaration" (that is, the Potsdam Proclamation), the content of this Proclamation had remained amendable by a later common-will (if there was one) of the Allied Powers that had made the document, and its effect remained indefinite accordingly (and it is even improper here to talk about legal effect). In this sense, the Proclamation (and the Cairo Declaration, too), though it was an offer, may be considered matter of political intentions (policy).

(B) But as soon as Japan accepted the Potsdam Proclamation on August 15, 1945, which acceptance would later be confirmed in a more formal way through the Instrument of Surrender of September 2, 1945, the Potsdam Proclamation, which incorporated the content of the Cairo Declaration, became an international accord legally binding upon Japan, and upon the Allied



Powers too; whether we treat it as a bilateral accord between the Allied Powers as one party and Japan as the other party, or consider it as a multilateral accord among all the states directly concerned. Before the signing of the Instrument of Surrender on September 2, 1945, Japan had been fully free to do as a sovereign state on equal footing with the Allied Powers; and so far as accords were reached, even with the victors, in law she ought to be treated as an equal, and the obligations given rise by those accords were strictly legal, that no party could without consent from other parties change the contents of such accords, less could they give such contents other (e. g., political) nature.

(C) In this way, the content of the Cairo Declaration became obligatory for Japan as for the Allied Powers.<sup>50</sup> China's acceptance of surrender of Japanese armed forces on Taiwan was, accordingly, execution of part of the content of the Cairo Declaration, even if China had not or could not have in law taken over the island on the basis of her own *jus belli*. And it must be emphasized that what has been legally executed cannot be subject to doubts raised at a later date for political reasons. The thesis that China was delegated by the Allied Powers to rule Taiwan is therefore no less mistaken than the assertion that Japan had been in illegal occupation of Taiwan since 1895.

(D) Even if it be considered possible that the Allied Powers other than China, based by the legal "alliance" against Japan, had some rights to Taiwan, they gave such rights up in 1943 and in 1945 when they made the two wartime documents—they could have made Taiwan an object of, say, *condominium*, but they did not do so. Thus, the Instrument of Surrender of September 2, 1945 and Chinese physical control over Taiwan since October 25, 1945, coupled by acquiescence on the part of other Allied Powers, become strongest proofs of evident transfer of title to, and sovereignty over, the island of

Taiwan from Japan to China.<sup>51)</sup> There was therefore no need of a complete formal cession; and the insertion of Japan's renunciation-clause into the San Francisco Peace Treaty was clearly done on behalf of China, because it would be ridiculous to conceive otherwise, due to the fact that no other state may be possible new sovereign to Taiwan in future without China's consent<sup>52)</sup>, if for no other reasons. This may be used as a pro-China argument for argument's sake on the omission in the peace treaties to nominate China as the ceded state. In fact, such omission was a result of political expediency; and political reasons can never take precedence over the law unless that law has been changed previously.

(E) Here we come to the most vital point. From the above demonstration, the result would be that, Taiwan had become Chinese territory, *before the coming into being of the PRC*, hence at least for those states that recognize the ROC (and for states that recognize neither of the two Chinese parties too), Taiwan is Chinese territory ruled by the Nationalist Government as the legitimate government of the State of China. But for states which recognize PRC, there is some difficulty to say the same thing. For, the Mainland Regime has never been able to hold physical control over Taiwan.<sup>53)</sup> It is in this sense that we may agree with Phillip and Zemanek, that the Taiwan issue is determined by recognition.

In any case, it seems not superfluous to repeat here that it is the state, not its government, that is subject of international law (that is, subject of rights and obligations), and that the government, in all events, only exercises rights belonging to the state. No challenges may be justified in law against Chinese sovereignty over, and title to, Taiwan. Freedom of action of states in general on this issue is therefore minimal. States might assert the contrary, but they do so at their own risks; the legal picture is not the least influenced thereby. The negative

view, objectively speaking, is a result of purposive mixture of the legal status of Taiwan as territory, and the *status quo* in the Taiwan Straits which concerns the nature of the armed struggle between the two Chinese parties. This is inexcusable, but it is deeply rooted, having close relation with the two-China theory suggested by many as a means of resolving the dilemma "one China, or two Chinas?"

## Notes

- 1) The term "civil strife" has in many an occasions been used to describe a state of hostilities within a state not recognized as a war *de jure* (belligerency), hence not *ipso facto* relevant to international law (of neutrality, of recognition, etc.). See Padelford, *International Law and Diplomacy in the Spanish Civil Strife* (1939), Preface, viii. Cf. The Havana Convention on Rights and Duties of Third States in Case of Civil Strife (1900); The Pan-American Convention on Duties and Rights of States in the Event of Civil Strife (1928). This term is adopted here for the purpose of avoiding prejudice to affirm or to negate the existence of a civil "war" which is a juridical fact.
- 2) Gentili, *De Jure Belli Libri Tres*, English translation, in *Classics of International Law*, lib. I, cap. 2, on p. 12, and Phillipson's Introduction thereto.
- 3) Grotius, *De Jure Belli ac Pacis*, lib. I, cap. 1. ii and note 1; lib. III, cap. XXI, 1.
- 4) Brierly, *Outlook for International Law* (1944) pp. 49—50; Oppenheim-Lauterpacht, *International Law*, vol. II, 7th ed. (1952) p. 202 (also vol II, 2nd ed. (1912) p. 60).
- 5) Oppenheim-Lauterpacht, vol. II, 7th ed., op. cit., p. 209.
- 6) Unconditional surrender in the Second World War was not 'unconditional' at all. This is so, because survival of the defeated was presumed. See, Armstrong, *Unconditional Surrender* (1961), Preface and p. 13 ff.; Chase in *Political Science Quarterly* (1955) p. 263. Strupp-Schlochauer, *Wörterbuch des Völkerrecht*, Erst. Band (1960) S. 261; Edwards in *Encyclopaedia of the Social Sciences*, Vols. III—IV, 12th printing (1957), (III) p. 523 f. Wehberg in *Recueil des Cours, Académie de Droit International de la Haye (Hague Recueil)* (1938) (I) p. 39; Garner in *American Journal of International Law (AJ)* (1937) Ed. Comment, p. 66 and note 2 idem.; Briggs, *The Law of Nations, Cases, etc.* (1938) p. 729 f.; Verdross, *Völkerrecht* (1950), Spanish tr. (1955) páginas 374 y 409.
- 7) The Prize Case (1862), in Chen, *The International Law of Recognition* (1951) p. 343.
- 8) Rourke, in *AJ* (1937) pp. 400 and 406; Hershey, *Essentials of International Public Law and Organization*, revised edition (1930) pp. 201—202 and note 16 on p. 204; McNair, *International Law Opinion*, vol. II (1956) p. 371; Oppenheim-Lauterpacht, op. cit., pp. 209—210 and note 1 on p. 210; McNair's Oppenheim, *International Law*, vol. II, 4th ed., (1926) p. 124; Padelford, op. cit., viii, and in *AJ* (1937) note 25 on p. 230 and p. 237; Hall, *International Law*, 8th ed. (1924) p. 36.

- Lorimer, *The Institute of Law of Nations* (1883) p. 143; Lauterpacht, *Recognition in International Law* (1948) § 58; Wehberg, *op. cit.*, pp. 37, 85, 95, 98; Brierly, *Law of Nations*, 6th ed. (1963, Waldock's Ed.) p. 142; Dana's *Wheaton*, p. 374; Hall, *op. cit.*, pp. 39—40; Moore, *Digest*, I, p. 165; Y. de Yanguas Messia, *Beligerancia No Intervención Y Reconocimiento* (1938) pág. 21.
- 9) Edwards, *op. cit.*, p. 524; Chen, *op. cit.*, p. 307; Rougier, *Les Guerres Civiles et le Droit des Gens* (1903) p. 387; Oppenheim-Lauterpacht vol. II, *op. cit.*, p. 209.
  - 10) Article 8. Resolution of the Institut de Droit International (1900); Vattel, *Droit des Gens*, English tr. p. 427; Quadri, *Diritto Internaz. Pubbl.* 3<sup>a</sup> ediz. (1960) pag. 403—4; Lawrence, *Principles of International Law*, 7th ed. (1923) p. 331; Lauterpacht, *Recognition*, *op. cit.*, §§ 58, 60.
  - 11) Padelford, *Civil Strife*, *op. cit.*, note 2 on p. 2, p. 17, and p. 21; Chen, *op. cit.*, p. 307; Arangio-Ruiz, "La Questione Cinese", in vol. 1<sup>o</sup>, *Scritti di Diritto Int. in Honore di T. Perassi*, p. 68.
  - 12) *Essentials*, *op. cit.*, p. 203.
  - 13) Brierly, *Law of Nations*, *op. cit.*, p. 141; Wehberg, *op. cit.*, p. 88. Cf. Fauchille, *Traité de Droit Int. Pub. (Bonfils éd.)*, Tom. I (1925) pt. I, p. 309; Hall, quoted in Chen, *op. cit.*, pp. 365—66.
  - 14) Monaco, *Manuale di Diritto Int. Pubbl.* (1960) pag. 434.
  - 15) Wehberg, *op. cit.*, p. 86.
  - 16) Cf. Rourke, *op. cit.*, p. 407; Hershey, *op. cit.*, note 21 on p. 206.
  - 17) The fact that both parties claim legitimacy, presupposes possibility of such full-scale attack. The situation will, and must, come to a period of closure by war if peaceful means be impotent.  
In fact, in our history there has been no war fought without intervals. Actually, in our situation we cannot perceive a complete and permanent standstill, if we are not to fall into self-deception. There have been shellings between both sides; there are fights in the sky and at sea. Such a situation is nothing less than a civil war *de facto*. V. The Prize Case (1862), *loc. cit.*
  - 18) It may be said on the contrary that the existence of the Nationalist Government profits the Mainland Regime in regard to its claim of sovereignty over Taiwan, in the sense that the civil strife is maintained in form if not in substance.
  - 19) The Spanish Civil War provides us with a good precedent, see, Thomas, *The Spanish Civil War* (1961) pp. 569 ff., 579 ff., 606; Padelford, *Civil Strife*, *op. cit.*, Ch. VII.
  - 20) Lauterpacht is a good example, see his "Recognition of Government" in *The London Times* (January 6, 1950); for criticism, see Arangio-Ruiz, *op. cit.*, pp. 69 and 76. Cf. Q. Wright in *AJ* (1955) p. 323.
  - 21) See among huge number of authorities agreeing on this point,

Hackworth, Digest, vol. 1 (1940) p. 391. *Lex desideratum*, for humanitarian reasons, international law should have a rule governing such peculiar civil war, so as to make applicable part of laws of war.

- 22) Confusion of the three questions is not rarity, and it has been proved that this is destined to lead to mistaken conclusions. See, Dean in Proceedings of the American Society of International Law (1955) p. 105; Frankenstein in Revue Pol. et Parl., Tom. 206 (1952) p. 59.

The term "Taiwan" as it is used here includes Penghu (The Pescadores) but excludes the offshore isles of Kinmen and Matsu.

- 23) Cf. E. Maurer in US Dept. of State Bull. vol. 39 (1958) No. 1017, December, p. 1006 ff.
- 24) Truman's speech on June 25, 1950. Cf. Statement by UK Foreign Office to the Supreme Court of Hongkong regarding the case of Civil Air Transport Inc. v. Chennault and Others, see Green in International Law Quarterly (1950) pp. 418—422. For details on motives behind this change, see Colliard in Annuaire Français de Dr. Int. (1955) p. 73 et seq. For content of official statements, etc. in this regard, see Phillips Jr., in Western Pol. Quarterly, vol. 10 (1957) No. 2, June, p. 280 and note 29 idem; Dean in Foreign Affairs (1954—55) p. 372.
- 25) W. Lippmann's article in the NY Herald Tribune, reproduced in the Japan Times (Feb. 4, 1955). The same view was repeated by Dulles himself after he had become Secretary of State. And, in connection with this, at the time of ratifying the Treaty of Mutual Defence with the Republic of China, the US Senate on December 2, 1954 made known its 'understanding' that "nothing in the present treaty shall be construed as affecting or modifying the legal status or the sovereignty of the territories referred to in Article VI" (Article VI reads: "... the terms ... 'territories' shall mean in respect of the Republic of China, Taiwan, etc.") See Phillips, op. cit., pp. 277—9, 281—282; Brohi in Hague Recueil (1961) (I) p. 210.
- 26) Green in Yearbook of World Affairs (1952) p. 20.
- 27) V. Foreign Minister Younger's written answer to the House of Commons, Parl. Deb., vol. 478 (1950), Col. 60; Reading's answer at the House of Lords, Dec. 20, 1954, Parl. Papers, 5 S. H. L., vol. 190, Cols. 510—513. Cf. O'Connell in AJ (1956) p. 409; E. Lauterpacht, in the Int. and Comparative Law Quarterly (1956) pp. 143—4. See further, Foreign Minister Eden's written answer to the House of Commons, Parl. Deb. (Hansard), H. of C. Off. Rep., vol. 536 (Feb. 4, 1955) Col. 159, in which Churchill's line was followed, to the effect that Taiwan's legal status was 'uncertain or undetermined'. It is interesting to see that Attlee (and Bevin before), who had taken the

negative view, this time challenged Eden's by asserting sovereignty for the Mainland Regime, see O'Connell, *op. cit.*, p. 406, and Parl. Papers, *op. cit.*, vol. 531, Col. 1532.

It must also be mentioned here that Canada and Australia follow UK's negative view, see O'Connell, *op. cit.*, p. 410.

- 28) The Sekai (Japanese language (J)) (Apr. 1955) p. 91 f. For USSR view, see *Miezdanarodnoe Pravo* (International Law) (Moscow 1957) Japanese tr. by Yasui et al., vol. I, p. 211; USSR Memorandum to USA regarding Taiwan's status, on May 7 and June 10, 1951; the Molotov Speech at the Supreme Soviet Committee, Feb. 8, 1955. For Indian view and official statements, see Green in Yearbook of World Affairs, *op. cit.*, p. 26 and Jain in AJ (1963) p. 39 f.
- 29) See on the former point, statement by Turton, UK Joint Under-Secretary of State for Foreign Affairs, made on May 4, 1955 (Parl. Deb. vol. 540, Cols. 1870—71). On the latter point, Churchill's official view was that "the Cairo Declaration of 1943 contained merely a statement of common purpose", hence according to him it was not binding upon the parties to it; see Parl. Deb. (Hansard) *op. cit.*, vol. 548 (1955).
- 30) Chiang Kai-shek's address (Feb. 8, 1955), presumably in response to Churchill's and Eden's negative view; formal statement on the legal status of Taiwan by the Foreign Ministry of the Republic of China on Oct. 16, 1959, as a reaction against a judgment of the US Federal Court which denied to China her sovereignty over Taiwan. In this formal statement, it is noteworthy that China's declaration of war on Japan on Dec. 9, 1941 was put forth as legal basis for Chinese sovereignty over Taiwan. The reasoning is this: the declaration of war categorically annulled all treaties and agreements made between China and Japan, hence the Shimonoseki Peace Treaty (in the statement, the word 'Peace' was dropped, perhaps intentionally) also became null and void, and this was later confirmed by Article 4 of the Peace Treaty of 1952 between the Republic of China and Japan. The date for China's recovery of sovereignty over Taiwan was declared in that statement to be Oct. 25, 1945.

The Mainland Regime shares the same view, but instead stresses that Taiwan is historically a part of China, adding that since 1945 no state had ever questioned this legal fact (that China regained sovereignty over that island); thus the question of estoppel was raised. See Chou En-lai's statement (June 28, 1950), in Important Documents concerning the Question of Taiwan (1955) 14 and 22; Wu Hsiu-chuan's speech at the UN Security Council (Nov. 28, 1950), UNSC Off. Recs. (1950) p. 6, and Important Documents, *op. cit.*, 41—42; The Ren Min Ri Bao (People's Daily), Dec. 5, 1954 (Editorial); Chou En-lai's interview with an English correspondent on Sept. 5, 1960.

Cf. Frankenstein, *op. cit.*, pp. 51—52. It must be reminded here, that since the Mainland Regime has declared null and void all international arrangements made by the Nationalist Government, in logic it may not assert the effects of the 'legal fact' occurred in 1945 as a result of a provision of an international arrangement declared null and void by itself. See 159 *London Economist* 203 (1950), quoted in Jain, *op. cit.*, note 30 on p. 33.

As a matter of fact, the two Chinese entities do not consider the cession made under the Shimonoseki Peace Treaty valid at all. To them such cession was, to borrow Fitzgerald's words, "a concession to force, without validity" (*Revolution in China* (1952) p. 202). This is understandable, because the Chinese are apt to consider juridical question in terms of morality (*ibid.* pp. 9, 28).

Pending the question of whether the Chinese claim is sustainable in law, attention must be drawn to one vital point: Is the exact date for "restoration" of Chinese sovereignty over Taiwan October 25, 1945 when the Nationalist Government took over physical control of that island, or August 5, 1952 when the peace treaty between the Republic of China and Japan came into force? If the latter date be correct, then in law before that day the Nationalist Government had exercised only *de facto* authorities as a victorious belligerent occupant. This raises a serious question, in view of the fact that before this date (Aug. 5, 1952) there had already existed the dual-government phenomenon in China, which is the true source of dispute.

- 31) Letter to the editor of *The Times*, *The London Times*, Feb. 2, 1955. Concur except point (4), Green in *op. cit.*, p. 5; contra, O'Connell, *op. cit.*, p. 411 ff. It must be pointed out that neither is there in the San Francisco Peace Treaty a single word leading to such *condominium*. Thus, it is perhaps arguable that to assert an implied *condominium* in this issue is less convincing than to assert implied transfer of sovereignty from Japan to China, which would be more realistic. Cf. Strupp-Schlochauer, *Wörterbuch*, cited in *supra* note 6, S. S. 293, 297; Oppenheim-Lauterpacht, *Int. Law*, vol. I, 8th ed. (1961) p. 453 et seq. Cf. also Oppenheim-Lauterpacht, vol. II, *op. cit.*, p. 239.
- 32) This is generally agreed among international lawyers. See Phillips, *op. cit.*, p. 288 and note 53, l. c.; Dean, *op. cit.*, p. 96; Myers, in *AJ* (1957) p. 599 and note 124, l. c.; Potter in *Encyclopaedia of the Social Sciences*, *op. cit.*, vol. III, pp. 319—20.
- 33) General Directive No. 1 of the Supreme Commander was addressed to the Japanese Government, never to China as a co-victor; and surrender by Japanese forces in Taiwan was execution of the General Order No. 1 of the Japanese Government which transformed the



- content of the General Directive No. 1. See Yokota, *Occupation of Japan by the United Nations (J)* (1947) pp. 71, 73, 74; Ueda in the *Asian Affairs (J)* (1955) vol. 3, No. 6, p. 39.
- 34) In the last analysis, all treaty obligations are nothing but "understandings" as to what legal norms shall apply to a certain case, see Brierly, *Law of Nations*, op. cit., p. 58.
  - 35) It is the state, and not its government, that may be entitled to sovereignty over territory. It is perhaps not impossible to conceive a theory of "suspended sovereignty" here, in the sense that cession of Taiwan to China has been done, albeit done incompletely as a matter of formality (renunciation of old sovereignty without naming the new sovereign), that hence this island can not be transferred to any other state without consent from China, and that in conclusion Chinese sovereignty over Taiwan is only suspended. Cf. O'Connell, op. cit., p. 411.
  - 36) In this sense, see Jain, op. cit., p. 29, cited Jessup's criticism of this theory. See further criticism not purely juridical, Younger's and Paget's Letters to the editor of *The Times*, *The London Times*, op. cit. Feb. 4 and Feb. 7, 1955 respectively.
  - 37) Referred to in Jain, op. cit., pp. 29—30. At an early date, Wright had maintained similar position, though somewhat ambiguously and inconsistent as to the real nature of the Cairo Declaration, etc., see Wright in *AJ* (1955) p. 322, p. 333. Cf. US reply to USSR (Dec. 27, 1950) 24 *Dept. of State Bull.*, pp. 65—66 (1950).
  - 38) Lippmann in op. cit. and in the *Japan Times*, Feb. 7, 1955. For criticism, see Phillips, op. cit., p. 276. Lippmann, however, changed his view later, see Sued, *Walter Lippmann's Philosophy of Int. Politics* (1963) p. 149 f.
  - 39) This can also be seen from Schwarzenberger's concluding part of his Letter to the *Times*, cited above. For criticism of this suggestion of UN sovereignty, see O'Connell, op. cit., p. 408; Zemanek in *Archiv des Völkerrechts*, Bd. 5 (1955) S. 316.
  - 40) Article in *Central Daily News* (Nanking), April 14, 1947. The full Chinese original text is not obtainable, and the content of the reasoning here is taken from Frankenstein (op. cit., pp. 57—58) and Tabata's article (in *Horitsu Jiho* vol. 28, No. 10, 1956, pp. 1156—57). For criticism of Wang's view, see Zemanek, op. cit., S. S. 311 ff.
  - 41) Mei in *The Modern Time* (Chinese (C)), June 1955, published on mainland. Note that here, too, the word 'peace' was deleted from the term "Shimonoseki Peace Treaty", as if such deletion might have anything to do with the nature of that peace treaty as a 'peace' treaty.
  - 42) For an opinion, equally of the PRC, assimilating the status of Taiwan with that of Manchuria, see Chan Ti-chiang in *The New*

China Monthly (C), March 1955.

- 43) Coactus voluit; sed tamen voluit. See Fauchille, op. cit., pp. 298—99; Cavaglieri in Rivista di Dir. Int. (RDI), anno. 27 (1935) pp. 9—10; Visscher, Théories et Réalités en Dr. Int. Pub., Engl. tr. by Corbett (1957) pp. 246—47. On historical territory, see the case of Legal Status of Eastern Greenland (PCIJ, 1933, Ser. A/B No. 53), but there was no question of discontinuity in legal title (the time element) as in the case of Taiwan. Cf. Von der Heydte in AJ (1935) p. 426 f., esp. pp. 465—67; Graham in ibid. (1944) Ed. Comm't.
- 44) See a discussion of Manchuria's territorial status, Beloff, Foreign Policy and the Democratic Process (1955) pp. 44 ff.
- 45) On stress of importance of this 'date' for other reasons, see O'Connell, op. cit.
- 46) O'Connell, op. cit., pp. 406—414; Phillips, op. cit., p. 281 f.; Zemanek, op. cit., S. S. 315—319 (concur, Tabata, op. cit., p. 1161; but cf. K. Irie in the Sekai (J), Apr. 1955, p. 94). For a strong and convincing view that on the present issue the law is against a two-China theory, see Starace in RDI (1959) p. 83 f.
- 47) Phillips even went so far as to say that "the legal status of Formosa... no longer rests on the Cairo and Potsdam Declarations or even upon the Japanese peace treaty, but rather upon the recognition policies of various governments in the world" (op. cit., p. 288).  
On the other hand, Zemanek confirmed China's sovereignty over Taiwan with his theory of *terra derelicta* but reserved the last word for recognition policies of foreign states toward China (op. cit., S. S. 316 ff. and S. 319).
- 48) Cf. Heilborn, Grundbegriffe des Völk., 1912, S. 32 ff. Both Churchill and Eden seemed to have resorted to the *clausula rebus sic stantibus* (vital change of circumstances) at the last moment, in order to negate Chinese title to Taiwan without bearing the risk of such negation's being denounced a violation of treaty, see Sekai Shuho (J) Feb. 21, 1955, p. 58. But it is very difficult to suggest a conclusive answer in such a case, hence the result is most likely to be a situation of criminations and recriminations. On such difficulty, see Parry, The Sources and Evidences of International Law, (1965) p. 62.
- 49) Satow, A Guide to Diplomatic Practice, 4th ed. (1961) p. 332 f., quotes Oppenheim with approval; Monaco in Hague Recueil (1949) (II), pp. 294—5, 300, 306; Myers in AJ (1957) note 66 on p. 587; McNair in the British Yearbook of International Law (BY) (1952) 226 and The Law of Treaties (1961) pp. 6, 10, 12 with cases cited in Note 3, p. 23 l.c. See further, Nicolson, Diplomacy, 3rd ed. (1962) p. 195, p. 228 and p. 243; Kaplan & Katzenbach, The Political Foundations of International Law (1961) pp. 237—38. Oppenheim even

asserts that a unilateral declaration may create legal rights/obligations, see Satow, *ibid.*, p. 333. It is desirable to make distinction between declarations jointly made by many states for the common aim and with common content, and declarations separately made by states with contents accidentally similar. Cf. Myers, *loc. cit.*, pp. 588, 599, and 605.

- 50) Monaco in Hague Recueil, *op. cit.*, pp. 284, 328—9, 358.
- 51) The formal validity of such transfer dates back to August 15, 1945, when the Cairo Declaration obtained its legally obligatory nature through the accepted Potsdam Proclamation; cf. Starace in RDI, *op. cit.*, pp. 76, 79 and nota on p. 80.
- 52) Because of the rule of estoppel, the theory of 'co-sovereignty' cannot stand in any sense. Cf. Colliard, *op. cit.*, p. 70, and Starace, *ibid.*, p. 72.
- 53) Cf. Kunz in AJ (1950) Ed. Comm't. p. 719. Of course, the Mainland Regime may, if it wishes, claim 'constructive' control over Taiwan as a result of its legitimacy recognised by a group of states. But the Nationalist Government surely may, with stronger reasons (due to the rule that presumption of legitimacy is in favour of the established, traditional, government), also claim constructive control over China mainland. And this is the ultimate weakness of the Mainland Regime. On this point, see Chapter 3 below on the implication of the rule of effective control.

## PART TWO

### THE CHINA PROBLEM

#### BASIC JURIDICAL POINTS OF THE MEANS-ISSUES

The centre of the China Problem is the question "one China, or two Chinas?" This may be named the object-issue. This issue is not a juridical one, there is therefore no need to discuss it here.<sup>1)</sup> However, to solve this issue, hence also the cause-issues already discussed in Part One, there are two devices both of which are juridical in nature: Recognition and determination of the UN on the Chinese Representation Question. The subject matters of these devices may be termed the means-issues, and are to be discussed in Chapters 3 and 4 respectively.

Publications on these issues are voluminous, and, indeed nearly all relevant disputes have been discussed. In this Part, therefore, we will examine only the most basic points.

It must be warned at the outset that, as content of the China problem in the broad sense, these two issues have been considered, through emphases by specialists, as more important than the China problem in the proper (narrow) sense (i. e., the two cause-issues discussed in Part One). This is a dangerous mistake. It leads to a tendency of confusing the means with the end: it impresses one with the idea as if a solution of the China problem (in the proper sense) through recognition and/or through determination of UN on the Chinese representation question, with whatever results, were the end, thus giving birth to reckless, sometimes absurd, suggestions without considering the reality of the China Situation. Unreasonable solutions, even if they be realised, do not solve the China problem at all; they only change its shape and give it a new content, hence make the problem more complicated.

Consequently, it must be borne in mind that the two issues

of recognition and UN representation are always the "means", never the ends, of studying the China problem: they are the means to solve the question "One China, or two Chinas?"

### CHAPTER 3 THE RECOGNITION ISSUE

Recognition, understood in our problem here, is an overt act expressive of the will of a foreign state to maintain or to alter its attitude toward the China Situation (China problem in the proper sense) in connection with the status of the two rival "governments" in China.<sup>3</sup> Such act, through operation of law, gives the government which is recognised as legitimate, the qualification to represent its state to the exclusion of its rival, including a claim to exercise the rights belonging to the state, including, that is, the so-called right to representation in the UN, *as against any foreign state so recognises it.*<sup>3</sup>

#### I. Effective Control (The Principle of Effectivity)—A Re-interpretation

The should-be focus, not always being so treated, around which all discussions are to be undertaken, is "effective control" which is the objective, and is said to be the only objective, criterion for recognition. This has nearly without exception been presupposed as something easily understood by all. And all unfortunate disagreements and shortcomings have their common origin in interpretations of this principle (or rule).

It is generally admitted that, like all other topics which are in the process of normative crystallisation, question of recognition too takes as the centre the applicability of a rule asserted to be *jus vigente*; that is, all disputes have their source in the existence or non-existence, and the content, of a legal norm. This is the problem of the law 'is' and the law 'should-be'.<sup>4</sup> In addition, even when the content be agreed upon, there re-

mains the question of interpretation. In this regard, the principle of effectivity (effective control) as a condition to recognition of government comes to the foremost in the China problem. But it is of course not everything; it is only one of the decisive points. For, recognition, to repeat, is merely one of the means-issues of the problem here. Hence, not at all is this principle meant that other conditions or points are immaterial<sup>5)</sup>.

"Effective control" is an observable fact. It is a species of the genus "effectivity", and is generally treated as the principle for legal admissibility of an act of recognition of government instituted by force, etc.<sup>6)</sup>

However, this is not entirely free from doubts. Many authorities, especially those of Latin origin, even question the more fundamental point or the precondition, as to whether "effectivity" (hence 'effective control') is a legal principle at all, as understood by most of their Anglo-American colleagues.<sup>7)</sup>

Even if it be conceded that "effective control" is a legal principle, its basis and nature of function are not self-evident.<sup>8)</sup> And, following this there is yet another question of substance: what is the content of this principle, and where are the criteria for interpreting this normative content, at least so far as recognition of government is concerned?<sup>9)</sup> All these are not to beg questions, nor to find fault with any particular interpretation. Actually, these are, one way or the other, sources of disputes clearly given in publications.

In consequence, paradoxically, if effective control is a standard, it needs a standard for itself. Such 'standard of standard' can be found, maybe, only after re-interpretation, through anatomy, of the notion "effective control".

The concept 'effective control' has two essences: the objective essence of observable fact (physical control), and the subjective essence of evaluation (judgement on "effective" or "ineffective" of such control). To push one step forward, the essence of

'control' further consists of two elements, both quantitative: (factual) control of territory and (psychological) control over people (obedience). The essence of 'effective', on the other hand, is determined by the 'time' element (permanency) which is in turn conditioned by the 'quality' element (absence of serious threat to stability). Thus the concept 'effective control' has two aspects, one affirmative, the other negative and, in case of doubt, the presumption, according to international law, is in favour of the established (traditional) government.

In this way, "effective control" becomes observable not in the affirmative aspect (as understood by commonsense), but in the negative aspect. To say the extreme, both control of territory and control over people are symbolic, hence both are not exactly "observable" facts in all cases. And, in connection with the question of "effective" or "ineffective", the really objectively observable phenomenon is the negative aspect only: control of territory to the exclusion of the rival force, and control over people without large-scale resistance (hence absence of a rival force representing (symbolic) the people or part thereof). By so analyzed and reformed, the notion "effective control" is linked with the symbolic 'consent' of the governed<sup>10</sup>, and is made clear and more dependable as criterion for judgment by policy-makers of states in considering the legal admissibility of their acts of recognition of new government instituted/organised by anti-constitutional means. In this picture, it must be emphasised, the negative aspect of the "effective" essence occupies a paramount position: it becomes the determinant of the notion of "effective control" as a whole. This, expressed in another manner, will be this, that, when one is in quest of the point as to whether or not a certain 'control' is 'effective' in a given case of newly instituted revolutionary entity, the *prima facie* test, and indeed conclusive evidence, would be whether the established government is still in existence and carries on

its armed contention against the seemingly successful revolutionary entity.<sup>11)</sup> This may be given the name "the negative test of effectivity"; it blocks the "effective" nature of the fact of physical control. In concrete terms, it determines the prospect of permanency (stability) of a new government: whether there exists serious menace—probability of its being overthrown or of its decreasing in power within reasonable period.<sup>12)</sup> Thus, not incidentally, the question of change of war-aim of the parties to a civil strife comes into our view—in the context of the distinction between 'revolution' and 'rebellion', such change of aim would materially decide the point of effectivity.<sup>13)</sup> Furthermore, the question as to whether the established government, which is still trying to put down the revolution or to suppress the rebellion, undertakes this on foreign soil or on the national territory, would also become vital.<sup>14)</sup> This is exactly the situation in China.

## II. Effective Control and the China Problem

But the theoretical world of international law seems to be in an obscure condition on the point of applicability, hence of interpretation, of this rule. One example only will suffice for showing this backwardness, and also for making ourselves avoid the extremes asserted by writers to the point of dogmatism if not of absurdity.

The most instructive example is perhaps Lauterpacht's opinion. Immediately after UK recognition of the Mainland Regime (January 6, 1950), Lauterpacht justified this act with the reason, *inter alia*, that "to maintain that the lawful government holding out in one isolated fortress is entitled to continued recognition *de jure* is to strain to breaking point an otherwise unimpeachable rule." "It is a question of fact," he added, "to be ascertained in good faith, whether the authority of the lawful government has become purely nominal."<sup>14)</sup> This directly con-



cerns the rule of effective control and the China problem (recognition). But this would be in conflict with his own assertion of the rule of presumption (of legitimacy) in favour of the established government "so long as the revolution has not been fully successful, and so long as the lawful government remains within the national territory and asserts its authority."<sup>15)</sup> Such conflict can be evaded, and Lauterpacht can be consistent, only when and if the Chinese Civil Strife of the 1940's be considered to have come to an end (hence the situation of armed hostilities be totally ignored), and when Taiwan be presupposed as non-Chinese territory. But both have been demonstrated to be misleading.<sup>16)</sup>

As a matter of fact, there are many good lawyers against Lauterpacht's above view. Chen is at least as correct as Lauterpacht, when he says: "As long as the war lasts the government which has hitherto been governing continues to be regarded internationally as the *de jure* government of the state, to whatever extent it may have lost actual control".<sup>17)</sup> Furthermore, Ruiz is a little careful, and with vision, in reminding Lauterpacht that, *inter alia*, "Formosa is not a fortress".<sup>18)</sup>

As a matter of theory, Lauterpacht's view would lead to a situation of state-in-exile, of which one can find no precedent in history and about which, no explanation in international law.<sup>19)</sup> And, indeed, his view, if sustained, would be a two-China theory which realisation is, to repeat, highly improbable. The Nationalist Government is not a nominal government like the Tinoco Regime of a small country like Costa Rica at its last stage; its existence, after its evacuating the mainland, has continued for nearly 20 years (note that the Tinoco Government existed only for a little more than two years). And, like it or not, it is recognised as the legitimate government of the State of China (The Republic of China), hence it is not "isolated" either.

The rule of effective control, to be an 'unimpeachable' rule, should, therefore, include as its part, or should refer to, the length of time of existence of the established government "ousted", the size of territory/people it controls, number of states recognising it, and its traditional international position. These are fair considerations. They point to the significance of the negative aspect of effective control or, what amounts to the same thing, importance of the survival of the established government.

How are we then to observe the application of the rule of effective control to the China Situation, without committing the mistake of going with the extremes?

According to what have been illustrated in the above Chapters, we have a clear picture of the China Situation: (1) there is a state of hostilities between the established government and the allegedly successful revolutionary regime, each controlling part of the national territory; (2) this state of affairs has continued for more than 15 years, and there is probability that a full-scale war may be necessary for the final victory; (3) in this sense, though differed in degree, each of the parties is a menace to the other, and this state of affairs is to continue for a quite long period to come; (4) the effective control of one of the parties means the ineffective control of the other, and from objective facts it is no easy thing for one to say with certainty on the matter of extinction or survival of either of them, so long as the parties do not change their corresponding war-aims.<sup>20)</sup> This situation is very peculiar.

Faced by this novel situation, we have a borderline case. But if the China Situation is peculiar and novel, it must be dealt with as such. In juristic logic, viewing the China Situation as it is, and that is disregarding the non-legal considerations, by asserting that the Mainland Regime represents the Chinese State as a whole one does not in reality solve the China problem, but only suggests a new China problem. One may not confuse

and equate the position of the seemingly successful revolutionary regime with the established government, in the matter of significance of the fact of continuing resistance: the law is with the established government, not with the revolutionary regime. Pragmatism holds no rank in the realm of law.

In this way, the rule of effective control, as a criterion for recognition of government instituted by force, also applies to the China Situation in its novel shape—the predominance of the negative aspect of the concept<sup>21</sup>). It, again, links recognition to the *status quo* in the Taiwan Straits (civil war *de facto*). Recognition of the Mainland Regime by a foreign state is a denial of the existence of the civil war in China; for, admission of such existence would make recognition premature, hence illegal.

But why is it that a group of foreign states acted otherwise and recognized the Mainland Regime without considering the negative aspect of the rule of effective control? Is it not proper, then, to say that recognition is matter of politics and not of law?

Although it can not be denied that recognition has its political aspect (rather, political colour), the fact remains true that the act of recognition is subject to legal control. And the answer to the above questions can be found in a fact, not at all profound but easily overlooked, that there is a dilemma in the matter of premature recognition and its legal sanctions.

There is under traditional international law a question, not yet resolved, as to whether there exists an obligation for existing states to recognize a new government in effective control of the national territory or part thereof (this in theory at least involves responsibility of the what may be called "blockade in recognition"). This question being put aside, the object for sanctions in international law of recognition is "premature" recognition only. But there is an intrinsic contradiction in the conception of responsibility for premature recognition of govern-

ment. The conception is of meaning only in case of recognition of new state (responsibility toward the mother state). In case of recognition of a new government (and with it withdrawal of recognition of the established government<sup>22)</sup>), even if that new government has not fulfilled the necessary conditions (granted that no serious challenges exist about such conditions) required by international law, and that is, even if we have a typical case of premature recognition, it is legally not possible to have the responsibility admitted, nor to have sanctions realized<sup>23)</sup>. For, in this case, the established government, having been withdrawn its recognition by a foreign state, becomes legally non-existent for that very foreign state, hence it can find no legal remedy so far as that very foreign state is concerned. This is the real reason why the negative aspect (effect) of the rule of effective control must be stressed.

*In concreto*, in the case of recognition of new state, since total withdrawal of recognition of the mother state as an international person is not involved, liabilities for premature recognition are answerable by the recognizing state toward the mother state; whereas in case of recognition of new government, the formerly legitimate government, though it remains legitimate government for other states (hence remains qualified to act in behalf of the state when its rights are violated by, e. g., premature recognition), can not have a legal voice against the foreign states prematurely granting recognition to its domestic rival.

Whether in a specific case an act of recognition is or is not premature, there is no better proof than the one given *ex post facto*; accordingly, it is thinkable that answer to liability, hence undertaking of sanction, is conditional in this matter, i. e., that the legal wrong be made good at a later date when the established government succeeds in putting down the revolution undertaken by the new government recognized by that foreign state. Though such a condition makes the responsibility and sanction

to the point not far from something in the air, on legal plane responsibility and any claim against premature recognition remain a clear reality. The whole matter ought to be determined by the objective criteria, among other things, of effective control. And this is why the existence of the established government may not be ignored in law as in fact.

One of the explanations to this troublesome question seems to lie in the maximum freedom of action, accompanied by risks, of foreign states in the matter of admitting the existence of the state of hostilities in China, and following it would be the logical necessity of acquiescence of Chinese sovereignty over Taiwan. But there seems a way out of this too: just why is it that there can be only one government in one state? This brings forth the vital point of claim to exclusive (monopolistic) right to represent the state in general international legal order.<sup>23)</sup>

### III. Representation of a State in General International Society—The 'One State, One Government' Principle and the China Problem

According to what has been said, so far as effective control is concerned it seems hard to say that either of the existing parties engaged in the Taiwan Straits *status quo* may claim universally exclusive right to represent the Chinese State, though the Nationalist Government, as the traditional government, in legal logic holds a stronger position. The change of the capital from mainland to Taiwan does not involve change in the representation of the Chinese State.<sup>24)</sup>

The principle 'one State, one Government' means: (1) that domestically there can be one, and only one, group of elite, calling itself 'government', to exercise power over a territory and to enjoy obedience to its sway by the bulk of the population on that territory; and (2) that internationally, there can be only one *de jure* government to represent the state in its relations

with other states (and with an international organization).<sup>257</sup>

But while point (1) is always true, to point (2) there are not without exceptions. Recognition of belligerency is one of the most conspicuous examples. Such recognition legally bestows a limited and provisional international personality (in case of rebellion) and quasi-governmental qualification (in case of revolution) on the rival regime vis-à-vis the legitimate government. Recognition of this kind, including recognition of insurgency, as such, is not necessarily a prelude to recognition of state or of government. It is granted mainly for humanitarian reasons (to make applicable the *jus in bello* (laws of war) to the state of belligerency) or for factual needs (e. g., trade at sea, protection of nationals, etc.). In a word, the justification for recognition of this kind is expediency. But it is significant that underlying the system is the purpose to realise contact between the recognizing and the recognized, which contact otherwise would be prohibited by law. To this extent, there is no great difference between the function of recognition of belligerency and that of recognition of government. Even the insurgents, if so recognised, will be in a position to represent the state, though their acts are territorially conditioned and only with *de facto* effects.

Thus, considered on a temporary basis the principle 'one State, one Government' is not at all absolute.

It may, however, be challenged that recognition of belligerency or that of insurgency is nonetheless exceptional. But, in the case of existence of a state of hostilities for a considerable period of time, such recognition is rather the rule—a transitional measure which foreign states would be obliged to adopt for specific purposes.

Consequently, recognition of two political entities in a state is admitted in international law. It follows that there would be no need, nor strong legal reason, nor political justification, for a two-China theory the unnatural realization of which

would, at present, make an international war inevitable. On the other hand, this also means that foreign recognition (or implied admission) of certain status of the two Chinese parties in the Taiwan Straits *status quo*, is legally not difficult. And this tells that there is no way out of the troublesome picture raised at the end of the previous Section. All exceptions to the principle 'one State, one Government' refer to a civil war *de facto* or *de jure*.

There is in China a situation that needs a special way of settlement. Pending a final result, hence a determination of the status of the rival parties in the civil war *de facto*, there appears to be no once-and-for-all settlement. *Lex ferenda*, international law should have a norm to meet the plural-government phenomenon which will not be infrequent in future. By calling the China Situation an "artificial" civil war,<sup>26)</sup> one can not deny that situation the nature of a civil war. By recognizing the Mainland Regime, hence withdrawing recognition of the Nationalist Government, a state does not help solving the China problem. Recognition, like the issue of UN Chinese representation, is the means, never the destination, of a "solution" to the China problem.

Freedom of action of states on the means-issue of recognition may therefore be described thus: Legally speaking, states are restricted by law to judge the fulfilment or non-fulfilment of the conditions on the part of the Mainland Regime if they are to recognize it; and special weight must be put on the negative aspect (effect) of the rule of effective control, and that is, the existence of the established government and the existence of a civil war *de facto* can never be denied arbitrarily. States are of course free not to recognize PRC so long as the Nationalist Government exists, because they are under no obligation to do so. In other words, for action on this issue foreign states hold restricted freedom; for inaction, their freedom is maximal.

And since legal responsibility of premature recognition, at least in juristic logic, though conditional, does exist, it remains true that states taking action on this issue, i. e., recognizing the Mainland Regime, bear their own risks.



## CHAPTER 4 UN REPRESENTATION ISSUE

As in the case of the recognition issue where recognition of the new government and withdrawal of recognition of the established government are involved, in the present issue the United Nations General Assembly (hence the member states) is confronted by the question of whether to approve the delegation appointed by the Mainland Regime as qualified to speak for China *in the United Nations* and if so: (1) according to what criteria may such approval be made? and (2) whether this delegation, when approved its qualification, excludes, and takes the position of, its counterpart from the Nationalist Government.

### I. Short History of the Issue in the United Nations and Voting Results up to the 20th (1965) Session of the General Assembly

Since 1950, states (chiefly India and USSR) protagonist for approval of the qualification of the Mainland Regime to represent 'The Republic of China' in the UN have in substance consistently given the issue the form of ousting the delegation of the Nationalist Government (opposing the qualification of this government to represent China), and of seating the Mainland Regime *in its stead*. The opposition states (chiefly USA, Latin American countries, and later, Japan too), on the other hand, have given many forms to their 'legal resistance' with success: by proposing suspension to discuss the issue (Moratorium) from 1951 to 1960, and from 1961 to 1965, by an 'important question' proposal (hence necessitating a vote of two-thirds majority of Members present and voting in the General Assembly to approve the change of the entity to represent China).<sup>27)</sup> The voting result of the 20th (1965) Session of the General Assembly shows that the 'important question' form seems to have come to its margin (47 for, 47 against, the 'important question' proposal, with

20 abstentions and 3 states absent), hence it becomes doubtful whether this form will work in 1963 as a legal means to refuse any attempt to oust the Nationalist Government as representing 'The Republic of China'. At this moment it is not yet clear what new form, if any, might be suggested by USA, etc., but it seems safe to say that some sort of two-China solution is under contemplation as the alternative to the 'important question' proposal if the latter may appear to be adverse to the position of the Nationalist Government.<sup>28)</sup>

## II. The Basic Points

Questions about this issue are too many. One of the most fundamental points is, no doubt, the nature of 'representation' and applicability of existing norms of the UN Charter to 'representation' proper. This may be pushed from two directions, one of adjective law, the other, of material law.<sup>29)</sup>

As question of adjective law, the nature of 'representation' determines whether the Chinese UN representation issue is an important question for the General Assembly under Article 18 of the Charter. As question of material law, it decides whether the conditions provided in Article 4 (1) of the Charter on admission of new members are applicable to the case of change of government entitled to represent its state. The former may cast light on criteria for exercising veto (and double veto too) at the Security Council ('procedural matters' and 'other matters' under Article 27 (2) and (3));<sup>30)</sup> the latter, like the case of recognition issue, involves the principle of effective control<sup>31)</sup> and the Aggressor-Resolution of the General Assembly of 1951.

Representation in an international organization (e. g., in the United Nations), and that is, in a particular international legal order, is a concept *sui generis*. It has no counterpart in private law, neither in the agent-principal relation nor in the representing-represented relation. It, again, differs from the represent-

ing-represented relation between a protecting and a protected states under international law, though the terms used are identical.<sup>32)</sup> This is also true in the case of the recognition issue—recognition of representation in the general international legal order.

One of the most conspicuous differences between 'representation' now in question, on the one hand, and 'representation' or 'agent' in private law, on the other, lies in this, that, while in the latter cases, both the representing and the represented (and the agent and the principal) are subjects of law (be they juristic persons or natural persons); in the former case, it is the represented only (the state) and without exception, that is subject of international legal order, and the representing is only one of the essences (and that is, the government, and, actually, persons delegated with powers to represent) of the state subject of international law. 'Representation' is therefore always double and indirect in nature. It is based on national law (constitution or the laws of lower ranks), not in the form or nature of a contract, but rather as a relation of public law. And the constitution (or the laws of lower ranks) is part of the national legal order which, in terms of legal theory, is the state itself.<sup>33)</sup>

Consequently, private law finds no full analogical application here. What is evident, however, is the fact that when question of "representation" arises in an international organization (in the United Nations for instance), it is not the delegation (nor the individual delegates or representatives) that is directly involved, but rather the government that is the issue. The point is, clearly, not whether a certain delegation is qualified to represent the state (regularity/validity of credentials, in the practice of the UN, to be disposed of by the Secretary-General of the UN), but rather whether the government which appoints this delegation is qualified to represent the state.<sup>34)</sup>

### III. The Representation Issue as Question of Adjective Law and that of Material Law

Thus there are serious questions lurking behind the statement that "Credentials may accredit to powers conferred by a government on its representatives. Representation is the right of a government to act on behalf of the state."<sup>35</sup> This paragraph is quoted not because it is authoritative, but because it shows the common error in treating of the present issue.

In the outset, it must be pointed out that no state may have a right to representation unless it has been recognised (in case of general international society) or admitted (in case of particular international society constituted by a particular international legal order). A government, be it a universally and traditionally legitimate one, not being subject of law, may not have any right in the proper sense of the term. It only exercises the right, if any, of its state and in the name of that state. A government, that is, may not as a matter of course claim a seat in an international organisation, e. g., in the United Nations. This is more so, when that government is one instituted by force and when the established government survives.

Whereas in private law there is no difficulty in determining a natural person or a juristic person in case of change of factual or legal situation; in international law, by dint of the peculiar nature of 'representation', in case of change of government by force (a break in constitutional order of the state), the connexion between the new government and the state that new government claims to represent, must be certified *according to the law of that international organisation* (in our present issue, the Charter of the UN). And if there be no expressed provisions in that particular legal order, analogy becomes compulsory.

Here, it should be reminded, the 'change' of government, hence its qualification/status to exercise the rights of the state,

is in question. In the end this is highly consequential on the rights and obligations of the state itself, and not rights/obligations of the government(s). It stands to reason that, being matter of succession of government, representation, in adjective law, is never an 'un-important' or 'less important' question (in the wording of Article 18 of the Charter, 'other' questions).<sup>36)</sup>

Correlatedly, representation, as question of material law, becomes much clearer in meaning. *Ipso facto*, the existence of the established government, in our case here, that is the survival of the Nationalist Government which has heretofore been exercising the rights of the State of China since the coming into being of the UN, is a bar to approval by UN of qualification of the Mainland Regime to represent the State of China *by other means than that which the Charter provides*.

There is not a single word in the Charter on 'change' of representation. Neither is there anything about the following question: Is a change of qualification for representation from one government to another of the same state member, in material law, subject to special conditions, and if so, what are these conditions?<sup>37)</sup> Thus we have a very embarrassing situation.

But the situation is not at all hopeless. There have been many *lacunae* in international law. They have all been filled one way or the other, and analogy is one of the most effective techniques.

In theory, it would be convenient to consider that 'representation' as question of adjective law (whether it is an 'important' question under Article 18 (2)) is one thing, while 'representation' as question of material law (that is, according to what legal criteria is change of qualification for representation approvable) is another. Of course, the two can not be cut distinctly; they are two aspects of the same issue, hence are destined to be mutually related.

To begin with, if, as having been demonstrated, the Chinese

representation issue in adjective law be one of the 'important questions' under Article 18 (2), since in the same paragraph "the admission of new members to the UN" is illustrated as another 'important' question, there is strong reason for one to say that with this as connecting agent Article 4 (1) on admission of new members would apply to similar 'important' question of Chinese representation issue.<sup>37)</sup> Furthermore, owing to the fact that individual recognition is admission of a government to represent its state in the general international society, there would be stronger reason for one to say that change in Chinese representation in UN can not be discarded from conditions stipulated in Article 4 (1) of the Charter, which are similar to criteria for individual recognition.

#### IV. UN Representation and Recognition—Applicability of the Conditions for Admission of New Members

It is maintained by many that representation in an international organization has nothing to do with recognition by individual states. From this proposition there comes the view that question of representation is matter of credentials<sup>38)</sup> (unimportant in adjective law), and matter of effective control<sup>39)</sup> (in material law) connected by the condition, provided in Article 4 (1) of the Charter, of "able to carry out" obligations contained in the Charter (and other international obligations, too).

No doubt, we may go too far if we endorse Ruiz's extreme opinion, to the effect that there exists no question of "Chinese UN representation";<sup>39)</sup> but it is equally hard to follow the view of the late Secretary-General Trygve Lie, as stated in his Memorandum, that the Chinese representation issue in UN is matter of effective control *only*.<sup>40)</sup>

As a matter of fact, while recognition of new government by an individual state is matter of representation of the recognised government in the general international society (traditional diplo-

macy), judgment of an international organisation on change of qualification for representation is matter of recognition of that qualification of the new government by the international organisation. And, since nearly all states are Members of the UN, and are legally competent to cast a vote in the General Assembly, it seems extraordinarily hard to say that the Chinese representation issue in the UN differs in essence from recognition. The identity between criteria for individual recognition and the conditions laid down in Article 4 (1) for admission of new members is no accident.

So considered, recognition and representation have something essential in common (especially in the China problem, changes in both issues are made necessary by alleged change of government inside China). It follows that in this issue UN approval of change of qualification for representation is matter of recognition by the UN. This is similar in the case of individual recognition of new government; and indeed nearly all writers who take the position of supporting the Mainland Regime to sit in the UN agree on this point.<sup>41)</sup>

Approval by UN on the Chinese representation issue in favour of the Mainland Regime is, in this sense, a disguise of UN recognition of that regime. It touches the legal status of the Nationalist Government. This statement will be more convincing, if one takes into account the fact that the Nationalist Government has been representing China since the birth of the UN. In consequence, denial by the UN to the Nationalist Government its continued qualification to represent the State of China amounts to withdrawal of recognition of that government by the UN.<sup>42)</sup>

This being so, it stands to strong reason that individual recognition supplies criteria for recognition by the UN (of change of qualification for representation, that is, change of government). The criterion basic for all is, like in the case of individual recognition, the principle of effective control. And, as having been

pointed out, this, among other things, becomes the contact agent between our present issue and the conditions for admission (ability to carry out international obligations, etc.). Conditions for recognition cannot be cut from dispute over UN representation; neither can conditions for admission of new members.

But effective control, though it is the most important criterion for settlement of our present issue, is of course not the sufficient condition.<sup>43)</sup> Subject to what has been said on negative effects (aspect) of the principle of effective control<sup>44)</sup>, there are still other necessary conditions, e. g., peace-loving the maintenance of which condition is the *raison d'être* of the UN itself.

In this regard, the Aggressor-Resolution of the General Assembly of 1951 becomes highly significant. Doubts have been cast on whether this Resolution is still valid as of today. But such a Resolution, important as well as unprecedented, once made, will remain valid for the General Assembly in law no less than in politics (prestige of the UN). To allege that it has lost its validity, strong proofs must be submitted, at least to the effect that the condemned entity has shown some change in attitude to the satisfaction of the UN or of two-thirds of its member states. And from recent facts it can hardly be said that the Mainland Regime has become a little more peace-loving than it was before.

But there are many who challenge the application of this condition (of peace-loving) to the Chinese representation issue. The common measure is that it is the state, not its government, that is the member of the UN, and that conditions for admission apply to state newly applying for membership, and not to a claim by a government whose state is already a member of the UN.<sup>45)</sup>

Such attack, though strong at first sight, is impotent in fact as in theory. We have given sufficient reasons in refusing the latter point, and there remains the first point to be answered.



If it be correct and realistic to say that it is the state, and not its government, that is the member of the UN, and that it is the government which is in effective control of the national territory and over the people (pending the bar of negative effect of the principle of effective control), that is able to carry out international obligations of the state; it would be equally correct and realistic to say that exactly due to these, the attitude of the government determines the attitudes (e. g., peace-loving or aggressive, or otherwise) of the state and of the people. Putting aside for the moment the philosophic argument, that it is perhaps truer to say that the people, and not the state, is the real subject of the UN, it is here necessary to stress that a government can not claim effective control without also making a *renvoi* of its attitude to the state it represents or claims to represent. In fact, there is no people or state that is in nature aggressive or peace-loving; what could be aggressive or peace-loving is the government, the elite group, which leads the people, or which forces the people to follow. It is a government that is the object for the UN to consider, even in case of membership; and the vice versa is of course hardly a falsity.

There are therefore many legal reasons against UN approval of qualification of the Mainland Regime to represent the Republic of China in the UN Organisation.

#### V. Speciality of the UN Chinese Representation Issue—The Two-China Theory and the Principle 'One State, One Membership' in the UN

Though the juridical picture may be drawn as the above, in reality there seem to be many other feasibilities. These come from the unique characteristics of the issue: (1) pre-juridical nature, and (2) ambiguous criteria.

In the Charter, determinations of major problems are undertaken in accordance with prescribed procedure (adjective

law), and specific criteria (material law) for judgment in voting attitude are presumably clearly given. However, despite the fact that disputes in most cases arise from interpretations of express stipulations, determinations (decisions) are fundamentally political or, more properly, legislative, and that is, pre-judicial. Being pre-judicial, voting attitudes, the casting of the votes, and the decisions themselves, are irrelevant from legal point of view. They involve no question of legality or validity as a matter of law; they are the givens, and shall be accepted as such.

Thus, before such omnipotence of a vote of the General Assembly<sup>46)</sup>, the criteria (legal conditions) become impotent. Many possible ways are open for states in the legislative world, and in our issue the two-China theory has been suggested by many as one of such possible ways.

As factual conditions and in a broad sense, there are many Chinas in the world: Outer Mongolia is a 'disputed' China, and Hongkong is no less than a *de facto* Chinese state.

A form of solution, any two-China theory is aimed at the crystallization, or transformation, of the *de facto* situation into a *de jure* one; and this is tantamount to altering the *status quo* in substance. No doubt, at least at present such a solution is dangerous as well as infeasible. However, in theory it may not be superfluous for us to take a look at the picture.

There is no agreed content on the form of crystallization/transformation (by agreement between the parties to the civil strife in the Taiwan Straits as a result of changing their war-aims, or through some kind of *fait accompli* (*status quo* maintaining), or to impose one through recognition or a vote in the UN, by cutting the linkage of the Offshore Islands with Taiwan, etc.). Originated sometime before 1950 (UK),<sup>47)</sup> this theory in fact bears so many various forms: a split-China (two Chinas in the proper sense), one China-one-Taiwan (Formosa as a new

state), one China on Taiwan and one new China on mainland, two new Chinas (successor states), and independence of Taiwan by plebiscite, and so forth. There are, furthermore, suggestions of UN trusteeship, etc., which may not be named two-China. In any case, a two-China situation through recognition and a two-China situation as a result of the UN Chinese representation issue must be kept distinct. They are not the same thing: not the same in ends and effects. While realization of a two-China through recognition needs consent from the rival parties and has direct bearings on the Taiwan Straits issue, a two-China through decision in the UN is legally left to freedom of the members at their own risks but is without consent from the two Chinese political entities. On the other hand, while the effect in the case of recognition is universal and valid in the international society as a whole, in the case of a UN vote, a two-China situation (if one be so made) would be valid only in the UN as particular international community and for the representation issue only. In order to be universally valid, recognition is the only means.<sup>49</sup>

Suggestions of a two-China reached its climax in 1958 and in 1960. After 1960, due to strong oppositions from both Chinese entities, and to international environment, this theory slipped underground. In early 1966, however, with a view to breaking through the Chinese representation issue, suggestions of this theory made their re-appearance everywhere and, in March 1966, it became a publicly discussed solution of the China problem in the United States and in UN.

Objectively speaking, realization of a two-China theory, whatever its form, is so difficult that the theory itself would become impracticable. For one thing, without consents from the Chinese entities, it is highly doubtful just how useful this theory may be—it gives birth more to danger than to security. Solution of the UN Chinese representation issue, after all, is not an end in

itself; it is only one of the means subject to higher ends. To solve the UN representation issue improperly would, in any circumstance, give another UN representation issue. In this event, the issue is not 'solved', but is made less susceptible of being solved.

This is not all. Solution of this issue through a two-China device is destined to fail. Though there is no certainty in saying that the Mainland Regime has not really intended to take over the seat in UN, it is sure that for many years, especially in 1958 and 1960, it took serious steps outside the UN which in our eyes are no more nor less than flank defenses for the Nationalist Government in the UN as against the common enemy—against any attempt to make a two-China situation in the UN. And there is good logic that the Mainland Regime, if its intention is to choose the timing best fitting itself to be seated in the UN, should defend the Nationalist Government for the sake of continuity, and perhaps of purity and integrity, of the Chinese State in the UN.<sup>(9)</sup> 'Solution' of the issue, and even one for the purpose of making both Chinese entities qualified to be seated in the UN, is meaningless now; and, seeing that all members of the UN, states for as well as against seating the Mainland Regime, dance in the UN under the puppetry of the Mainland Regime, the picture appears to be rather ridiculous.

But even if the China problem, and its part the UN Chinese representation issue, be so complicated and be worsened day after day that a special solution should be carefully prepared, the two-China theory is not at all the only solution.

What makes a two-China theory necessary is the apparently unchallenged rule 'one State, one vote (one membership)' in the UN as a result of the first basic principle of 'the sovereign equality of all ... members' (Article 2 (1) of the Charter). This principle corresponds to the principle 'one State, one government' in general international society. But whereas the latter prin-

ciple, save in very few temporary exceptions, has been consistently maintained, the principle 'one State, one membership (vote)' in the UN is rather loose from the beginning, and its exception is permanent in nature. USSR, though a pseudo-Bundesstaat, holds 3 votes since the coming into being of the UN.<sup>50)</sup> Sovereign equality, in political or juridical sense, is not an absolute rule here. In theory, approval of qualification of the Mainland Regime does not *ipso jure* or *ipso facto* exclude from the UN the delegation appointed by the Nationalist Government. Something may perhaps be fought out here. There are perhaps some other means too; and if the two-China theory remains 'theoretical' at present, there is every good reason for deliberation of a means other than the two-China device.

Freedom of action of states on this issue may therefore be stated in plain terms as follows: Approval or disapproval by the UN of the qualification of the Mainland Regime to represent the Chinese State necessitated by a revolution (not necessarily change of government because the established government still survives and is recognized by many member states), is a collective-legislative act independent of individual acts of voting by member states. Under the veil of a 'general (collective) will' expressed in an affirmative (or negative) vote of necessary majority in compliance with law, the voters (member states) are free from individual risks in their respective voting attitude, though the qualification of either of the Chinese entities in the UN is thus constitutively declared by that majority vote. Under the legislative shield, that is to say, freedom of action of states on this issue is infinite.

## Notes

- 1) See, however, note (48) of this Part and the text referred thereto.
- 2) For a definition of recognition, see Brown in *AJ* (1950) p. 617.
- 3) Subject, of course, to the difficulty raised in the last paragraph of the previous Chapter. However, in this regard there is similarity between recognition and UN representation. See Chapter 4 (II).

On the other hand, a line should be drawn between recognition by individual states within general international legal order, and recognition (or, if this term is undesirable, approval) by UN (that is, "collective recognition" as suggested by Kelsen and Wright *de lege ferenda*) of the qualification of a government to represent its state in the UN, which is a particular legal order constituted by the Charter. Cf. Alexandrowicz-Alexander in *AJ* (1952) p. 630; Kelsen in *AJ* (1941) p. 605.

There are some who doubt whether the act of recognition as such is the necessary condition or sufficient condition for legitimacy of government instituted by force; and there is strong reason for one to share such doubt. On this point, see Ottolenghi, "Il Principio di Effettività e la sua Funzione nell'Ord. Int.", in *Scritti vari di Dir. Int.*, vol. Primo (1959) p. 250, and Gemma in *Hague Recueil, loc. cit.*, nota 39. Cf. Fenwick in *AJ* (1944) Ed. Comment.

To avoid misunderstanding, it is helpful to note here that at the present stage of international law recognition, as a legal institution, is, as against the hope of many authorities in the field of international law, still in the process of crystallisation, hence it is inevitable that it brings with it some residuum of political colour. This makes recognition somewhat different from something like transfer of title to, or sovereignty over, a territory. V. A. Alexander, *ibid.*, p. 631 and p. 632. Smith, Hyde and others confirmed this view, see Schwarzenberger in his Letter to the Editor, the *London Times*, Jan. 9, 1950; Brown in *AJ* (1950) p. 640; Ottolenghi, *ibid.*, p. 256; Costa in *Revue Général de Dr. Int. Pub.* (RGDIP) (1922) p. 51.

But all these do not mean that recognition is a political act pure and simple. They only draw attention to the fact that recognition involves vision and political wisdom, and that since the international society is yet highly decentralised, though there exist some objective standards for judgement of commission or omission of the act of recognition, this act itself nonetheless remains one about which individual states are apt to assume arbitrary attitude as if they were free to decide everything. As a matter of fact, decisions on recognition are legally very difficult as well as politically highly burdensome. See Kaufmann in *Hague Recueil* (1935) p. 380.

For an account of states recognising either of the two Chinese entities (including those recognising neither), see Halpern (ed.), *Policies toward China* (1965), Appendix A. At present, states recognising ROC are a little greater in number, than states recognising the Mainland Regime. In the main, however, it can be said that on this issue there is a condition of balance.

Due to the fact that our question here is one of recognition of government, and not of state, many theoretically complicated, profound and important questions are avoided. Among such questions the most fundamental is no doubt the controversy between the constitutive theory and the declaratory theory as to the nature and effect of the act of recognition. This controversy "applies only incidentally to recognition of governments" (Higgins, *The Development of Int. Law through the Political Organs of the UN* (1963) p. 136).

- 4) There is no general agreement as to how many, and what, conditions are sufficient to justify an act of recognition. Many statements *de lege desiderata*, though suggestive, remain doubtful from point of view of existing law. The core is the weight and balance between the objective test and the subjective test, though writers tend to go to the extreme of one and exclude the other. More concretely, the real point is: whether willingness to fulfil international obligations, like ability to fulfil same, has the same weight as measure for judgment in a particular act of recognition (hence of withdrawal of recognition), and whether, say, Jefferson's formula 'the will of the nation, substantially declared', is as vital as the condition of effective control over people and territory. See Lauterpacht's article in the *London Times* (Jan. 6, 1950) and Schwarzenberger's criticism thereof (in his *Letter to the Times* (Jan. 9, 1950) *op. cit.*, directly on the China problem). See further, Chen, *op. cit.*, p. 118 ff.; Fenwick in *AJ* (1948) *Ed. Comm.* p. 865 and in *ibid.* (1953) pp. 658—660; Sperduti in *RDI* (1953) pp. 49—50. As a matter of fact, the distinction between the objective and the subjective tests can never be absolute: objective test seen from another angle may become subjective test, and vice versa. But there is no doubt on the statement that "effective control" is the greatest common measure amongst writers on recognition, as in fact it is at least a necessary condition for recognition (Cf. Miaja, *El Principio de Efectividad en Derecho Int.* (1958) note 8 and pp. 12, 27). After all, in most cases it is change in physical control over a people and a territory by political entities, that makes necessary foreign states to reconsider their recognition policies.
- 5) In a certain sense, this principle is the basis of evidence to justify recognition, subject to the negative aspect of the same principle itself.

See the following paragraphs.

- 6) "Effective control" applies also to other matters, e. g., prescription, but we deal here only with its relation to recognition of government.
- 7) "Effectivity" is asserted as a fundamental legal principle, that is, a pre-judicial norm (Sereni, *Dir. Int. (I)* (1956) pp. 112—3); as a rule that interprets a factual situation (Barile, *Il Dir. assoluti nell'Ord. Int.* (1951) p. 204); as a principle not normative but informatory, i. e., as evidence (Sperduti in *RDI* (1953) op. cit., pp. 48-9 and in *ibid.* (1959) p. 149; cf. Ottolenghi, op. cit., p. 324 et seq., where effectivity is explained as something having no normative function). It is also denied by some the nature of a "general principle of law recognized by civilized nations" (Miaja, op. cit., p. 83); it is, again, even conceived as a 'fiction' (*idem.*)

Thus, the nature of this rule (?) is far from clear. However, it seems reasonable and safe to follow Visscher, when he says that "L'effectivité est une notion qui occupe en droit international une place particulièrement importante, mais encore mal définie", which statement suggests that effectivity is at the present stage a presumption (C. de Visscher in *RGDIP* (1958) pp. 601, 609; cf. "The Tinoco Case" (1923), in Scott & Jaeger, *Cases on Int. Law* (1937) p. 96 ff., and Briggs, *The Law of Nations, Cases, Documents and Notes* (1938) p. 115 ff.).

- 8) While the maxim *ex iniuria non oritur ius* is upheld by majority of writers, the contrary maxim, *ex factis ius oritur* appears to be true for others (cf. Salvioli in *Rivista int. di Filosofia del Dir.* (1931) p. 585, and in *Hague Recueil* (1933) (IV) pp. 51-54; Verdross, *Die Verfassung des Völkerrechtsgemeinschaft* (1926) S. 129 et seq.). Thus one might be obliged to have recourse to Jellinek's 'normative force of facts' which calls for epistemological issues between the *Sollen* and the *Sein*.
- 9) Verdross, *ibid.*, SS. 90-91. There is every reason for one like Fenwick to challenge the traditional criteria from historical viewpoint, supported by the clear fact that techniques of 'control' (toward the standard of 'effective') have during the past years been improved (and better, have become more 'tricky'), to the extent that the concept "control" has been altered qualitatively. See on this point, Fenwick in *AJ* (1953) op. cit., pp. 659—660; Carreau in *Pol. Étrangier* (1959) p. 79.
- 10) Fenwick in *AJ* (1944) "Ed. Comm.", pp. 448-9, 452.
- 11) Once more attention is drawn to the rule that presumption is in favour of the established government. Prediction on the success or failure of the established government is inadmissible, see *supra* note (13) of Part I and the text referred thereto.
- 12) Cf. Miaja, op. cit., p. 24, where conditions for effectuating a factual



- situation are given as origin, intensity, and duration.
- 13) See *supra* Chapter 1 (III) (3). Putting these two points together, and we have a further question of government-in-exile or state-in-exile. Attempt to realize a 'split-state' theory would become something more than probability here.
  - 14) Lauterpacht, *Recognition in International Law* (1948), quoted by himself in his article in the *London Times* (Jan. 6, 1950). The "isolated fortress" extremity was used by Q. Wright, mistakenly too, to deny the Nationalist Government its legitimacy (in *AJ* 1955, p. 323).
  - 15) *Recognition in Int. Law*, *ibid.*, § 38. This was reproduced in his article in the *London Times*, *ibid.*, in the form of "reasonable prospect of reasserting its authority". In this respect, it must be reminded that Lauterpacht is proved to be incorrect in his negative prediction of the Nationalist Government's survival, which prediction would be correct in ordinary cases, see, *supra* note 20 of Part I and the text referred thereto.
  - 16) See *supra*, the concluding parts of Chapter 1 and Chapter 2.
  - 17) Chen, *Int. Law of Recognition*, *op. cit.*, p. 291, italics mine. "The *de facto* government", he continued on something having regard to our Taiwan issue, "although wielding actual power in the territory under its control, may not, according to the traditional view, be regarded as the sovereign of the territory." And then he went to the extreme, by saying that "This is true even if the *de jure* government has been completely ousted, or, indeed, has disappeared." (*idem*). *Concur*, Starace, *op. cit.*, p. 80.
  - 18) Ruiz, *op. cit.*, p. 69. Ruiz and others go to the extreme in some other aspects, e. g., moral standpoint, Carreau (in *op. cit.*) went so far as to say that Mao's regime represents nobody. Cf. Hornbeck in *Foreign Affs.* (1955-56).
  - 19) It is therefore equally possible for one to cast doubt on the 'one state, one government' principle with equal weight of reason.
  - 20) Cf. Wright, *AJ* (1955) p. 325; Fenwick, *ibid.* (1953) p. 660; Sperduti, *op. cit.*, pp. 48, 49, 55.
  - 21) *Supra* (I) of this Chapter.
  - 22) The practice that recognition of a new government by a foreign government must be accompanied by withdrawal of recognition of the established government by that foreign government, hence automatic withdrawal of recognition of that foreign government by this established government, is the result of the principle "one state, one government"; see *infra* (III) of this Chapter. On the nature of withdrawal of recognition, see Kelsen in *AJ* (1941) p. 611. It is, of course, not inconceivable that there exist political, informal, relations between these two through a third state; thus the situation is

similar to one in time of war between enemy states, or that between states having broken diplomatic relations. But in the former case there is a hostile character between states and not between governments, and recovery of peaceful relations is anticipated. In case of states breaking diplomatic relations, their mutual recognition remains intact. The natures are not the same.

- 23) This differs from "representation" of a state in an international organization (e. g., the United Nations) which is understood as a particular international legal order. On the nature of 'representation' of a state, v. Sperduti, in RDI (1953) p. 336 and note 68 *idem*.
- 24) Sperduti, *ibid.*, pp. 56-57; Donato Donati in RDI (1914) p. 346 and notes (1) and (2) *idem*.
- 25) Cf. Jellinek, *Die Allgemeine Staatslehre*, Italian transl. (1921) p. 617. The second point has another aspect on representation in an international organization (interrelations among states in a particular legal order and relation of a state to that international organization), reflected in the 'one State, one vote (one membership)' principle, see *infra* Chapter 4 (V). See further, on this principle proper, Ottolenghi, *op. cit.*, pp. 237, 250.
- 26) Silvain in "Revue Politique et Parl"., tom. 225 (1958).
- 27) Resolution of Gen. Assembly, 1668 (XVI) 1961. In 1950, the issue was disposed of by the Special Committee appointed by the General Assembly: no agreement could be reached on this issue at the Committee. In 1951, the General Assembly, through a Resolution of February 1, declared that the Mainland Regime is an aggressor in the Korean War. The validity of this Resolution would later become a dispute, because it directly concerns the 'peace-loving' condition (Article 4(1) of the UN Charter on admission of new members) asserted to be applicable analogically to the present issue. In 1964 (the 19th Session), due to antagonism among Great Powers on the expenditure of UNEF in the Congo, the United Nations met a financial and political crisis; that Session was declared to postpone *sine die*, and substantially in that Session there was no discussion on this issue.
- 28) For details on voting attitudes of states in the General Assembly on this issue, see Halpern (ed.) *Policies toward China* (1965), *op. cit.*, Appendix B.
- 29) The terms 'adjective law' and 'material law' refer to the procedural provisions and the substantial provisions respectively. They are used here to avoid confusions with the terms 'procedural matters', etc., as used in the Charter which bear different meanings.

A line may be drawn, on the one hand, between the Chinese representation issue and other possible future questions of the same nature about states non-permanent members and not directly involv-

ing struggle between Great Power groups; on the other hand, between representation questions and pseudo-representation questions. Thus our present issue differs in either of these two aspects, from the Indian-Pakistani Case (1947, state succession), the Czechoslovakian Case (1948, successful coup d'état), the Hungarian Case (1956, suppression of revolution by foreign troops), the Case of Iraq (1958) and the Case of Yemen (1962) (both questions of representation proper), and also from the Case of the Congo (Leopoldville) (1960-61, domestic political vacuum, absence of a legitimate government).

All the above listed cases were disposed of as questions of credentials, but in none of them was there a dual-government phenomenon like the one existing in China. The present issue therefore finds no precedent in the history of the United Nations, and admissibility of disposal of this issue as matter of credentials is questionable. Cf. Memorandum of the UN Secretary-General, Feb. 1950, "Legal Aspects of Problems of Representation in the UN" (S/1466; SCOR, V, Supp. for Jan.-May 1950, pp. 18-23); Higgins, *The Development of Int. Law through the Political Organs of the UN*, op. cit. p. 152 ff. Due to legal difficulties and political complexity of the present issue, the General Assembly passed a Resolution (Dec. 14, 1950, GAOR V, Supp. 20, A/1775, on p. 24) suggesting a highly abstract and, to speak frankly, ambiguous, criterion: "in the light of the purposes and principles of the Charter and the circumstance of each case".

- 30) No doubt, the wordings of Article 18 (2) and (3) and of Article 27(2) and (3) are not the same. One step further, they bear clearly different forms and implications. While in Article 18 weight is put on 'other questions' (not "all" other questions, hence a little restrictive) and it gives extensive meaning to paragraph (2) which is not at all exhaustive; in Article 27, weight is put on 'all other matters' (non-procedural, hence perhaps more important, matters). The meanings are, in result, not the same.
- 31) Memorandum of the UN Secretary-General, cited in *supra* note 29. See also Higgins, op. cit., pp. 133, 157 and notes, pp. 158-164; Aufrecht in AJ (1949) p. 699 f.
- 32) Quadri, *Diritto Internazionale Pubbl.*, III Ediz. (1960) p. 490.
- 33) Cf. Kelsen, *General Theory of Law and State* (Wedberg transl., 1949) xvi; Monaco, *Manuale di Diritto Int. Pubbl.*, (1960) pp. 316-317. On 'representation' and 'agent' in various senses and on their natures, see Kelsen, *ibid.*, pp. 83, 101, 107-8, and p. 289 ff.; Holland, *Jurisprudence*, 8th ed. (1896) p. 264; Ledlie, *Sohm's Institutes of Roman Law*, 3rd ed. (1907) pp. 219 ff., 431 f. None of these authors deals with 'representation' which we are now questioning; in fact, hardly is there a definition of "representation in the international

organization" available in textbooks of international law.

- 34) Cf. Sperduti in RDI, op. cit., note on page 68, where the point is pushed deeper, that Sperduti technically denies the state its qualification to represent the people.
- 35) W. W. Boyer in Pol. Science Quarterly (1961) No. 3, p. 338.
- 36) In this connection, since the wordings and forms of Articles 18 and 27, hence their meanings, are different (supra note 30 of this Part), and because the Chinese representation issue seems to be no less 'important' than some of the 'important' questions expressly illustrated (hence not exhaustive) in Article 18, it may not be unreasonable to say that, by analogy this issue could be interpreted to be one of the important question 'included' under Article 18(2). And if so, one step further there would seem no reason why a vote is always necessary on whether this issue is or is not an 'important' question. If this interpretation be admitted, then, to push one more step, in case a resolution be passed in the General Assembly, to the effect that the present issue is an 'unimportant' question, this might amount to a *de facto* amendment of Article 18(2) in spirit if not in strict wording; although, however, it must not be overlooked that this may also be justified under Article 18 (3) as matter of interpretation.
- 37) Similar logic may also be said of the Aggressor-Resolution of the General Assembly (1951). In other words, this Resolution may function as a link between the Chinese representation issue and Article 4, in the sense that the condition 'peace-loving' in that article would be directly against the position of the Mainland Regime, whether the Mainland Regime is really interested to be seated in the UN notwithstanding.
- 38) Wright in AJ (1955) p. 337; Fitzmaurice in Yearbook of World Affs. (1952) pp. 37, 39 and 43-44; Brohi in Hague Recueil (1961) (I) (1962) Tom. 102, Lecture V, p. 198, p. 199. See also the case of credentials of the Ethiopian delegation in 1936 (League of Nations), in Aufricht, op. cit., pp. 682-683. Ruiz, op. cit. pp. 88, 89, 91, 94, 95, 96; Kelsen, The Law of the UN (1951) pp. 945-946; Higgins, op. cit., p. 151, p. 157; International Conciliation, No. 534 (Sept. 1961) p. 32; Klooze in AJ (1949) pp. 250-1, 260; Kerley in AJ (1959) p. 325; Briggs in Int. Organisation (1952) p. 208; Appleton in Pacific Affs. (1962) p. 167; A. Alexander in AJ (1952) p. 639.
- 39) Ruiz, op. cit., p. 91; Briggs, in AJ (1949) p. 121. Ruiz, by asserting that the Chinese representation issue involves change of state personality, brings forth the question of state continuity of the Republic of China. In theory, besides this point, there is a question

of vacuum of China's membership in the UN, hence also the question of re-admission in case the Mainland Regime is to sit in the General Assembly, should the Nationalist Government be driven out of the UN. Perhaps due to this, together with the possible fear that such vacuum at the Security Council or in the General Assembly might give chance for realization of a two-China theory, the Mainland Regime has been cooperative in maintaining the civil strife in the Taiwan Straits by shelling Kinmen, etc., with a view to supporting its rival to temporarily remain in the UN, till it really intends to step into that organization. There are, furthermore, also question of change of name (from the Republic of China into the "People's" Republic of China), and of possibility of expulsion of a permanent member (see Kelsen, *The Law of the UN*, op. cit., pp. 948-49; Fitzmaurice, op. cit., p. 54).

- 40) Even if this be true, there still remains the problem of the meaning of the rule of effective control. This is similar in the case of recognition, see *supra* Chapter 3(I). In fact, the UN representation issue requires something more than effective control.
- 41) Feinberg in *Hague Recueil* (1952) (I) pp. 336-7; Higgins, op. cit., pp. 164-166; Rosenne in *BY* (1949) p. 447. Cf. Kelsen, *The Law of the UN*, p. 947 note; Y. L. Liang in *AJ* (1951) p. 689.
- 42) Higgins, op. cit., p. 132; Rosenne, op. cit., p. 447. Wright used the term 'recognition of *status quo*', but in substance it is nothing different from recognition of qualification, see Wright in *AJ* (1950), Ed. Comm't, p. 552 ff. and in *ibid.* (1955) p. 325.
- 43) See ICJ Advisory Opinion of May 28, 1948, on "Conditions of Admission of a State to Membership in the UN", ICJ Reports, 1948. The same is also true of the condition of "willingness to carry out UN obligations". In fact, such willingness is another name for "peace-loving."
- 44) *Supra* Chapter 3 (I) and (II).
- 45) Higgins, op. cit., p. 158; Brohi, op. cit., pp. 195-96. Cf. Cuban representative in the Committee of Experts, UN Doc. SC./1/SR. 113, pp. 3-4, quoted in Liang in *AJ* (1951) p. 692. Contra, Ruiz, op. cit., pp. 91-92. See further, Kelsen, *The Law of the UN*, pp. 946-47.
- 46) Friedmann, *The Changing Structure of Int. Law* (1964) p. 32.
- 47) In USA, however, the two-China theory is rooted in Dulles' idea of separating Taiwan from mainland, which presupposed the 'ambiguous' status of Taiwan. It was given expression in the Chiang-Dulles Joint Communiqué of Oct. 13, 1958.
- 48) For the two-China theory, see, Memorandum published by the US State Dept. (Aug. 11, 1958); Kennedy's speech at the National Press Club immediately before he became US President (Jan. 1960); Pamphlet entitled "Looking Ahead" series (No. 1) published by UK

Labour Party (1961). About theory, see Seligman, *The US Should Change Its China Policy* (1958); Scalapino in *The Conlon Report* (1959) and his *Analysis on US North-East Asian Policy* (1961); A. Doak Barnett, *Communist China and Asia* (Japanese Tr. 1961 p. 486 ff.); Stevenson in *For. Affs.* (Jan. 1960); Chester Bowles in *ibid.* (Apr. 1960). Secretary of State Rusk, too, has been one of the zealous supporter for a successor-state style two-China.

- 49) The Mainland Regime showed its clearest attitude in the latter part of 1965, by imposing counter-conditions for its being seated in the General Assembly. The conditions include amendments of the Charter, naming USA an aggressor, and re-examination of the qualifications of the UN members. See Chen Yi's statement on Sept. 29, 1965.

Such attitude is, however, not surprising. On the contrary, it should have been anticipated. Every year, before and during the plenary session of the General Assembly, the Mainland Regime as a rule takes steps to block any move to fight for its being seated in the UN (including a two-China theory); and, curious enough, the degree of fury of its attitude has appeared to be in proportion to the extent the move seems to be favourable to its being seated in the UN.

- 50) Frankel, *The Making of Foreign Policy* (1963) p. 13.

## PART THREE

### JAPAN'S CHINA PROBLEM

The title "Japan's China Problem" has specific implications. It signifies that for different states the China Problem, or an issue thereof, bears different meanings, due to their respective international environments and/or domestic conditions. This presumes that position of State A may not be the same as position of State B, in face of the same issue of the China problem. In this sense, every state is in a special position when faced by a situation/problem. Proper criticism for/against a certain action (inaction) of State A may not claim to be equally effective for/against that of State B as a matter of course. There is no general standard for criticism of actions of states in the China problem (and in other problems too).

#### CHAPTER 5 JAPAN'S MARGINAL POSITION—THE RESTRICTIVE ISSUES AND OTHER LIMITATIONS

In the above Chapters, freedom of action of states in general in the China problem is to some extent clear. What, then, is Japan's freedom of action in the China problem, in particular?

General freedom of action of states is a measure for comparison, in case of checking whether a particular state is more restricted in its action radius, or is given a *carte blanche* due to its special position in face of a certain situation giving rise to some problems. Such restriction or *carte blanche* is, in most cases, a result of existence (or absence) of special legal relations (e.g., treaty, etc.).

In dealing with the China problem, Japan bears special restrictions in this sense. There are of course many other restrictions, political in nature. But so far regarding the China problem, for Japan the juridical is in essence far more vital than

the political. This is so, because there exists a peace treaty, and that is, a treaty basic in nature, between Japan and ROC. This peace treaty, in law as in fact, becomes the source, and in fact the bounds, of restrictions on Japan's actions in the China problem. Study of such restrictions must also start from discussion of this source.

The legal effects of the Sino-Japanese Peace Treaty (1952) is therefore the main point for this Chapter. Political/diplomatic restrictions, formal or informal, from USA on Japan's actions are presupposed, because for the Japanese Government US attitude on the China problem has always been the paramount factor, though it must be added immediately that some resistance has in fact been made with success.

### **I. The Sino-Japanese Peace Treaty (1952)—Background**

During the past years, doubts have been cast upon whether this peace treaty is a *peace* treaty, and disputes have arisen about interpretation of the territorial sphere of application of this treaty.

Since this peace treaty was made under very peculiar circumstances, and since interpretations of treaty provisions (and documents attached thereto) can not be divorced from such circumstances, the background of the making of this treaty becomes greatly relevant.

In 1951, immediately after signing the San Francisco Peace Treaty, Japan was confronted with a necessity to choose one of the two Chinese entities for the making of a separate peace treaty with the State of China. Due to pressure from USA and to consideration of national defence, the then Prime Minister Yoshida, in a letter (The Yoshida Letter of December 24, 1951) to J. F. Dulles, then Special Envoy of US President to Japan, pledged that Japan would choose as 'China' the Nationalist Government of the Republic of China, and would make with it



"a treaty to reopen normal relations". Yoshida also asserted that Japan "has no intention to make bilateral treaty with the Communist regime of China".<sup>1)</sup> It was also made clear that the application of the treaty to be made with the Nationalist Government would be limited within the area under actual control (and areas that may in future come under the control) of that government. The content of this Letter was realized in the Sino-Japanese Peace Treaty of 1952, and the point as to "application" was adopted in the form of Exchange of Notes attached to that Treaty.

At the time when this treaty was being made, there was indeed disagreement as to whether it should be named a 'peace treaty', or otherwise 'basic treaty' or 'treaty of friendship' which would be local in nature without necessity to insert a territorial-application clause. This involved exclusive legitimacy of the Nationalist Government and Taiwan's status. Whereas Japan, in order to keep a free hand in future for its possible relations with the Mainland Regime, intended to make a treaty "to normalize relations between the two governments"<sup>2)</sup>, hence to make it with 'one of the Chinese governments' (a so-called 'limited peace'); the Nationalist Government insisted on making a 'peace' treaty which would imply that it was the only government representing the State of China.<sup>3)</sup> Here lies the origin of differences in the interpretation of this treaty.

Be this as it may, by compromise this treaty was at length named a 'peace' treaty, and the form and content followed those of a typical peace treaty. *Quid pro quo*, Japan succeeded in restricting its territorial application, which would be understood in the Exchange of Notes that: "The articles of the present treaty, in respect of the Republic of China, will apply to all territories at present under the control, and territories that hereafter may come under the control, of the Government of the Republic of China". In addition to this, Japan also ob-

tained, as consideration, from the Republic of China the "sign of magnanimity and good-will" to "give up war indemnity from Japan to China".<sup>4)</sup> In this way, Japan succeeded in her double-blade play: on the one hand, it put an end to the state of war between the two states; on the other hand, for the future it kept a free hand for herself to deal with the Mainland Regime.

Taking advantage of the *status quo* in China, therefore, Japan, a defeated country, realized a dream of unprecedented victory in her diplomacy. However, it became clear later that her double-blade was unworkable. From the very beginning, the Mainland Regime denounced this treaty (by its claim of legitimacy) and the San Francisco Peace Treaty of 1951 (on the maxim *pacta tertiis nec nocent nec prosunt*),<sup>5)</sup> and declared that it reserved the right to demand war indemnity from Japan<sup>6)</sup>. Evidently, in the context of such denunciation and reservation, it also hinted that the demand could be about 50 billion US dollars.<sup>6)</sup> This made Foreign Minister Shigemitsu of the Hatoyama Cabinet say in the Diet that the Nationalist Government is 'the' legitimate government of China, and since then that government has been formally so treated by Japan. The Sino-Japanese Peace Treaty was thus made general in nature; and in logic there exists no more question of war indemnity from Japan to China. But this Peace Treaty nonetheless remains one *sui generis*, departing that is from an ordinary peace treaty at least in so far as territorial application is concerned. And this also implies that, like it or not, Japan has to support the theory of constructive (formal) control of the Nationalist Government over mainland, which leads to an admission of the existence of a civil strife in China today.

## II. The Sino-Japanese Peace Treaty (1952)—Re-interpretation of the Fundamental Points<sup>7)</sup>

Consequently, whatever argument may be put forth, this

peace treaty is a 'peace' treaty and has ever since its being made become the basis of post-war relations between the Republic of China and Japan.

By this peace treaty, the Chinese Government headed by Chiang Kai-shek and the Japanese Government headed by Yoshida Shigeru recognized each other as representing China and Japan respectively. In theory, the former *ipso jure* also recognized the fact that the defeated State of Japan became an independent state.<sup>7)</sup> In this manner, this treaty simultaneously concerned recognition of the Government of China and recognition of Japan's independence and of Yoshida's government to represent Japan. The choice which Japan seemed to have been forced to make in 1951 was therefore not one as to whether or not to make peace with China, which making was according to international law a necessity to put an end to the state of war, but one as to which of the two Chinese 'governments' was to represent China as far as Japan was concerned. There might, however, in the logic of war, be some reason for the Mainland Regime to deny the existence (hence validity) of this peace treaty, and to assert for itself the right to opt in the matter of making peace with Japan for the timing and the form, etc., and even, like the Japanese Government did in 1951, to choose "a" Japanese Government as the other party to such a peace treaty. Provided that Japan tries to recognize the Mainland Regime, the latter has the legal initiative in making peace.

But there is also something for Japan to say. The treaty of 1952 between Japan and the Republic of China is a peace treaty. A peace treaty, according to international law, is "the normal means to restore peace", and serves a double-purpose: termination of a state of war and settlement of questions which caused that war and questions which were given rise during that war.<sup>8)</sup> And since a state of war exists only between states, and because Japan, legally, chose the Nationalist Government as represent-

ing the State of China, the state of war between Japan and China came to an end with that treaty, and with it all questions coming into being before and/or during that war were liquidated once and for all. *Ipsa jure*, that is to say, there will be no more legal necessity for another peace treaty between the two states with a view to ending the state of war of 1937-1945, which would otherwise be required for restoration of peace and normalization of diplomatic relations; hence to Japan there appears no ground for the Mainland Regime to demand any reparation for that war.<sup>9)</sup> In this sense, the view, prevailing in Japan, that this peace treaty made a partial peace or limited peace, is hurtful for Japan herself.

However, it is pointed out by some that Japan's recognition of the Nationalist Government is a special kind of recognition, in the context of the dual-government phenomenon.<sup>10)</sup> In terms of effective control (hence the effectivity of the provisions of that peace treaty is involved), as understood by the parties in the Exchange of Notes this treaty is automatically broadened in its territorial sphere of application or is susceptible of losing validity, according as the Nationalist Government may be successful to return to the mainland or as the dual-government phenomenon may disappear. In this sense, it is submitted, it is a treaty *at present* not covering the mainland area. But it is mainland that is vital for the purpose of making peace between Japan and China. Recognition of the Nationalist Government as the legitimate government of China, in law, seems to give the peace treaty general validity for the State of China. Thus factual effectivity of this treaty does not adapt itself to its sphere of validity. In other words, regarding Taiwan, the peace treaty is fully valid and effective; concerning mainland, its effectivity (and, perhaps, validity) is conditional.

The condition appears in the Exchange of Notes. It is a suspensive one. It means that the peace treaty will apply also to

mainland when and if the Nationalist Government regains its power over mainland (legal validity to follow factual effective control). *A contrario*, so long as the Nationalist Government can not in fact return to mainland, the peace treaty applies only as far as Taiwan and the Isles of Kinmen and Matsu. The Exchange of Notes being an integral part of the Peace Treaty, it seems not unfair to say that this peace treaty itself expressly places restriction on its own validity, hence the question concerning its applicability to the mainland may be something beyond factual effectivity.

Here in theory there lies an implied resolute condition: when and if the Nationalist Government no longer exists, this peace treaty would also lose its validity. And if the Nationalist Government disappears without being able to touch mainland, this peace treaty would have nothing to do with mainland because this has been understood in the Exchange of Notes. Accordingly, even if the Mainland Regime compromises and succeeds to rights and obligations under the Sino-Japanese Peace Treaty of 1952, this would only have meaning for the area of Taiwan. The peace treaty, in this theoretical aspect, would appear to be a local treaty and its validity unstable. In the context of the war-indemnity issue, this becomes very serious, and is deadly to Japan. Through the understanding expressed in the Exchange of Notes, Japan originally intended to reserve for herself freedom of action toward the Mainland Regime in future, but she also hangs her own neck through the same formal understanding. Should there be no such understanding, that is to say, at least in law Japan would be in the right to assert that this peace treaty, by operation of the law, applies to the entirety of the State of China. There is therefore no double-blade: it is legally impossible and logically contradictory to talk about a limited peace (or limited recognition), and to assert at the same time that the recovery of peace is not limited.<sup>11)</sup>

This logic betrays Japan's original intention. So interpreted, the Sino-Japanese Peace Treaty, which has heretofore been Japan's diplomatic booty of her military defeat in a war and her shield against both Chinese entities, would become a heavy burden for Japan in the meantime.

However curious this may sound to some, it remains always true that this is only the necessary result of what is intrinsic to legal justice—to keep balance in juridical relations (rights and obligations).

On political plane, the consequence is the same. The peace treaty now in question, once Japan's double-blade sword, has, fortunately or unfortunately, become a hindrance to Japan's rapprochement toward the Mainland Regime. It is even considered by many as being to the detriment of Japan's national interests; but this thought, of course, is hardly correct. What is sure, however, is that, this peace treaty remains as it is, there are some risks on the part of Japan, if in her approach toward the Mainland Regime she steps out of the bounds fixed by the juridical logic.

### III. Legal Effects and Risks as By-Product of the Sino-Japanese Peace Treaty (1952)

The Sino-Japanese Peace Treaty, as having been examined, is a peace treaty of special kind, hence it needs special interpretation.

Though claimed to be one made between two legitimate governments of two states at war, politically this treaty is nonetheless one signed by one government of China representing one of the parties, Japan's change of attitude some years after its being signed notwithstanding. In this sense, this treaty is a partial one, and its validity legally conditioned. As a result, unless the conditions are fulfilled, another peace treaty would have to be made between Japan and the Mainland Regime, *if Japan*

*attempts to deal with the latter in a formal way.* And in this case another restrictive issue (the war-indemnity question) is destined to come to the forefront.

According to the logic of constructive (formal) control of the Nationalist Government over mainland, referred to in the above, the validity of the peace treaty (1952) would stretch to mainland (with some difficulties, for sure). But if this be maintained, Japan would have to recognise a civil war in China, so as to make this logic of constructive control theoretically convincing. In this case, whether accompanied by recognition and withdrawal of recognition or not, provided that the *status quo* in the Taiwan Straits (hence the status of the two Chinese entities) remains unchanged, Japan's formal contact with the Mainland Regime would be a violation of international law.

What is worse is the fact that while for other states an answer to responsibilities for premature recognition to wards the established government (the Nationalist Government, for instance) withdrawn recognition by such states, is *ex post facto* in nature, that is, conditioned by the fact of established government's regaining effective control over territory and people once lost to the revolutionary regime; in case of Japan, similar statement may not be true in similar case. The reason is that in such an event Japan would be liable for breach of a peace treaty, the gravity of juridical responsibilities and political consequences of which is beyond imagination.

Let us give an example: Japan made the peace treaty with the Nationalist Government with the lowest price to liquidate all questions which were the causes of the war and those which were given birth by the war<sup>12)</sup>, without paying war-indemnity; suppose that it recognized the Mainland Regime some years later (in 1964 for instance), would this be a case in violation of international law? Since there had been no change of *status quo* in China from 1952 to 1964, and since the status of the National-

ist Government in 1952 was understood by Japan as qualified to represent the State of China, the answer to this hypothetical question must be in the affirmative. And since a peace treaty is permanent in nature, Japan could not resort to the *clausula rebus sic stantibus*, even if we admit that this *clausula* may in law justify such act in some instances. Recognition of the Mainland Regime by Japan, unless the Nationalist Government disappears, would be an abrogation of the peace treaty with ROC or, even if the Mainland Regime requires no such abrogation (and this is quite unthinkable), would shake its very foundation.

This is not all. From this picture there come many other effects and risks of what may be called by-product of Japan's could-be adventure in the China Problem.

First, as a matter of law, because Japan's recognition of the Mainland Regime menaces the very existence of the Sino-Japanese Peace Treaty, and because this peace treaty, so far as its application (relevance to mainland) is concerned, is suspensively conditioned by the return of the Nationalist Government to mainland, a right (of abrogation) of the Nationalist Government would be created as a result of serious violation of the peace treaty by Japan.<sup>13)</sup>

Secondly, the Nationalist Government might, in this case, with strong reasons assert: (a) that the renunciation of war-indemnity in the Protocol attached to the Peace Treaty is *ab initio* resolutely conditioned,<sup>14)</sup> conditioned, *in concreto*, by the fact of Japan's recognition of the Nationalist Government as legitimate (hence non-recognition of the Mainland Regime); (b) that recognition of the Mainland Regime by Japan, whether accompanied by withdrawal of recognition or not, formally denies the legality of the Nationalist Government to return to mainland, hence destroys the essential of the peace treaty; and (c) that renunciation of war indemnity, which had been made "as a sign



of magnanimity and good will" and in consideration of Japan's recognition (choice of a government representing China to sign the peace treaty), loses its basis accordingly.

Thirdly, as another theoretical possibility, due to necessity for execution of rights, the Nationalist Government may, in case Japan will recognize the Mainland Regime, resort to the *ultima ratio*, by declaring the resumption of the state of war of 1937-45 between China and Japan. Japan's withdrawal of recognition of this government would have nothing to do with the legal possibility for such a resumption of a former war.<sup>15)</sup> This legal card becomes a guarantee of Japan's non-recognition of the Mainland Regime, and sanction supporting a demand for war indemnity if Japan does not maintain her non-recognition policy. Such action, though hurtful for Japan, benefits the Nationalist Government neither. But here we have a picture wherein both governments may choose the 'suicidal alternative' which all states retain in their freedom of action.<sup>16)</sup>

Fourthly, and in consequence, though as a general rule the UN Charter must be duly considered in a case similar to our hypothetic event of resumption of war in the light of 'threat or use of force' etc. (Article 2 (4)), it is highly doubtful that the UN is competent to touch a question which is the continuance of the last war, and to determine through its Security Council that such event is a 'threat to the peace', and to take measures accordingly (Articles 39, 41 and 42). For, among other things, "Nothing in the present Charter shall invalidate or preclude action, in relation to any state which during the Second World War has been an enemy of any signatory to the present Charter, taken or authorized as a result of that war by the Governments having responsibility for such action" (Article 107) should be considered here.

As a matter of fact, although it is not possible that the Nationalist Government will intend in this case to enter into an

actual state of war against Japan, and consequently it is not easily conceived that armed conflict would become real, such resumption of state of war is nonetheless serious for Japan, with reasons lying in other fields. For instance, with the resumption of a state of war, the Nationalist Government may, according to *jus in bello* (laws of war, general international law), interfere in, and even cut off, Japan's transportation with Southeast Asia at the Taiwan Straits, even if its belligerent status in a civil war be not recognised by Japan (if Japan recognises the Mainland Regime only). This is of course more serious than what Korea actually has done: it would shake Japan's life line of trade and would greatly threaten her national defence as well.

Fifthly, Japan's act of altering the *status quo* within China (that is, act of recognising the Mainland Regime equivalent to disturbing the recognition-balance of states on the China Situation) would, again, entail a more serious risk that, due to despair in the political situation caused by Japan's action, the Nationalist Government might be pressed to unite itself with the Mainland Regime, in which case it would not be inconceivable that with such return to the mainland the Nationalist Government would, in favour of the Chinese State as a whole, make use of Japan's violation of the peace treaty, and choose the best timing to denounce the peace treaty so as to impute to Japan all legal responsibilities, including the obligation to answer to a demand for war indemnity. On this point, the two rival entities in China are on the same boat, and their interests are in accord.

All these are no mere guesses nor arguments for argument's sake. In 1964, when the Nationalist Government went to the brink of severing its diplomatic relations with Japan due to the Chow Hung-Ching Asylum Case, drastic measures differed in kind but no less destructive to Japan, were for times hinted in Taiwan and in Hongkong, both officially and unofficially. It is

to be reminded that the Chinese hold the records of using absurd means in dealing with what they consider betrayers.

But some may say that the Nationalist Government is out of question, because Japan's recognition of the Mainland Regime would bring about settlements for questions of making peace and of war indemnity. This is in fact a wishful thinking common to the Japanese who urge earlier recognition of the Mainland Regime.

This wishful thinking is, however, hardly convincing as well as dangerous. Except toward a Communist or quasi-Communist government in Japan, the Mainland Regime would not be so generous, as the Nationalist Government once was, to show anew 'magnanimity and goodwill' for nothing. In fact, it insists on the line that with the conservative government of Japan there is no true friendship. Hence, in all likelihood the Mainland Regime would resort to (making) peace as a means of national policy; and, at least for the purpose of embarrassing the Japanese Government (with the evident intention of drawing Japan into its own circle—and this is the unalterable ultimate aim of its policy toward Japan), it would keep the war-indemnity issue open, so as to make it the most vital item on the agenda for a give-and-take negotiation and a bait for "friendship" simultaneously.

This is more likely, when Japan offers the Mainland Regime recognition (thus for the Mainland Regime this should be accompanied by withdrawal of recognition of the Nationalist Government). Such an event means that its rival (ROC) would disappear at least so far as Japan is concerned. Accordingly even if the Mainland Regime shows 'friendship' by lowering the actual amount of war indemnity, etc., Japan would have to sacrifice greatly in other matters (for instance, services, etc., similar to that which are provided in Article 14 of the San Francisco Peace Treaty in the stead of paying war reparation). The Mainland Regime is, in this case, a casting-vote holder. And, more

unfortunate (?) is the fact that since Japan is in a condition of high prosperity, the reasons for renunciation of war indemnity in 1951-1952 are no more valid; but she could not, nor is she prepared to, satisfy China on this matter. Japan's non-recognition of the Mainland Regime was used in exchange for renunciation of war indemnity from the Nationalist Government; on the other hand, her recognition is a trump for admission by the Mainland Regime of the renunciation of war indemnity made before by the Nationalist Government. Both would lose their force in our hypothetical case: and it is undesirable for Japan to have the war-indemnity issue discussed with the Mainland Regime, even if it be quite clear that as a matter of fact the latter might give it up.

Politically, Japan's recognition of the Mainland Regime is also conditioned by world situation at large, by US attitude, by the moves of the two Chinese entities (hence their predictable reactions towards Japan's action), and by Japan's pride as the leading power in Asia, and by many other factors, domestic and international. She is not easy to move in the China Problem.

There are of course for Japan some ways out of this risk-trap. First comes to one's mind in this respect is the two-China theory, through realization of which to maintain the legitimate status of the Nationalist Government to represent 'the Republic of China' which is the real party at war with Japan. And to evade legal responsibilities Japan would prefer realization of a two-China theory in the UN, to the realization of same by way of individual recognition. But this again is questionable, even if Japan be wise enough to avoid taking initiative 'to attempt recognizing a two-China situation'. Toward Japan China is in a stronger position. Both Chinese entities once more are concurrent against any form of two-China by whatever means.<sup>17)</sup> And, tit for tat they may also counter-attack on political plane: they may, for instance, deny Japan's rights to

Okinawa and instead claim Okinawa's independence in future<sup>18)</sup> (that is, when USA is to restore Okinawa to Japan), by raising a question of 'territorial status of Okinawa' on which China as the once sovereign and as a co-victor in the Second World War would have legal and historical voices. Japan's denial of Chinese sovereignty over Taiwan would meet the same response. So would it be the case, too, if Japan recognizes Outer Mongolia and settles the question of war indemnity with it. A two-Japan situation will not be a fable here.

#### IV. Japan's Marginal Position

The above imaginable, and indeed probable, situations would of course be highly destructive to Japan's national interest, to her international political position, and to her domestic political conditions. Since politics is said to be the art of the possible, all the above risks should be taken into due account when one is to know Japan's position in the China Problem.

With the above juridical givens, that Japan's position is one marginal, in comparison with those of other states, seems to need no more comments. But what are the concrete 'margins' for Japan's (freedom of) action, then?

##### (A) The Cause-Issue—The Civil Strife in China

In theory, Japan would have to recognize, tacitly at least, that in China since 1952 (when the Sino-Japanese Peace Treaty came into force) there has been a state of civil strife, a war *de facto* if not *de jure* (note that this civil strife is something more than a civil war *de facto* though less than one *de jure*). The Notes exchanged for the Sino-Japanese Peace Treaty depend on this point.

In fact, such recognition (actually Japan seems to have done this tacitly) is to Japan's benefits. If there were no such civil strife, there would be no legal ground for Japan to assert, when

she will recognize the Mainland Regime, that the latter shall succeed to the rights and obligations under the Sino-Japanese Peace Treaty of 1952. In legal logic, Japan at least may not expressly deny the existence of the civil war in China. Her position on this point is therefore far more limited than states in general, whose freedom of action is not far from maximum.<sup>19)</sup>

#### (B) The Cause-Issue—Territorial Status of Taiwan

As a consequence of the above, Japan would also have to admit that Taiwan is part of China. She may not assert otherwise. Nay, she may not even have a voice to so admit; for, having renounced Taiwan, in law she has no voice whatsoever about this territory. Thus, though Japan may by changing her recognition policy recognise the other Chinese political entity to exercise sovereignty over Taiwan, she may not, while other states may, take the view that Taiwan is Chinese territory *pending something*, e.g., pending an answer to the question as to which of the two entities is to exercise sovereignty over this territory. Denial to China her sovereignty over Taiwan would make it impossible for Japan to urge as against the Mainland Regime that the state of war between Japan and China had been ended; and denial to the Nationalist Government its legal competence to exercise Chinese sovereignty over Taiwan would not only be unrealistic, but would also mean that Japan made a peace treaty with a government (state) without territory (a government-in-exile or a state-in-exile), in which case a peace treaty ending a state of war between the State of China and Japan is not far from being a juridical impossibility.<sup>20)</sup> Besides, as having been pointed out, in both cases there will come a revenge urging a two-Japan theory. Japan's freedom on this issue is, again, far more restricted than that of the other states—zero, although the latter's freedom is equally near the minimum.<sup>21)</sup>

## (C) The Means-Issue—Recognition

Recognition of the Mainland Regime by Japan, conditioned or not by withdrawal of recognition of the Nationalist Government, gives a legal claim to the Mainland Regime, in the name of the Chinese State and as legitimate government thereof, to require of Japan to make a peace treaty anew, hence also gives room to that regime to raise the war-indemnity issue as a topic for negotiating peace. In addition, on the recognition issue Japan also has to maintain the *status quo* in the Taiwan Straits and the world balance of recognition. For the sake of Japan's national interest, unless it be very clear that the Mainland Regime admits ROC's renunciation of war indemnity and unless it be absolutely beyond doubt that the Nationalist Government will disappear one way or the other, the costs for a change of recognition policy at improper timing and under bad conditions would be unbearable for Japan. Accordingly, though Japan has not the least intention to go with the Nationalist Government to the extent of committing double-suicide (*shinju*), it is likely that she will nevertheless have to become the last state that will recognize the Mainland Regime. If Japan is not sure that her national interests would not be jeopardised, it is not at all impossible that she might still maintain her non-recognition policy even if USA goes one step ahead to recognise the Mainland Regime (in this case, of course, Japan's justification for such policy would be the uncompromised attitude of the Mainland Regime on the issues of peace treaty and war indemnity).

Japan's legal position on this issue is, therefore, this: in regard to action (to recognize the Mainland Regime), Japan's freedom of action is extremely restricted to the extent of no freedom at all; with reference to inaction (to maintain the non-recognition policy), however, Japan, like other states, has maximum freedom *so long as the dual-government phenomenon*

*lasts*, as Japan is under no obligation to recognise the Mainland Regime so far as the latter has not yet been in effective control of whole China.<sup>29)</sup>

#### (D) The Means-Issue—UN Chinese Representation

On this issue, on the other hand, behind the shield of collective-legislative will (a decision of the UN) Japan may have infinite freedom of action like that possessed by other states.<sup>29)</sup> But in the context of the Peace Treaty with the Republic of China, hence of the war-indemnity issue, like in the case of recognition Japan would have to support the Nationalist Government to the last moment. This needs a few words as explanation.

Representation in the UN, as having been shown in the above, can not be cut off from the question of individual recognition. And because determination on the UN Chinese representation issue is matter of legislation—pre-juridical, hence political, the non-juridical factors (political, etc.) occupy greater weights. Here US attitude, Japan's national defence, and transportation through the Taiwan Straits (fear of blockade action by Taiwan) come to the fore and become predominant factors. Unless there be a way out of risks, e.g., realization of a two-China plan, Japan would maintain her non-recognition policy to the last moment for her own sake. UN approval of qualification of the Mainland Regime to represent China with the result of ousting the Nationalist Government (in this case the juridical logic of making peace and that of war indemnity become the issues), would, due to domestic pressure, make Japan's individual recognition of the Mainland Regime inevitable. Unless there is in UN a way out of the risks, therefore, Japan is obliged to cast a negative vote and, if necessary, to do this in a more active manner as a leading power, against moves for such UN approval. This is within her freedom of



action, and entails no juridical responsibility. Thus US pressure, seen from Japan's own stand and needs, is not at all a serious factor here: even if there were no US pressure, Japan would also have to do the same thing as she has done with US in the UN since 1961 (that is, to become a co-sponsoring state of the "Important Question" proposal). In this meaning, Japan may not exercise her freedom similar to that which is actually enjoyed by other states in the extra-legal world.

(E) The Object-Issue—One China, or Two Chinas?

Ironically, while realization of a juridical two-China situation seems infeasible in the foreseeable future, in theory such two-China situation appears to be the most desirable for Japan—it adapts to her purposes of solving the difficulties lurking behind the peace-making and war-indemnity problems. Whether realization of such a situation might be made by way of recognition, in the UN, or through an historical *fait accompli*, depends on Japan's foreign policy line.<sup>24)</sup> No doubt, for Japan at the present the UN-means appears to be the most suggestive and desirable. This, on the one hand, will give Japan a chance to avoid being drawn into risks; this, on the other hand, fits Japan's tradition of resisting a strong China by making another China or by helping one to stand if there has already been one.

But in doing so, as we have seen, whether Japan takes the initiative or not, she would have to face political attacks (status of Okinawa, hence a two-Japan theory, etc.) from both Chinese entities. Due to the highly political nature of the object-issue of the China Problem, therefore, besides being subject to other political restrictions similar to those which other states are also subject to (e.g., without consent from both Chinese entities, an international war would be needed if one tries to impose a two-China situation, etc.), on this issue Japan

bears peculiar risks. Under no circumstances may she take the initiative. In this sense, Japan's freedom is more limited than that of other states too.

From the above, it becomes very clear that on all the issues of the China Problem, and that is on the China Problem as a whole, Japan stands at the marginal line on the brink of "point of no return". Pushing one step forward, and she would be thrown into a very dangerous position deadly detriment to her national interests.

It is in such a picture, that we have Japan's *marginal* position *in concreto*.

Being in such a marginal position, Japan naturally has to act very prudently. Especially insofar as 'action' is concerned, to describe in a little literary way, she is in the 'China web' with both hands and feet bound by uncounted and unbreakable legal, political and strategic threads. There is no surprise that she has always appeared to be in a state of standstill in her diplomatic China front.

Such apparent state of standstill is understandable. However, it has been seriously and continually criticized by the Japanese themselves. And, curiously enough, though many of the steps taken by the Japanese Government may be objectively evaluated as being in pursuance of Japan's own national interest, they are unreasonably, and sometimes even maliciously, denounced by some Japanese of fame, including many a specialists, as nothing but acts done to dangle after US lines (or lines of other states). But what otherwise could have possibly been done by a government responsible to its own people, and what in fact can Japan do with so many juridical and political negative-givens and their effects on the back?

We are not to apologize for the Japanese Government; but we can not but say that most of the criticisms have not at all been just. But how do these criticisms come, and what is the

measure for their evaluation (for criticism of these criticisms)? This is another fundamental question. To answer this we have to describe the state of affairs about the China Problem inside Japan, to which we now turn.

## Notes

- 1) On the content and interpretations of this Letter, see Terasawa in Gendaihō to Kokusaishakai (J) (1965) pp. 286-92; Omura, Futatsu no Chugoku (J)(1961) pp. 191-2, 193; Jiji Tsūshinsha (ed.), Peking, Taiwan, the UN (J) (1961) p. 25; Kajima, Nihon Gaikō no Tembō (J) (1964) p. 125. There are many in Japan who seem to doubt the validity of this treaty, with the reason that Yoshida was threatened by Dulles that if Japan should choose the Mainland Regime, it would be difficult for the San Francisco Peace Treaty (1951) to be ratified by the US Senate. But it is an indisputable rule of international law that even duress is no legal excuse for invalidating a peace treaty. See, for instance, Crandall, *Treaties, their Making and Enforcement* (1916) pp. 3-4. Besides, Japan's choice was not solely a result of Dulles' threat; consideration of strategy was also an important factor.
- 2) Since war is a relation between states, and not between their governments, a treaty between two "governments" would not be a 'peace' treaty having legal effects of ending the state of war between Japan and the State of China as a whole. A treaty local in nature would, as will be shown below, be against Japan's interest; in later periods, therefore, the Japanese Government, when referring to this peace treaty, would emphasize that "the Nationalist Government is 'the' government of China".
- 3) The situation is somewhat similar to the case of the Basic Treaties between Japan and South Korea (The Republic of Korea) of 1965, and there have already been instances of dispute about their territorial application. It is also predictable that if Japan should make a 'peace' treaty with Outer Mongolia, similar dispute would appear as between Japan and the two entities of the State of China.  
On the making of the Sino-Japanese Peace Treaty, see Ueda in *Asian Affairs* (J) (1955, No. 6) p. 42; Omura, *op. cit.*, pp. 193-4.
- 4) Protocol, the Sino-Japanese Peace Treaty (1952), in *Contemporary Japan* (1952—1954) p. 162. It is doubtful whether this includes the loss of oversea Chinese in Malaya during the 2nd world war.
- 5) V. Phillipson, *Termination of War and Treaties of Peace* (1916) p. 111 f., p. 172.
- 6) As early as 1951 (August 15), Chou En-lai declared such reservation. More concretely, from 1955 onwards, the Mainland Regime, through Chou En-lai, Chen Yi, and Kuo Mo-rō, has so hinted for several times. On August 16, 1955, its Foreign Office even formally stressed the reservation exceptionally strongly. In 1958 (May 28) the *Ta Kung Pao* (Peking) made this point much more unequivocal.
- 7) Interpretation of a 'peace' treaty differs from interpretation of trea-

ties in general in many respects, see the present writer's study in Takano (ed.), *The International Court of Justice-A Case Study* (J) 1966, pp. 300 ff.

Cf. Green in the *Yearbook of World Affairs* (1952), p. 23. As a general rule, a war between two states has nothing to do with the continuity of their international personalities, nor ordinarily with mutual recognition of their governments (if both are identifiable in law during the war). But the situation now at hand is not an ordinary one. First, Japan unconditionally surrendered, but unlike Germany (v. Kelsen in *AJ* 1945), she retained her state continuity, though due to unconditional surrender and US occupation she had once lost her formal independence (Yokota in *the Journal of International Law and Diplomacy (JILD)* (J) vol. 45 (1946)). Secondly, during the war with China the Japanese Government withdrew its recognition of Chiang's Nationalist Government which had been the real opponent in that war against Japan, and made a 'Treaty on Basic Relations' in 1940 with another 'Nationalist Government' led by Wan Ching-wei (*JILD*, vol. 40 (1941) pp. 196-97). Though in Chinese law Wan's "Government" was illegal (traitorous), in the relation between Japan and China during that period Japan's withdrawal of recognition of Chiang's Government must also be counted. In law, therefore, the peace treaty of 1952 functions to nullify this illegally made Treaty with Wan. See, on this point, Article 4 of the Sino-Japanese Peace Treaty.

- 8) See Strupp-Schlochauer, *Wörterbuch des Völk.* (1960) Erst. Band, S. 590; Berber, *Lehrbuch des Völk.* (1962) Zweiter Band, S. 103; Oppenheim-Lauterpacht, *Int. Law*, vol. II, *op. cit.*, p. 610; Lord Stowell in 'The Eliza Ann Case (1813)' in Briggs, *The Law of Ns.*, *op. cit.*, pp. 412 and 414; Phillipson, *Termination of War*, *op. cit.*, p. 173, p. 180. Cf. Schwarzenberger, *The Frontiers of Int. Law* (1962) p. 100.
- 9) It must be noted that this is so, because of the validity of this peace treaty and of the existence of the Protocol quoted above (see *supra* note (4) of this Part), hence the correctness of this statement in strict law is subject to risks demonstrated below, see *infra* (IV) of this Chapter.
- 10) Nishimura in *Sekai Shuho* (J) (Feb. 28, 1961) p. 31.
- 11) Cf. Kajima, *op. cit.*, p. 126; Jiji Tsushinsha (ed.), *Peking, Taiwan, the UN*, *op. cit.*, p. 26; Omura, *op. cit.*, pp. 193-94. On other interpretations of the Exchange of Notes see Terasawa, *op. cit.*, pp. 292f.; K. Irie, *Ryodo to Kichi* (J) (1959) pp. 137-138.
- 12) Questions causes of the war refer to Japan's aggression in Manchuria early in the 1930's, etc., and questions given birth by the war refer to war reparation in the narrow sense, that is, covering only China's actual loss of lives and properties during the war, etc. They

- both are included in the concept of war indemnity in a broad sense.
- 13) Oppenheim-Lauterapacht, *Int. Law*, vol. II, *op. cit.*, p. 616.
  - 14) Note that renunciation of title etc. to Taiwan by Japan has nothing to do with renunciation of war indemnity by the Republic of China, because Japan was the defeated, while ROC the victor, in a war, and because the renunciation of title to Taiwan had been executed long before the coming into being of the dual-government phenomenon in China and, indeed, before the making of this Peace Treaty. Note also that formal renunciation of title to Taiwan by Japan in the San Francisco Peace Treaty was executed simultaneously with the coming into effect of that peace treaty, whereas renunciation of war indemnity by the Republic of China, due to the peculiar nature of sphere of application of the Sino-Japanese Peace Treaty, is executory and always conditional in nature.
  - 15) On possibility of resumption of a state of war, see Phillipson, *op. cit.*, p. 164, pp. 205—6 and p. 216; Crandall, *op. cit.*, p. 358. Cf. Kunz in *AJ* (1952) Ed. Comm., p. 115, p. 116. It is also to be reminded that recognition has been a frequent *casus belli* or reason for war. For provisions of peace treaties to similar effect, see, e. g., Articles 42—44 of the Peace Treaty of Versailles (v. Tamura, *Sekai Gaikoshi* (J), vol. III (1963), p. 11); see for a legal precedent, *obiter dictum*, Lord Stowell in *The Diana* (1803), in McNair, *The Law of Treaties* (1961) p. 554, and on other occasions, pp. 556—57 in *ibid.* See for cases denouncing peace treaty, Oka, *Gendai Oshuseijishi* (J) (1949) p. 185 note 1.
  - 16) Frankel, *op. cit.*, pp. 2, 132, 173 and 200.
  - 17) It is clear that both Chinese entities take the same step on this point. For instance, in 1958, the Nationalist Government attacked Japan before, and the Mainland Regime did it after, the Nagasaki Flag Incident. See Chen Yi's speech on May 9, 1958, and the Editorial of *Renmin Ribao* following it.
  - 18) The claim for an independent Okinawa has long been made by both Chinese entities officially and unofficially, though the motives for such claim are not at all the same. See material relative to this point, Murao in *Today's Topics* (J) (March 1966), pp. 25 f., especially p. 28. They may even make use of the "blood debt" question of oversea Chinese in Malaya to embarrass Japan-Malaysian relations.
  - 19) *Supra* concluding part of Chapter 1.
  - 20) On this issue, see Irie, *Ryodo to Kichi*, *op. cit.*, pp. 137—8 and his article in *Sekai* (J) (Apr. 1955) p. 63 and p. 94. Cf. Tabata in *Horitsu Jiho* (J) (No. 10, 1956, vol. 28) p. 1161.
  - 21) *Supra* concluding part of Chapter 2.
  - 22) The negative result of the principle of effective control legally justifies the policy of non-recognition. Of course, other non-judicial

factors such as US attitude and Japan's own national defence also function greatly, but what we are concerned here is the juridical aspect. For freedom of states in general on this issue, see *supra* concluding part of Chapter 3.

- 23) For freedom of action of other states on this issue, see *supra* concluding part of Chapter 4.
- 24) Japan's first principle in the field of foreign affairs is "Centre be put in the UN". Other principles are subject to this. In the sense given in the text, this order of precedence of foreign policy principles is advantageous to Japan at least so far as her China Problem is concerned.

However, the answer to the question of whether individual recognition is subject to, is parallel to, or takes precedence of, the UN representation issue, varies from state to state. UK takes the line opposite to that which is adopted by Japan; US puts same weights on both issues toward the Mainland Regime, and USSR takes the same line toward the Nationalist Government.

## PART FOUR

### JAPAN'S ATTITUDE TOWARD THE CHINA PROBLEM NATIONAL CONSENSUS

It is said that on foreign affairs, and on the China Problem in particular, there is no consensus in Japan. This may or may not be true, according as different definitions be given to the term 'consensus'.

'Consensus', to follow the most authoritative dictionaries of the chief languages in the world, means 'agreement' or 'accord'. There is universal consensus on this meaning of the term 'consensus'.

But the question for Japan here is rather the "meaning" of the meaning of consensus. There exists sharp split in Japan's national opinion as to what may be called a national consensus on a certain international problem. And this is best symbolized in the Japanese Diet.

In the sense that there is, and has been, in this world no "national" consensus in a perfect, hence strict, sense on a concrete international (and even on a domestic) issue, not even in a totalitarian state in time of war, consensus in a symbolic and general form can only be found in the domestic political power-balance (diet, committee, etc.) according to the rule of democracy (and this is the very meaning of democratic politics). In this sense, there is national consensus in Japan on the China Problem (and on international issues in general), seeing that many a decisions on the China Problem, always the vital issue, have been made, and the conservative force in Japan remains stable in power. If there had been no national consensus on the China Problem, for instance the Ikeda Cabinet would not have been maintained after France's recognition of the Mainland Regime (January 1964) where that Cabinet determined not to take action in the situation.<sup>1)</sup> In this sense, it is not necessarily true



of the predominant opinion, that Japan's national opinion is split on the China Problem. Nor would it be undesirable or unfortunate, even if such split be in existence.

Such national consensus may for the purpose of the present study properly be named *absolute national consensus*, in the context of the rule of absolute majority. This kind of consensus is also the basis of partial/specific consensus of the same society on similar issues; it is discoverable through analysis of the results of public polls (public opinion in the strict sense) and the views of the Press (public opinion in a broad sense).

But in a democratic system, diversity of opinion on concrete issues other than those which touch the very system itself, is desirable, and indeed inevitable. In contradistinction to the absolute national consensus, therefore, we have also what may be named *average consensus*, meaning the greatest common measure among the different opinions *on the basis of the absolute national consensus* (because the average consensus, in the final analysis, comes from, and returns to, the absolute national consensus). To this kind of consensus belong the opinions of the critics, experts, professors, and intellectuals in general.

These two sorts of consensus will be treated of in this Part.

## CHAPTER 6 ABSOLUTE NATIONAL CONSENSUS— RESULTS OF PUBLIC POLLS AND THE PRESS

Public polls are chiefly conducted by the press, hence their results are, for many reasons well known, to a greater or smaller extent influenced, if not controlled, by the press, even if we take for granted that the questionnaires are prepared by people of objective mind. In this sense it seems necessary that the press, for better or worse, is considered a part of 'public opinion' only in a broad sense (meaning that it represents public opinion in a loose sense). However, the press in Japan, on

the one hand, appears to be emotional, and at times tends to sensationalism (tending, that is, to move by moods); it is too much inclined to criticise the government for the sake of criticism, as a result of anti-power tradition; and sometimes (e.g., on the China Problem) it is clearly in contrast with truer(?) public opinion as seen from results of public polls. The press, on the other hand, to claim for itself qualification to represent public opinion, should generally follow the line of this public opinion. In view of these two facts, we put weight on the results of the polls, and treat opinions of the press as subsidiary means of knowing public opinion. Although, certainly, we do not deny that the press remains the vital means to check (to lead) 'public opinion', when on a certain concrete point 'public opinion' is unknown or is in a state of confusion. Results of public polls, being scientific conclusions, will be considered here as symbolising *public feeling* which underlies public opinion (in a strict sense). Replies in public polls are the *ne plus ultra*, though naive expression, of potential social feeling so far obtainable.

### I. Results of Public Polls about the China Problem

In Japan, the populace talks about the China Problem while knows nothing about the China Problem.<sup>29</sup> This has its cause in the fact that, mass-communication dominating Japan, the Japanese of general standard understand the China Problem by *believing* what is printed in newspapers, in magazines and what on the TV screen. In result, on the China Problem general people are colourless and are highly susceptible of being intentionally and calculatedly stereotyped through continuous propaganda.

On the China Problem, most public polls have been conducted by newspapers, and some by other agencies.<sup>30</sup> All of them centered on the general feeling about the dual-government phenomenon (hence the object-issue of the China Problem), and the

issues of recognition and UN representation, of necessity, have become *foci* for the polls.<sup>4)</sup>

On April 2, 1961, the *Yomiuri Shimbun* made known the result of a survey of public feeling (nation-wide straw poll) specifically on the China Problem. This is perhaps the first of the kind since the Ikeda Cabinet succeeded the Kishi Cabinet in July 1960.

This poll, however, did not touch the issues of the China Problem, but pointed to the China Situation as a whole. And the points were as follows:

- (i) Agreed point—crystallisation of the two-China situation was both possible and desirable;
- (ii) Disagreed point—some thought this situation should be solved by the Chinese people themselves (domestic affairs), some, that it be solved in the United Nations (international affairs);
- (iii) As to the form of such two-China situation, no concrete suggestions were made so far;
- (iv) The majority was cautious, in that it asserted that Japan

should not try to take the initiative to solve this question.

The result of this poll was confirmed by another poll done by the Chuo Chosasha (The Central Survey Institute, presumably close to the government) in July 1961 (nation-wide).<sup>5)</sup> The result of this poll was rather simple: with a DK group of 59%, among other 41% more than a half (24%) suggested recognition for both Chinese entities as independent states. As to the form for realisation of the two-China thought, again, there was no majority.

A comparison of this result with a survey made by the same Institute on the same problem in November 1959 shows that the two-China theory as a means of solving the China Problem had been deeply rooted. In 1959, the result of the poll was that, with a DK group of 55%, a majority of those who had answered

the questionnaire (24%) affirmed the desire for crystallisation of the two-China situation; but there was no majority opinion as to the means of realising this two-China situation which is itself a means to solve the China Problem (in narrow sense).<sup>53</sup>

There are other polls to check the above results.

In a public poll held by the *Tokyo Shimbun* in September 1961 (within Tokyo area and made known to the public on October 3), the result again shows the potential desire for a two-China solution. It is significant that, in nation-wide polls as in polls of the Tokyo area, the same thought was confirmed and re-confirmed: this tells that the two-China thought, seen from both its depth and its width, had become a concrete absolute national consensus. On other international problems, the results of public polls rather show differences in different areas (and according as the polls are undertaken on nation-wide or regional basis).

On the means-issue of recognition and of the UN representation, however, Japanese public opinion seems to have been highly prudent.

It must be warned that the above results, and results of polls to be analysed below, must be understood as being conditioned by the fact that the questionnaires were given without consideration of the interrelations among the issues of the China Problem, hence the answers to the questionnaires were also given without consideration about the effects, juridical as well as political and diplomatic ones, which might come from such interrelations. This, as having been seen in Chapter 5, signifies that, had such interrelations been duly taken into account, and had warning been given in the polls (albeit, surely this is no easy job), the results might have been more cautious and, indeed, more correct.

In a poll conducted in November 1961 (in Nagoya area), when asked whether Japan should recognise the Mainland Regime *even at the expense of Japan's friendship with USA*, the 45.2% that

supported UN approval (admission) of the Mainland Regime (with 9.7% opposed) dropped to 8.6%, and 41.4% put a condition "to the extent not worsening Japan's relation with USA" on recognising (in the wordings of the poll: recovering formal diplomatic relations with) the Mainland Regime, with another 18.9% asserting that "there is no need to recover diplomatic relations (even) to the detriment of (Japan's) relations with USA", thus making a highly remarkable rate of 60.3% for those who were reluctant to affirm recognition of (or approval by UN of Chinese representation in favour of) the Mainland Regime unconditionally.<sup>69</sup>

In a poll on the UN representation issue, conducted by the same Institute in September 1961 (nation-wide), the result was: 37.4% for, 9% against, UN approval of qualification of the Mainland Regime, with a DK group of 53.7%. The 37.4% affirmative for the Mainland Regime dropped to 20.6%, when asked whether 'admission' of the Mainland Regime may be done at the cost of ROC walking out of UN (implying also the case where ROC be ousted from the UN by a vote in the General Assembly to this effect); and the other 16.8% contained 4.6% opposed and 12.2% DK. The public became cautious on choosing one of the Chinese entities to the exclusion of the other.<sup>70</sup> This is a natural result of a post-war psychology of the Japanese people disliking the extremes.<sup>81</sup> It shows the hope for crystallising the two-China situation by means of a vote in the UN (through determining the UN representation issue); for, logically (but no more than logically), if one can not or will not have a clear cut on the China Problem (and it is in fact very difficult to have a clear cut at all), as long as the *status quo* in the Taiwan Straits exists the only thing for one to choose would be a two-China situation when one tries to solve the China Problem. This is especially true in case of the Japanese people.

Another poll on the UN representation issue, in particular,

was undertaken by the *Tokyo Shimbun* (in the Tokyo area) also in September 1961. The result was: 52.5% for, 8.4% against, 'admission' of the Mainland Regime into UN. But within this affirmative majority of 52.5%, 62.3% (equivalent to 32.7% the total answers to questionnaires) also stressed ROC position in the UN (asserting that the Nationalist Government continues to represent the Republic of China), with 18.6% (9.8% the total answers) opposed thereto. Excluding the DK group (31.2%), and more than half the total replies were in favour of some form of two-China situation by means of solving the UN representation issue. The fact that similar results were had in nation-wide and in area polls is again noteworthy.

Thus, it may be said in conclusion that, albeit there was no distinct consciousness about the preconditions for (form and means for realisation of) a two-China situation, and though cautious attitude to avoid Japan being drawn into danger of the struggle (hence oddly in expectation for natural solution of the *status quo* by passage of time) remained prevailing among the Japanese, there was at the least potential consensus (national feeling), too realistic perhaps, on a two-China solution, conditioned by the timing for its overt expression. And, considered as the object-issue of the China Problem, the question 'one China, or two Chinas', to the Japanese by and large, was not at all unsolvable. There is therefore not much justification for one to assert that on the China Problem there is no consensus in Japan (and this is the prevailing opinion in Japan). The conclusion may be simply stated in this way: the Japanese people desired a more flexible policy on the China Problem with the aim of solving it through passage of time, and, to them less desirably, through realisation of a two-China situation in some form and by some means, and at best timing.

This consensus had been maintained throughout the Ikeda period. Comparing this with the results of polls of the pre-Ikeda period,<sup>99</sup> one may discover some vital similarities. Thus though

the two-China thought appeared to have been withdrawn into the background for a certain period, the consensus just referred to remained Japan's absolute national consensus. And this statement is proved in 1964 by the impact of French recognition of the Mainland Regime, in which situation this Japanese consensus came to the surface and was expressed in an exceptionally strong form.

In January 1964, when France recognised the Mainland Regime, Japan's public opinion, naturally, centered on the recognition issue. In the polls undertaken in those days when the impact was hardly measurable, there was no notable departure from the potential consensus that had been shown in the previous years.

To take as a good example the poll conducted by the *Yomiuri Shimbun* immediately after French recognition (made known to public on Feb. 20, 1964, nation-wide, straw poll), the percentage for and that against Japan's recognition of the Mainland Regime were nearly equal. It was pointed out by the editors of the column concerned when they made known the result of the poll, that at the beginning of the poll an overwhelming majority had urged for immediate recognition of the Mainland Regime, and that cautious attitude became prevailing after the ROC severed diplomatic relations with France (thus making impossible realisation of a two-China theory). However, it remains true that the current went toward recognition of two Chinas. This strengthened the convincing force of the thesis, which seems pragmatic and too realistic, that the two-China thought had been Japan's absolute national consensus on the China Problem and that what differed were only means, form and timing of its being realised.

When the recognition mood given rise by the "de Gaulle-heat" had become cool, the *Yomiuri Shimbun* made a public poll on the same issue (nation-wide, made known on April 19, 1964). The

result was again not so far from what had been obtained two months ago: 22% against, 15% for, immediate recognition of the Mainland Regime, with 14% for conditional recognition (among the conditions was raised 'peace-loving') and a DK group of 31%. On the UN representation issue, the result was: 34% asserting Japan's gradual approach to the Mainland Regime, 18% urging Japan to follow the majority in UN, 11% claiming immediate 'admission' of the Mainland Regime (3% against such admission), with a DK group of 34%. On a two-China policy, furthermore, the answers show 23% for, 11% against, with a DK group of 43%. It is remarkable that the 23% for a two-China policy warned that Japan should not take the initiative. This confirms our above conclusion.<sup>10)</sup>

## II. The Press—Public Opinion in a Broad Sense

Public feeling or national consensus of a people, good or bad, is not subject to criticism, not, especially, to criticism from outsiders. A people is responsible to itself.

However, the press (meaning newspapers in the main), being public-feeling leading opinion (instrument), is accountable for such feeling. This should be true in every country, and it is truer in Japan because of highest degree of freedom of speech, of the marvelous circulations of the newspapers and of the magazines (no less than a total daily circulation of 20 million copies for newspapers, and annual circulation of monthly and weekly magazines, synthetic or otherwise, counted by hundred million), and because of the fact that the Japanese *believe* what the press says. This no doubt is the reason why the press is vital in every sense.

It is unfortunate, however, that in conducting public polls on the China Problem the press does not explain the effects of interrelations among its issues.<sup>11)</sup> In fact, this is not even done in daily spaces. The Japanese press is in this sense answerable



for mistakes or prejudices existing in public opinion (feeling) as we have demonstrated above.

It must be confessed that it is no easy thing to know the concrete and continuing stand of Japanese press. This sounds strange, but it is exactly the reality in Japan. The Japanese press, due to reasons to be given, seems to be in want of consistency, and sometimes, of identity as the 'press' which must be cool and objective.

While the most certain means to know the stand of a newspaper is to read its editorials, in Japan such means hardly serves this purpose. The reason is that people in general do not read editorials at all, and the cause for this in turn lies partly in the fact that editorials are difficult to understand and that, in particular, there is no 'stand' (in a strict sense of the term) that can be seen from editorials. More concretely, Japanese newspapers do not as a rule have continuity in their stands, and editorials on foreign affairs are, nearly without exceptions, written in a manner not affirmative nor negative, but are rather written so ambiguously as to impress the outsiders that the editorial writers (Ronsetsu Iin) try to sit on the fence: rarely, except in time of crisis (in 1960 for instance) and on domestic affairs, is there firm and concrete assertion amounting to represent the stand of a paper discoverable in editorials.<sup>12)</sup>

Such a strange phenomenon comes from the characteristic of the Japanese press itself. Besides the anti-power tradition and the above-referred emotional nature, the Japanese press is apt to playing hula-hoop.<sup>13)</sup> There is also hardly any denial that it is ideologically left-leaning, as a result of its volition to be 'progressive' and due to some extent of control by the communist or communist-sympathizers. In addition, though the Japanese press has so far not lost its nationality, it applies its principle of "being just and neutral" even to the China Problem; thus it appears to be critical of the government for the sake of

criticism, and about the China Problem, for times it seems to side with the Mainland Regime.

If a stand must be found out for Japanese press, then there is a common stand: except some TV and radio stations, the Japanese press as a whole is anti-anti-communist<sup>14)</sup> (but not exactly pro-communist). This for times impresses one with the cynical fact that, as against its real aim, the Japanese press in consequence does profit the communists.

On Sino-Japanese relations in general, the press, especially during the Ikeda period, urged a positive attitude for normalisation of relation with the Mainland Regime<sup>15)</sup>, with the relation between ROC and Japan kept intact. This on the one hand is in line with the logic underlying the national feeling of an ideal peace—to be friendly with *all* on earth; this, on the other hand, is a result of the tradition critical of government position.

From this it follows that a two-China theory was contemplated. On this point, once more, Japanese press was in conformity with the logic of Japan's national feeling of that period, and may be considered to have represented public opinion. On the two-China line, the press left no doubt, and sometimes the editorials were rather inclined to defend government position. It may be doubted whether, on this point, the Japanese press had not intentionally functioned to lead public feeling in the polls through hints, by way of making the questionnaires in a specific form. This may be inferred from the fact that no poll has been offered to the public with clear explanations on the interrelations among the issues of the China Problem. And, at least so far as editorials were concerned, that the Chinese Civil Strife of the 1940's had been ended was taken for granted, and that Taiwan's territorial status had remained undetermined was implied in all cases. The recognition issue and the UN Chinese representation issue have been discussed on these two presuppositions. In this picture, there is no surprise that the Japanese

press was again critical to the government, which is responsible to the Japanese nation, hence must be highly prudent. In any case, on appearance at least public feeling and the press are close to each other on the issues of recognition and UN representation.

On the question of making peace with the Mainland Regime and on the war-indemnity issue, Japanese press once more supported the government under the paramountcy of national interest. It is therefore presumable that the Japanese press deliberately hid the interrelations amongst the issues of the China Problem and the effects thereof, so as to make a 'public poll' follow its technical lead.

These can be seen in time of crisis. In the situation of French recognition of the Mainland Regime in 1964, all newspapers exceptionally made clear their stands through their editorials. Most of them were, not unexpectedly, similar on one point: they lost their presence of mind, tottering between recognition and non-recognition, and between one-China and two-China.<sup>10)</sup> Accordingly, if it be true to say with the Japanese press that the Japanese government had no firm stand in the China Problem, it may equally be true to say that the Japanese press, like the Japanese people, is not immune from the poison of 'mood'. However, in time of crisis, as a rule the press would take a prudent, wait-and-see line, as would the government, on the China problem. And the reason lying behind this is this: the Japanese press knows well enough that, the *status quo* in China remains as it is, there is no easy and once-for-all solution for the China Problem, and that Japan should be prudent because questions lurking behind the interrelations of the issues of this problem will not be to Japan's interest, if Japan tries to go her way against reality. In this respect, the Japanese press is inconsistent and pragmatic (and not only sensitive). It does not explain why Japan's non-recognition policy must change, and cannot

tell how it may justify itself in its criticism of government daily decisions (e. g., denouncing as dangerous the decision of the government to join the 'important questions' proposal at the 16th Session of the UN General Assembly on the UN Chinese representation issue), which in fact were based on the prudent wait-and-see line latent under the current of the press itself.

From the above, it may be concluded that so far as the China Problem is concerned the Japanese press had less benefited than hurt Japan: while leading public feeling in an invisible way, it hid itself under the veil of public opinion and committed many mistakes. In this sense, it was supplementary to public feeling which may be known through analysis of scientific results of polls. And, insofar as it discarded the interrelations among the issues of the China Problem in their public polls, while in reality it was conscious of, and hinted on, such interrelations in terms of Japan's national interests only in time of crisis, the Japanese press can not be free from criticism, in that it is liable for the ignorance of the Japanese populace about this cardinal problem in Japan's foreign affairs.

But we do the Japanese newspapers injustice, if we do not at the same time stress their functions in leading public opinion, and if we hesitate to insist that they are at the least far more objective and pure than the Japanese periodicals. Here we have to search for the situation among the *chishikijin* (the Intellectual or *bunkajin*), in contradistinction to the journalists that are here understood as chiefly belonging to the category "the press".<sup>17)</sup>

## CHAPTER 7 AVERAGE CONSENSUS OF INTELLECTUALS

The stratum "intellectuals"<sup>18</sup>, as used here, will include the critics and writers, professors and specialists in all fields (whether they are famous figures in the society or not), and those journalists who occupy some space also in the periodicals (the *Sôgô Zasshi*—synthetic magazines), etc. It will include, in other words, the *chishikijin*, the *yushikisha*, and the *bunkajin*, etc. These sub-categories are equally able to have their voices heard, chiefly if not solely, through the *Sôgô Zasshi*.

So far as they participate in leading public opinion, the intellectuals, like the press (hence the journalists and columnists of the newspapers), function as public-feeling leading stratum; but so far as they are in a position to criticize the press, as in fact they always do, the intellectuals bear more responsibility than the press should.

Frankly speaking, to search for agreements, if any, among Japanese intellectuals is a far more difficult job than to try doing the same thing in the case of the press. The reason is simple: Japanese intellectuals are most deeply influenced by some ideology (perhaps more deeply preoccupied than the Socialists are, to the extent that sometimes their nationality may well be doubted). As a natural result, the Japanese intellectual circle happens to be the most hardly compromised in personal prejudice, and most discrepant and diversified in opinion. We have here a situation of intellective confusion if not turmoil or anarchy. And since the figures of this circle are apt to be self-contradictory in their views given on different occasions, the truism, that a state of opinion-excess is worse than a state of opinion-vacuum, holds good in too many cases.

Be this as it may, it is nonetheless necessary to know the average stand (average consensus) of this too powerful and authoritative group, without whose consensus nothing can be

talked about the China Problem, and directly against which no government attitude-policy could possibly be maintained for long.

The root of the confused state of affairs within the intellectual circle on the China Problem (and on other international questions as well) is this, that, whereas opinions of this circle are given for the purpose of criticizing the government position (and they are, as the Japan Quarterly once pointed out correctly, in tradition stern to their own government), there is no agreed criteria for criticism. Thus we have a condition of hundred-flower blossom: criticizing the government becomes a passport to go into this "club," and everybody has his own standard of making criticism against government policy. The meaning of the 'China Problem' is considered self-evident, and the interrelations among its issues are pushed into the dark.

Under the circumstances, some doubt whether many of the intellectuals really understand what the China Problem is<sup>19)</sup>, and some assert that it is highly necessary to make clear what the China Problem is meant<sup>20)</sup>. Unfortunately, these appear to be the correct prescriptions for the chaos just referred to.

In describing the average consensus, if any, of the intellectual circle on the China Problem, we shall, as it should, exclude the extremes of the right and the left, and raise opinions of the somewhat representative figures generally so recognized in the Japanese society<sup>21)</sup> (and this not solely according to judgments of the present writer, thus avoiding subjectivity), and will try to draw out the average along the line of the *absolute national consensus* already established, if possible. It is, however, quite fortunate that there have been some important polls on the China Problem, which were specifically undertaken among the intellectuals.

But in analysing the results of the polls (and even in choosing one) specifically directed to this circle, two points at least become of cardinal importance: (a) unlike the press (in a strict sense, that is, newspapers) which is to a great extent ideologically neutral

and is objective in the main, the periodicals (the press in a broad sense) have their strong ideological histories and backgrounds more or less distinctly visible and are resolute in their editorial policies (not infrequently contributors of articles, if they be not very famous ones, may be requested to amend part of the contents of their articles so as to fit the respective editorial policies); (b) the authors, and that is the *chishikijin* themselves, are equally ideologically coloured, subjective and furious in attitude, and tend to be exclusive, hence intolerant, though they themselves ask for tolerance from others. The results of the polls accordingly may not always be objective, hence we may not accept their face values before checking the backgrounds of the periodicals undertaking the polls and the general histories of the figures giving answers to questionnaires<sup>22</sup>). Many a polls were technically well-designed to fit certain selfish ideological purposes—some kind of propaganda with cooperation from chosen personalities, and answers to questionnaires could be foreseen. This can hardly occur in scientific polls by Japanese newspapers.

In a public poll among intellectuals, rare of the kind, held from January 24 to February 1, 1964 (nation-wide, close to government) by the *Naigaijosei Chosakai* on the China Problem, with French recognition of the Mainland Regime at the background and asked 'how should Japan's (China) policy be?', the answers show the following lines<sup>23</sup>):

- |   |     |
|---|-----|
| (i) Realisation of some sort of two-China             | 34% |
| (ii) Independent policy with forward attitude         | 24% |
| (iii) To put weight upon continuing support for ROC   | 21% |
| (iv) Immediate recognition of the Mainland Regime     |     |
| (hence withdrawal of recognition of ROC)              | 17% |
| (v) Cautious line—not too early, not too late, and to |     |
| avoid Japan's taking any initiative on the matter     |     |
| (meaning to wait for world 'recognition mood')        | 17% |
| (vi) A two-China situation not good for Japan         | 5%  |

The general line was evidently this: a two-China line was prevailing, but caution to avoid Japan being drawn into danger was a condition. Had this poll been conducted after February 10 when the Nationalist Government severed its diplomatic relations with France (this made impossible a two-China situation in that crisis), the answers (and even the questionnaires) might have been greatly different. But this would mean only that the potential thought of a two-China situation would retreat underground. Hence it is rather useful to search for the real thought in this crisis so as to know true facts.

Another poll may function as a check to the above results. In May 1961, the *Tokyo Shimbun* published the results of its enquête made among invited famous figures of different circles (the *shikisha* or *yushikisha*), with the average of opinions (greatest common measure) as follows: (i) a two-China solution, if possible; (ii) not to be in conflict with USA on this problem; (iii) Taiwan's importance for Japan being stressed (hence in the matter of recognition and of UN representation, policy in favour of the Mainland Regime to be conditioned by equal treatment of ROC); (iv) since for the time being there was so far no effective way to solve the China Problem, the wait-and-see line was the only one available.<sup>24)</sup>

This average consensus is similar to the results of the 1964 poll demonstrated in the preceding paragraph.

The above is an average consensus of the Japanese intellectuals on the object-issue of 'one China, or two Chinas?' On other issues of the China Problem, there seem to have existed some average consensus too. In fact, such issues had been examined carefully by most of the *yushikisha* (especially by experts of international relations), hence it becomes possible to explain the condition a little in details.

# (1) *Status quo* in the Taiwan Straits



On this issue, it is surprising to see that there existed unanimous consensus among all from the extreme rightists to the extreme leftists, with reasons not necessarily similar but doubtlessly same in origin of feeling. This consensus found its expression in the reluctance to admit that there is in the Taiwan Straits a civil strife. The intellectuals acknowledged neither that that war was (is) extension of armed struggle of the Chinese Civil War of the 1940's, nor that it was (is) a new civil strife. Thus they invited attacks from both Chinese entities, and on this point at least they indeed looked like ostriches in the desert. Faced by the reality, however, they not only were unable to explain what was going on in that area, but also desperately hid their unrealistic conclusions on this issue behind a more dangerous picture, by claiming for this armed struggle the nature of an international (perhaps a world) war, a war, that is, probable between USA and the Mainland Regime (and USSR would be involved too). In this way, on the one hand, their ideal of absolute peace, which has become the vertebra of Japanese life, was itself menaced; on the other hand, the potential feeling of two-China came to the surface unconsciously. In other words, like the general public the intellectuals shared the same feeling of hatred and fear toward another full-scale war. They recognized that a series of facts in the Taiwan Straits was one between the two Chinese political groups and was abnormal; nevertheless they considered this in terms of 'one China, or two Chinas?'. Thus the two totally different issues were confused, and it is natural that no correct conclusion was reached.

Questions however were raised by the experts (including professors of international law and of international politics). Most of the specialists, due to their knowledge in their respective subjects, asserted the contrary, to the effect that there is in existence of a civil strife in the Taiwan Straits. But this assertion had so far not been accepted by other groups

belonging to the same stratum of intellectual, hence it remains the minority opinion subject to pacifism.<sup>25)</sup>

## (2) Territorial Status of Taiwan

Since there is indivisible relation between this issue and the *status quo* in the Taiwan Straits, and also a logical link of cause and effect between them, denial to the first its nature of a civil strife necessarily denies Chinese sovereignty over Taiwan. But the intellectuals in Japan did not follow this logic, and this issue is in fact the ideological divide<sup>26)</sup> between the two chief groups belonging to the category *chishikijin*: the reformist group urged for Mainland Regime sovereignty over Taiwan (thus implying necessity of Japan's recognition of that regime); the conservative group, however, claimed the correctness of UK theory of 'uncertain or undetermined' status<sup>27)</sup> (thus logically denying both Chinese entities qualification to exercise "sovereignty" there, hence amounting to saying that ROC was a state-in-exile, which is a novelty in international law and in diplomatic history). The majority, however, seemed to have considered at the middle line, that, on the question as to whether Taiwan was or was not Chinese territory Japan had no voice whatsoever, (thus avoiding the risks of making a dangerous and difficult choice), but that it was desirable that this politically and strategically important island be kept out of the Mainland Regime for Japan's interest<sup>28)</sup> (and not necessarily in favour of ROC).

Overwhelming majority of the experts, especially the international lawyers, affirmed the opposite theme: Taiwan was understood as belonging to China as a result of strict legal obligations under the wartime arrangements, even though there had been no formal cession.<sup>29)</sup>

The average consensus of this category on this issue may therefore be stated thus: whether Taiwan was or was not Chinese territory, and whether there did or did not exist legal obliga-

tion for the Allied Powers of the Second World War to have this island transferred to China, it was desirable for Japan not to concern herself in this issue; but what Japan hoped for was that this island, being closely connected with her national defense, be kept in the hands of a friendly and non-Communist country, whatever that country may be.

### (3) Recognition and the UN Representation Issues

These are always the centres of disputes among the intellectuals. They are most subject to ideological preferences in Japan.

The discrepant condition in the *Gaiko-kondankai*<sup>30)</sup> is highly instructive here.

The discrepancy existed at this round-table conference (in 1961) ranged from necessity of recognition to extreme non-recognition of the Mainland Regime. No conclusions were reached, except a confirmation that this issue (recognition) was too complex for decision.

Many proposals were submitted by the most famous members of the conference. The first was a non-recognition proposal, with the reasoning that the Mainland Regime had been aggressive; the second suggested a "realistic" view of recognising both Chinese entities; and the third was one of gradual recognition, conditioned by the solution of the Taiwan question, etc.<sup>31)</sup>

But despite such discrepancy, there were some points in concert. There was majority that it was still early to recognise the Mainland Regime, and underlying this was the potential tendency of a two-China thought through solution of the representation issue in the UN.<sup>32)</sup>

This condition was, however, not unique of this conference. Studies by other groups showed similar tendency.<sup>33)</sup> As a matter of fact, this situation, added by the Socialist view of immediate recognition, became the miniature of Japan's reality on this issue.

Here we have the average. On the one hand, as the chairman (Kiuchi) of those meetings of the *Gaiko-kondankai* on this particular issue said after the discrepancy had become evident, that "it was clear (in the meetings) that the China Problem is so complicated in nature, that it is of no benefit to talk about recognition heedlessly; and this is the great harvest of our discussions". On the other hand, though there existed in Japan at least seven attitudes on the recognition issue, the difference lay in "timing" only, and was no matter of principle.<sup>34)</sup> A study of the interrelations among the issues necessarily led the intellectuals to adopt cautious attitude.

On the UN representation issue, on the other hand, there existed clear majority opinion which would make its solution (for Japan) subject to the condition of 'world opinion' (and the 'world opinion' in the UN was said to be a two-China solution).<sup>35)</sup> Though it was true that many acknowledged that admission of the Mainland Regime into the UN would be necessary in remote future; immediate, absolute, and unconditional solution of this issue in favour of the Mainland Regime occupied no significant position in the stratum of intellectual.<sup>36)</sup>

#### (4) The Restrictive Issues—The Peace Treaty with ROC and War Reparation (Indemnity)

Strangely, while it seems a matter of course that as Japanese the *chishikijin* should not divide amongst themselves on these points which would seriously compromise Japan's national interest, in actuality the most serious splits among the intellectuals were exactly on these issues. This is so, because most of the *chishikijin* had their own logic (rather, starting point) of reasonings.

The progressives asserted for the Mainland Regime a right, and imposed on Japan an obligation,<sup>37)</sup> to make peace; the conservatives denied any such right and obligation.<sup>38)</sup> The root

of this dispute was whether the peace treaty made in 1952 between Japan and the Nationalist Government was a peace treaty at all, and if so, whether it was a peace treaty applying to 'China' as a whole.

On the war reparation issue there existed similar disagreement. Whereas the progressives generally predicted that the Mainland Regime would not demand war indemnity from Japan as a condition for making peace;<sup>39)</sup> the conservatives, logically, denied any ground for the Mainland Regime to make such demand at all.<sup>40)</sup>

There was therefore on appearance no average consensus, because the two camps within the intellectual stratum showed fundamental differences at the point of departure, in the reasonings, and hence in conclusion, due to ideological stands which were likely to be maintained at the cost of national interests. However, as will be seen in the next Part, the progressives (the Communists being excepted), when they met with the choice between ideological consistency and national interest, preferred the latter to the former.<sup>41)</sup> It is due to this reason that Japanese progressives had not *believed* in their ideology on an international plane (e.g., international communism); and from this indeed there comes a possibility for an average consensus.

Such average consensus may be stated in this way: Both camps within the intellectual stratum admitted that the Sino-Japanese Peace Treaty of 1952 was (is) a peace treaty, and the only point on which they differed was its territorial application; hence there came the difference between a 'limited peace treaty' and a peace treaty in ordinary sense. But though this is not only a matter of terminology, it remains true that in the context of our reasoning on the effects of the Exchange of Notes concerning territorial applicability of this peace treaty,<sup>42)</sup> the difference between the 'limited peace treaty' and the 'peace treaty in ordinary sense' loses its meaning. Both, in other words,

tell one side of the picture, hence they are not at all uncompromising. And if this treaty is a peace treaty, whether another peace treaty with the Mainland Regime would be necessary, would depend rather on the attitude about recognition, which, as having been pointed out, was dominated by a two-China tendency. If the *chishikijin* grasped the concept of the China Problem in its organic meaning (understood the interrelations among the issues) they would discover that they had something in common; and that is, to Japan's interests, with strong reasons there would be no other answers than the one to claim that no peace treaty would be needed for Japan to deal with the Mainland Regime. And this in fact would be so made more in terms of the war-reparation issue than for the peace-treaty issue itself. Without the war-reparation issue, many say, there would be no harm for Japan to agree that it is necessary, or desirable, as a matter of form, to make peace anew with the Mainland Regime—and this indeed was one of the grounds on which assertion of the progressives in the Ikeda period was based.

## Notes

- 1) The continuation of the absolute majority position of the ruling Liberal-Democratic Party in the Diet *prima facie* proves the existence of the national consensus, though imperfect, on the China Problem. However, this is not to say that with an absolute majority in the Diet all actions (inactions) of the Ikeda Cabinet were politically wise or may be justified *ex post facto*. If it is the basic principle of democratic system that the majority rule be followed, it is the other aspect of the same principle that minority opinion should also be respected. This is especially true in case of foreign policy which degree of success depends in the first instance on the extent of national supports.
- 2) Maeda, in Minutes of the *Gaiko-kondankai* (J) (quasi-governmental and confidential documents) 4th Meeting, Oct. 25, 1960, p. 42.
- 3) For fear that observations be led to onesidedness, to retain objectivity we include in this Chapter results of all influential polls obtainable, undertaken by official (governmental), semi-official, and unofficial units with different stands and starting-points, with no deliberation as to what their results are.
- 4) Public opinion (feeling) on other issues therefore will have to be sought in the average consensus (see Chapter 7). But the omission in making these other issues subjects of the polls may be interpreted as a hint expressive of the view of the press/units that conducted the polls: e.g., the fact that the nature of the *status quo* in the Taiwan Straits has never been included in questionnaires, shows that press view seems to be that the Chinese civil war of the 1940's has come to an end, etc.

In this Part, what concerns us is consensus, if any and of whatever kind, existing in the Ikeda Cabinet period. For the situation of public opinion on the China Problem in the pre-Ikeda period, see D. H. Mendel, Jr., *The Japanese People and Foreign Policy* (1961), Japanese transl. (1963) pp. 306, 327 f., 347-8. It is significant that in that volume Japanese press (newspapers and magazines) was said to have given "only the views of scholars and politicians" and "Scientific surveys are the best way to discover true public opinion" (Prof. Ueda's opinion, quoted by Mendel on p. 18 l. c.). This is the correct view about the present situation in Japan, though we do not deny that the Japanese press has had other vital functions.

- 5) Report on 'Japanese View on China' (J), Cabinet Secretariat (Cabinet Research Office) Publication No. 30 (Survey Material on Social Tide. Dec. 1964) p. 12. Cf. similar result of majority affirmation of a two-China solution was had in another survey (nation-wide) conducted by the same Chuo Chosasha in September 1961, *ibid.* pp. 9-

10.

- 6) Report on 'Japanese View on China', *ibid.*, p. 10. This, of course, may not be naively understood as to mean that the Japanese people attached absolute importance to friendship (in the pure sense) between Japan and USA. "There is a considerable part of Japanese people that casts doubt on recognition of Communist China, from viewpoint of Japan's national security" (*ibid.* p. 6); and it is USA that was, and still is, relied upon for Japan's national defence.

7) *Ibid.* p. 9

- 8) Concur, *ibid.*, p. 10. Neither, therefore, does the Japanese people attach importance *par excellence* to Taiwan's strategic value for Japan. This psychology, mixed with the feeling of deep historical relations, cultural closeness and ethnic homogeneity, makes the Japanese reluctant to deny either of the two entities in China. This is the root of a desire for a two-China.

Such psychology, as it were, is rooted in a strong pacifism which controls the Japanese minds in the post-war period; and from this pacifism comes the desire to be friendly to all countries on earth, including the Communist States. Though such desire is no more realisable than the thesis of permanent peace, it remains a real factor in Japan's foreign policy. See, on this point, Matsumoto in Halpern, *op. cit.*, p. 128.

- 9) See Mendel, *op. cit.*, p. 329 f., p. 333. In fact, as early as 1952, in a poll by the *Asahi Shimbun* (nation-wide), replies desiring "normalisation" of diplomatic relations with the Mainland Regime were 57% (opposed 11%); and in 1956, a nation-wide poll by the Prime Minister's Office shows that 53% was in favour of Japan's (general) intercourse with the Mainland Regime. With such easily discernible line at sight, it is not necessary, nor is it desirable, to inquire into the ideological split among the minority which always hides itself behind the omnipotent name of 'public opinion'.
- 10) In all the polls on foreign affairs, the Japanese public always shows a high percentage of DK—more than 50%. Though high rate of DK group is common to polls in all countries, the exceedingly high percentage is nonetheless characteristic of post-war Japan.
- 11) See *supra* (I) of this Chapter.
- 12) See on this point, Uchikawa in the *Chuokoron* (June 1966 issue) p. 143, quoting criticism from the *London Times*, to the effect that editorials of Japanese newspapers are explanatory rather than giving conclusions. Cf. the *Sogo Janarizumu Kenkyu* (J) (Feb. 1965 issue), p. 14 f. However, it would go too far if one says Japanese newspapers have no stands at all. We mean here only that their stands are not expressed clearly in their editorials, thus they may at any time export mistaken image to the readers (if these readers read the editorials



at all) and, more vitally though indirectly, they dominate the results of the public polls. See *supra* (I) of this Chapter.

- 13) See *the Sogo Janarizumu Kenkyu*, *op. cit.* (Feb. 1964) p. 11 f.
- 14) *The Free World* (J) (May 1964 issue) p. 49, p. 52.
- 15) Matsumoto in Halpern, *op. cit.*, p. 139.
- 16) See a 180° change in attitude of editorials of the *Asahi Shimbun* (Jan. 19 and Feb. 12, 1964); and of the *Mainichi Shimbun* (Jan. 19 and Feb. 12, 1964). *The Yomiuri Shimbun*, instead of giving an editorial, made known on Feb. 20, 1964 the result of its poll, above analysed, which was tantamount to a sudden change of attitude similar to the other two papers (cf. its editorial of Jan. 21, 1964). NHK too fell into this confusion, which was known from its news commentary program on Jan. 20, 1964. January 19 marks the start of the impact of French recognition of the Mainland Regime, while Feb. 12 is the date when a two-China situation was made impossible. All these three big papers first predicted, and indeed hinted, with technique, that the French Recognition Situation was desirable for Japan because a two-China situation would become feasible; three weeks later, however, they retreated by strongly denying such feasibility and urged for caution. The secondary papers (and in fact the pro-government papers), on the other hand, were rather cautious from beginning; and facts proved that they were so far correct. See *the Sankei Shimbun* (Jan. 21, 1964) and the *Tokyo Shimbun* (Jan. 24, 1964).
- 17) It is in fact hardly possible to make a sharp distinction between journalists of the press, on the one hand, and the *chishikijin* (*bunkajin*) occupying spaces of the periodicals, on the other. In a loose sense the two may overlap each other. It may even be correct to say that many of the *chishikijin* (*bunkajin*) are also journalists, just as many a critics are at the same time experts or professors. It is due to convenience only, that a distinction is made here.
- 18) For many reasons, the term "intelligentsia" is not used here. It must be confessed that it is no easy thing to make distinctions among the *chishikijin*, the *yushikisha* (the *chishikijin* of the *chishikijin*?) and the *bunkajin*, because they are nearly the same. There is furthermore the question as to who are 'intellectuals' and '*chishikijin*', etc. But we do not inquire too deeply. We need only exclude before hand the '(pseudo-, semi-) intellectuals', who become such only because they belong to the constituency of a high-class periodical like the *Sekai* or the *Chuokoron* (disregarding whether they actually read and really understand what they have read if they do read; see on this point, Oda M., *Nihon no Chishikijin* (1964) p. 122), because they do not function in leading public-feeling. Cf. Hidaka, quoted in *Shakai Kagaku Quarterly* (J) (Feb. 1964, No. 2) p. 81

- 19) For instance, Eto S. in *Today's Topic* (J) (Apr. 1965 issue) p. 11; Kumano in Report No. 8, Synthetic Study on China (Dec. 15, 1959) p. 12.
- 20) See for instance, an article in the *Jiyu* (J) (Apr. 1964 issue) with the pregnant title "What is the China Problem?"
- 21) Some of the famous figures in this circle are not necessarily representative in all respects, though in the main they do lead public-feeling. For, on some vital points they may have isolated themselves from their fellow countrymen as a result of ideological loyalty. Due attention is therefore paid to this fact, in choosing the 'representative opinion' of a certain person of fame on a particular point.
- 22) One of the examples is an enquête by *Sekai* in October 1958 (p. 29f.) immediately after the Nagasaki Flag Incident had occurred. From the timing, the way of putting the questionnaires and persons chosen to reply, and even from the motive (clearly stated to be in opposition to government wait-and-see policy on recognition of the Mainland Regime), those answers can hardly be said to have been representing 'public opinion' of the time. Another example is a poll conducted by the *Chuokoron* (made known in its March 1963 issue, p. 148 *et seq.*) about "view on China" (meaning on the Mainland Regime). The way of conducting the poll was kept unknown, and the answers ranged from one extreme to the other, that no average consensus may be had (note that a Chinese who is well-known to be anti-ROC was also invited to give answers), while through techniques it tried to impress on the readers that there had been a consensus in favour of the Mainland Regime. There are many others of the kind. In this sense, polls undertaken by newspapers or scientific research institutes are more reliable, though, of course, not without danger too.
- 23) Report on "Japanese View on China", *op cit.*, pp. 20-21. It must be pointed out that in those days most of the intellectuals tended to recognition of the Mainland Regime but were annoyed at the existence of ROC (and, unconsciously, at the invisible importance of the island of Taiwan). At that juncture, like it or not, the logical way to rid themselves of the trouble was a two-China situation.
- 24) Concluding part of the series on "All about the China Problem", No. 14. Like in the case of the 1964 poll by the *Naigaijosei Chosakai*, this poll was undertaken with special background—in the former part of 1961, Japan was to join USA as co-sponsoring state of the 'important question' proposal on the Chinese representation issue to be submitted to the UN General Assembly, and many newspapers were opposed to such action by the government.

The same tendency hoping for a two-China settlement existed also in some study groups. For instance, the idea-supplying group of

'Synthetic Study on China', apparently sponsored by some government source, strongly impressed one with such a tendency, see conclusions in reports by this group (Report No. 6, Dec. 1, 1958, pp. 176-177, also pp. 134, 139 and 160, and Report No. 16, Oct. 15, 1964, pp. 209-210). The *Gaiko-kondankai*, advisory organ for the Prime Minister and the Foreign Minister, was also controlled by this tendency. See *infra* (3) of this Chapter and notes there.

Among international lawyers and scholarly ex-diplomats, too, the two-China tendency was prevailing. See for the former group, Yokota in the *Sekai* (Apr. 1955) p. 61; Ohira, *Asian Diplomacy and Japan-Korean Relations* (J) (1965), p. 111, p. 116 and citations there. *Contra*, Terasawa in the *Jiyu* (Mar. 1961 issue), who named a two-China situation a myth. On the other hand, some like Ueda even went so far as to assert that there was no question of law for recognizing two Chinas (in the *International Affairs* (J), Apr. 1961, p. 10f, and in the *Jiyu*, Dec. 1964, pp. 109-111).

For the latter group, see, for instance, *Kindai Nihon nō Gaiko* (J) (1962) p. 201. But see Sakamoto in the *Asahi Journal* (J) (Feb. 21, 1965 issue) p. 87 ff., esp. pp. 91-92. Some even claimed that a two-China settlement was "world commonsense" and "rightful" solution, see the *Sekai Journal* (J) (Apr. 1965 issue) p. 63.

- 25) See Irie A. in the *China Quarterly*, "Special Survey on Formosa" (Jul.-Sept. 1963, London) p. 52; Tabata in *Kokusaimondai* (J) (Apr. 1961 issue) p. 14; Kosaka in *Jiyu* (J) (Apr. 1964) p. 31 and p. 45; *Synthetic Study on China, Report* (J), *op. cit.* No. 6, pp. 17 and 46, etc.; Nishimura in *Sekai Shuho* (J) (Feb. 28, 1961 issue) p. 31.

It is interesting to see that this *status quo* was termed 'an international local war' (and that is, an 'international' civil war somewhat between states), which is a self-contradiction in term but which would be acceptable if "belligerency" was implied (Report No. 6, *Synthetic Study on China*, pp. 17 and 134, but see p. 46 where this status was clearly referred to as a 'state of civil war'). This is symbolic of the helpless condition of the Japanese critics and specialists, but this also shows the sub-conscious desire for a two-China settlement. This condition has its cause, besides in the general pacifism of the Japanese people, also, in the logic, equivocal as it may be, of national defense. that the "foundation of post-war Japan (the San Francisco Peace Treaty, the Sino-Japanese Peace Treaty, etc.) requires that the Taiwan question be considered an international question" (see *ibid.* No. 6, conclusion on p. 160), brackets mine.

- 26) See Kosaka in the *Jiyu*, *op. cit.*, pp. 32-34.

- 27) Cf. Kase in the *Tokyo Shimbun* (Apr. 21, 1961).

- 28) Representing this trend is Report No. 16, *Synthetic Study on China* (Oct. 15, 1964) p. 209, pp. 301 ff., 310, and 311; cf. Report No.

- 11 (Sept. 15, 1961) pp. 107-108. Cf. further, Hayashi in the *Gekkan Jiji* (Aug. 1966 issue) pp. 14-15.
- 29) Irie K. in the *Sekai* (Apr. 1955 issue) p. 63; Yokota in the *Asahi Shimbun*, Jul. 20 and Aug. 30, 1956; Ohira Z. in the *Sekai to Nihon* (Jun. 1961 issue) p. 20 f.; Tabata in the *Horitsu Jiho* (Oct. 1961 issue) p. 1208 ff. Cf. Tajiri in *International Affairs* (J) (Mar. 1965) p. 6f., esp. conclusion on p. 8; Terasawa, *op. cit.*, p. 290; Nishimura in the *Sekai Shuho* (Feb. 28, 1961 issue) p. 31.
- 30) The full-name was "Gaikomondai Kondankai" (Round-Table Conference on Foreign Affairs). It was an advisory organ for the Foreign Minister and the Prime Minister. In case policy-making process is the point, this will occupy certain weight, although it is not clear to what extent it actually influenced Prime Minister Ikeda, who was the top policy-maker. In our study here, however, seeing that the members of this organ (?) were all top-class *chishikijin*, *yushikisha*, critics and professors, their opinions would naturally be more influential than other study groups, e. g., the Synthetic Study Group on China which was informal but substantially an idea-supplying group to the Gaimusho (Foreign Ministry) and to the ruling Liberal-Democratic Party.
- 31) Minutes of the *Gaiko-kondankai*, No. 12 and No. 13 (Feb. 21 and Mar. 7, 1961, respectively). There was also opinion of recognition of 'one' China only, see the Inoki proposal, Minutes No. 12, pp. 30-31 and the Hosoya proposal (verbal), *idem.*, p. 34. Note that the last mentioned proposal nonetheless suggested a two-China (one China, one Formosa) solution.
- 32) *Idem.* Though many different techniques were used in the proposals, a careful reading of them makes one reach no other conclusions. Especially see Minutes No. 12, p. 28 (the Royama proposal); p. 38 f. (the Hirasawa proposal); pp. 44, 46 (the Kiuchi proposal); Minutes No. 13, pp. 4-5 (the Mitarai proposal).
- 33) For instance, the Synthetic Study Group on China, Reports No. 6, pp. 43-44, p. 176; No. 10 (Feb. 10, 1961) pp. 164, 165; No. 16 pp. 297, 299-300; No. 17 (Apr. 1965), conclusions. It is significant that the negative aspect of the rule of effective control was unconsciously referred to as important politically. Reports No. 11, pp. 108-109; No. 16, p. 300 f.
- 34) The seven attitudes were, and still are: (1) immediate and unconditional recognition, denying ROC any status (Japanese Communists); (2) immediate recognition conditioned by a two-China situation (majority opinion); (3) neutral and gradual recognition by implication (through making governmental trade agreements or establishment of trade mission), with the Taiwan issue considered as a domestic question (Socialist Party); (4) independent gradual rec-

ognition, that is, *de facto* recognition of the Mainland Regime with Taiwan's status to be determined by plebiscite (Democratic Socialist Party); (5) wait-for-chance attitude, with Taiwan's status pending for future determination, and with the UN representation issue to be determined by 'world opinion' (Ikeda's line); (6) postponement-wait-and-see attitude, weight being put on the condition of maintaining the *status quo* in the Taiwan Straits (Kishi's line); and (7) absolute non-recognition (those who followed the US attitude). The most prominent among these attitudes will be demonstrated and analysed a little in details in the sequence.

35) This is a matter of course, because this issue is most closely related to recognition about which the two-China tendency has been very strong.

36) Minutes of the *Gaiko-kondankai*, No. 12, pp. 25, 35, 40, and 45, No. 13, p. 6. Cf. *Synthetic Study on China. Report*, No. 11, p. 37.

The same line was also shown in a poll (in the *Hyo*, Apr. 1965 issue, pp. 63-65) undertaken for the category of intellectuals (members of the Diet being considered *chishikijin* when they gave answers to questionnaire in this poll as private persons). The question was "How to deal with the China problem?", and the results can be thus averaged:

- |  |                       |
|--|-----------------------|
| (1) Recovery of diplomatic relations with the Mainland Regime, with a two-China situation crystallised.                      | Overwhelming majority |
| (2) Positive attitude on recognition of the Mainland Regime  | 57%                   |
| Cautious attitude on recognition of the Mainland Regime  | 54%                   |
| (3) Approval by UN of change of UN representation in favour of the Mainland Regime   | 44%                   |
| Maintenance by UN of representation in favour of ROC   | 42%                   |
| (4) Recognition and approval of UN representation on the basis of one-China with the Mainland Regime representing this China | 50%                   |
| Recognition and approval of UN representation on the basis of two-China thought  | 50%                   |

37) The existence of the state of war between Japan and China was logically implied. See for instance, Nambara in the *Sekai* (J) (Oct. 1958 issue) p. 17, p. 18; Takeuchi, in the *Asahi Journal* (J) (Jan. 14, 1962 issue) p. 16 and in the *Sekai* (Mar. 1964 issue) p. 55 f. (*contra*, Omori in *ibid.* (Apr. 1964 issue), p. 141 f. Cf. Matsuzaki in *Study on Japan's Foreign Policy Decision* (J) (1964), Report edited by Ohira Z. for the Minshushugi Kenkyukai, pp. 240-41, where the term 'limited peace' was used for this peace treaty, without considering the

juridical risks on the part of Japan. See also Ueda in the *Chuokoron* (J) (1961 June p. 85, and in the *Jiyu* (J) (Dec. 1964 issue), p. 110; Irie K. in the *Sekai* (J) (Nov. 1955 issue) p. 79, p. 80; Obata in the *Asahi Journal* (J) (Jan. 4, 1962 issue) p. 16, and in the *Sakai* (J) (Apr. 1964 issue) p. 68 f.

- 38) This was the majority view, and indeed it was so asserted with clear consciousness of Japan's interests. But see Tachibana in the *Mainichi Shimbun* (Feb. 13, 1964); cf. Kawasaki in the *Kokusai Seikeijijō* (J), *Aichi University Publication* (1954-II) No. 18, p. 34 and p. 35; *The Nation and Politics* (J) (Mar. 1964 issue) p. 65.
- 39) See the Symposium on "Political Conditions for Japan's Independence" (J) (in the *Sekai*, Dec. 1954 issue, p. 55 ff.) where such prediction was implied. See also Utsunomiya in the *Hyo* (J) (Apr. 1965 issue) p. 32 and in his book, *Nanaoku no Rinjin* (J) (1964), p. 160 ff. The war-indemnity issue was therefore not seriously discussed. See severe criticism on this point, Kosaka, *op. cit.*, pp. 43-44, where such attitude was denounced as dangerous and unrealistic. See also *Gaiko-kondankai*, Minutes No. 11 (Feb. 7, 1961) p. 50., and No. 13 (Mar. 7, 1961) p. 51 and p. 54.
- 40) Synthetic Study Group on China, Report No. 11, *op. cit.*, pp. 39-40, where this question was, however, treated as one of politics, though it was confirmed there that in law the Mainland Regime had no ground to demand war-reparation.  
It should be noted that the conservatives rather stressed the negation through asserting the impossibility of existence of a state of war between Japan and the Mainland Regime, see *The Nation and Politics* (J) (Mar. 1964 issue) p. 32. On detailed and strong assertion of the importance of this question for peacemaking with the Mainland Regime (meaning that if peace is to be made the Mainland Regime will so demand), see Kosaka, *op. cit.*, pp. 31, 42-45. Cf. *Gaiko-kondankai*, Minutes No. 11 (Feb. 7, 1961) p. 50 f, and No. 13 (Mar. 7, 1961) p. 51 and p. 54.
- 41) See *infra* Chapter 8 (I) (A) (B).
- 42) See *supra* Chapter 5 (II).

## PART FIVE

### JAPAN'S ATTITUDE TOWARD THE CHINA PROBLEM— COMPROMISED CONSENSUS AMONG POLITICAL PARTIES AND GOVERNMENT VIEWS

Besides the two sorts of consensus discussed in Part Four, there is another kind of consensus which may be qualified *compromised* consensus. This kind of consensus is that which is expressed on domestic political plane; in other words, it is something common to and at the base of all assertions of the political parties (or those of the factions within the Liberal-Democratic Party (LDP) and of the factions within Japanese Socialist Party (JSP) too), if the political parties, in fact their respective factions, are to function.

Such consensus should exist, and indeed does exist, for it is the necessary condition for party politics to become possible at all. As in other modern democratic countries, in Japan the opposition parties balance the government party in the Diet. Whether one thinks that in Japan there is a multi-party system in the proper sense of the term, or one endorses Scalapino's often quoted phrase of "one-and-a-half parties in Japan," the balance in the Japanese Diet will leave no room for challenge.

But such kind of consensus is obviously something *sui generis*; it is a compromised one, in the sense of passive, and even reluctant, acceptance of the assertions of the majority according to the basic rule of democracy. In consequence, such consensus also comes from, and goes to, the *absolute national consensus* referred to in Chapter 6.

## CHAPTER 8 VIEWS OF THE POLITICAL PARTIES AND OF THE PRESSURE GROUPS BEHIND POLICY-MAKING

If there are opposition parties formally functioning to balance the policy-making of the ruling party and of the government in

the Diet, there are certainly some pressure groups doing the same thing informally and outside the Diet. The most powerful among informal groups that exercise direct influences over the Japanese Government on foreign affairs are the industrialists (*zaikai*), the ex-diplomats, and the bureaucrats in the Ministry of Foreign Affairs; and their attitudes will be, as they are most properly to be, discussed together with the attitudes of the political parties here.

## I. The Opposition Parties

### A. The Japanese Socialist Party (JSP)

It is well-known that policies of the Japanese Socialist Party are prepared for elections to show 'opposition' against *all* policies of the ruling Liberal-Democratic Party and, in effect, of the government, more for the purpose of convincing the electorate that it "differs" from the ruling party, than for ideological reasons or for the sake of politics properly so-called.<sup>19</sup> The China policy of JSP is no exception to this rule. In fact it is a typical case for such "difference" show.

To know the attitude or the view of this Party, therefore, the above must be kept in mind. No less important is the fact that, due to factional struggles (the right-wing vs. the left-wing, etc.), and to the looseness of party control and discipline, within JSP there hardly exists an overwhelming majority opinion on a vital issue, be it a domestic or an international one. Moreover, since the element of ideology in the case of too many Japanese Socialists has not yet been internationalized in the name of consistency or otherwise, ideology has not been able to subject national interest to its domination. Thus there comes into being a strange condition that most of the Socialists hold two faces—one as a member of the JSP in the Diet, the other, as a Japanese—the expressions of which (two attitudes or views) are not the same and, of course, are not rarely irreconcilable in



themselves<sup>2)</sup>.

The Socialist Party started from the one-China standpoint, with the Mainland Regime representing "China".<sup>3)</sup> On the *status quo* in the Taiwan Straits, logically it did not recognize the existence of a civil strife—for it the Chinese Civil War of the 1940's was ended in 1949 when the People's Republic of China was proclaimed. And, to explain the reality it claimed that the Taiwan Straits situation was a result of US aggression, and that it was a state of hostilities between USA and the Mainland Regime.<sup>3)</sup>

It stands to reason that the Socialist Party had no choice but to maintain that Taiwan belongs to China (meaning for JSP the Mainland Regime). Again, to explain the reality of the existence of the Nationalist Government (ROC), it set forth the ideological thesis that that island was occupied by USA for aggressive purposes.<sup>4)</sup>

On the recognition issue, naturally JSP urged for immediate recognition of (recovery or normalisation of relations with) the Mainland Regime and withdrawal of recognition of the ROC.<sup>5)</sup> And, for this reason, it claimed for the Mainland Regime an exclusive right to the seat in the UN<sup>6)</sup>

On the restrictive-issues, the JSP departed from the Japanese Communist Party (JCP), in substance if not on appearance.<sup>7)</sup>

On the Sino-Japanese Peace Treaty of 1952, it is somewhat self-contradictory that the JSP recognized its legal validity, though in the sense of a 'limited peace', and urged that it should be denounced as soon as, and even before, Japan would recognize the Mainland Regime.<sup>8)</sup>

On the war reparation issue, the JSP met with a deadlock. The two-face nature of the views of JSP Dietmen was best shown here. Officially JSP had not considered this a serious question, because it could not help believing that the Mainland Regime would give this up for friendship. In fact, however,

many of the JSP leaders did seriously consider this a vital question unavoidable for making peace with the Mainland Regime in future.<sup>9)</sup> It is therefore possible if not probable, that the Socialist Party's contradiction of recognizing the legal validity of the Sino-Japanese Peace Treaty had come from sub-consciousness to make the Mainland Regime admit the renunciation of war reparation by ROC under that treaty.<sup>10)</sup> If this be so, then to this extent the Socialist Party retained its Japanese nationality, turning away from ideology to national interest.<sup>11)</sup>

As a matter of fact, such two-face phenomenon occurred equally about other issues of the China Problem. Even regarding the territorial status of Taiwan, more than half the factional forces in JSP, though contrary to the formal view of the Party, was secretly reluctant to have Taiwan given to the Mainland Regime unconditionally, with a view to maintaining Japan's national defence and/or to keeping the issue as consideration of the Mainland Regime's giving up war-reparation in future. Here again we see the potential tendency of a two-China thought,<sup>12)</sup> and this was, and still is, one of the sources of controversy and struggle among the factions within the party *inter se*.<sup>13)</sup>

The most symbolic case is the French Recognition Situation (Jan. to Feb. 1964). Faced with this Situation, the two wings in the Socialist Party, with intention also of snatching the party leadership, engaged themselves in a fierce struggle, which *ab initio* took the shape of 'national interest' against 'class struggle' on ideological plane, and which was further complicated by the rift between the Mainland Regime and USSR. The antagonism in 1964 was so furious, that the JSP as a whole became paralysed. And in late Feb. 1964, a compromise was reached in the form of '*Ishi Toitsu*' ('unification of wills'). In that Situation, JSP was unusually stimulating. Anywise, the fact remains

true that JSP was subject to nervous quake in reacting to dramatic situations. This leads one to think that its criticism of the ruling LDP on the latter's China policy is artificial and is exactly what may be used to criticise itself.

In particular, with a two-China tendency (of the strong right wing) within, in early 1964 when the Nationalist Government severed ROC diplomatic relations with France, JSP, through its Secretary-General Narita, made a statement (and that was the compromise between the right wing and the left wing mentioned above) to the press to re-confirm its one-China line. But in that same statement, it was also asserted exceptionally boldly that "Taiwan's status (meaning the status of the Nationalist Government) should be recognized as a belligerent because it is a fact that that government is in control of a territory called Taiwan".

It must be pointed out with special emphasis that this part of the statement is to Japan's national interest, as it is in conformity with the legal logic of the *status quo* in the Taiwan Straits. It is even more logical than the government view on this point.<sup>14)</sup> This compromised consensus was in conformity with the absolute national consensus.

On the peace treaty between Japan and ROC, however, the Narita statement fell into contradiction. After confirming that this treaty should be abolished, it claimed that as soon as Japan recognized the Mainland Regime this peace treaty would *in fact* lose its effect, and that what remained was only a *formal* question. This committed a return to its official line. But JSP in this case had not contemplated the alternative for the case where this "formal question" be raised by the Mainland Regime as a *substantial* question, in terms especially of the war-reparation issue.<sup>15)</sup> On this point, the statement stopped at a repentance that Japan had once afflicted great injury of war upon the Chinese people. Whether JSP was ready to admit

the obligation of paying indemnity for such affliction was untold.

#### B. The Democratic-Socialist Party (DSP)<sup>16)</sup>

The point of departure of DSP on the China Problem in the Ikeda period was a two-China theory. For times this line was made a part of the party pledges to the public in elections.

However, this line was not the original one, nor could it be immune from confusion.

At the time of its split from the JSP, the newly formed DSP had taken the realistic line of 'one China, two governments'. In early 1961, however, it tended to a one-China line, and asserted for the Mainland Regime legitimacy. This alteration invited severe criticism from *Zenro* (right-wing labour organisation, the most powerful backing force of the DSP). In the party conference that year, the above alteration was explained, and understood to have meant that "Peking 'should' represent China".<sup>17)</sup> As a matter of fact, the two-China thought controlled the party leaders, and the wait-and-see attitude was considered the most proper means to deal with the China Situation.

Beginning with a two-China theory, DSP was silent on the nature of the *status quo* in the Taiwan Straits, but seemed to have asserted that the Taiwan issue (meaning to include the *status quo* in the Taiwan Straits and the territorial status of Taiwan) was a domestic question for the Chinese themselves to decide, and that accordingly Japan should not touch this question.<sup>18)</sup> But it also tended, on the other hand, towards a 'peaceful solution' through *fait accompli* (of self-determination of inhabitants on Taiwan) or through the UN determination. How to reconcile the "domestic question" thesis with the "peaceful solution" thesis within the party was one of the deadly points for DSP unity on the China Problem.

In connection with the two-China theory, DSP could not

maintain an immediate recognition of the Mainland Regime or an unconditional vote in the UN in favour of that regime on the representation issue.<sup>19)</sup> Except the point that weight was put on UN, the line as such, to be clearly understood, however, needed some guess.

On the restrictive-issues, DSP did not make clear its view. According to material at hand, it seems that it considered the state of war between China and Japan still existed (hence to it another peace treaty with the Mainland Regime would be necessary). Top-leaders of this party were also aware of the danger to make this "another peace treaty". But, like their old friends in JSP they could only hope for goodwill and friendliness of the Mainland Regime to give up war-reparation.<sup>20)</sup>

The under-current of DSP on the China Problem was a two-China line in all cases. It was more compromising with the line maintained by the ruling party than the line of the JSP was. In the French Recognition Situation, this line was even formally declared in a special resolution of DSP as "the only line".<sup>21)</sup> By and large, therefore, DSP was more consistent than the Socialist Party. This comes partly from the fact that DSP was too small a party to have serious factional struggles (if there be any, it was only potential in nature), and partly from its being more logical and more nationalistic in warning that the war-indemnity issue would become a very serious question; although it suggested no effective solution whatsoever.<sup>22)</sup>

## **II. The Pressure Groups—The Industrialists and the Bureaucrats in the Foreign Ministry**

There are many pressure groups behind Japan's political screen. The reason why we raise as the most influential the industrialists and the bureaucrats is that these groups are, in a socio-political sense, real rulers of Japan.<sup>23)</sup>

### A. The Industrialists

Like in the case of the intellectuals, it is not easy to define this group with relative exactitude, not to say with unanimity. It is not even easy to name this group properly, which is termed in Japanese language '*zaikai*'. Though the term 'industrialists' may not exactly bear such meaning, it is generally used as including the '*jitsugyokai* (the business circle)' and the '*kinyukai* (financial circle)'.<sup>24)</sup>

Views and attitudes of this group centered on the object-issue of 'one China, or two Chinas', and logically, also on the means-issues of recognition and UN representation.

The traditional basic stand of this group on the China Problem (Chugoku-kan—view on China) had from beginning been quite firm against the Mainland Regime as a result of its dislike of Communist and the paramount need to cooperate with USA in foreign affairs.<sup>25)</sup> And this, though subject to some trifle changes in nuance, is still the under-current of today.

Except a few figures like Adachi and members of the so-called Taiwan-Korean-Lobby who put considerable weight on moral ground of '*giri* (debt of gratitude)' toward the Nationalist Government and ROC President Chiang Kai-shek personally (something with the motive to defend Japan's interests and based on the anti-communist link with ROC), this group in the main had been realistic, to the extent not so far from pro-communist on appearance, hence it seems that it was inconsistent with its fundamental position as a capitalist group. In a word, it had not much to like of the ROC or even of Taiwan as such. It follows that their support for government policy of non-recognition of the Mainland Regime was rather a consequence of its fear of influence from that regime over Japan's domestic situation, and a result of strategic consideration (noting that in this regard Korea was considered far more important than Taiwan).<sup>26)</sup> There is also a possibility, if not probability, that,

since the leaders of this group are all old men, the group as a whole looks upon the Mainland Regime with contempt, as a consequence of the inferior complex of its leaders.

On the object-issue, within this group the two-China thought was traditional and strong.<sup>27)</sup> The intention behind this was that, with the realisation of this thought Japan could be free to get close to the Mainland Regime to the extent determined by Japan herself. On the recognition-issue, therefore, the wait-and-see attitude was persisted, pending development of the situation as a result of change of the *status quo* in the Taiwan Straits. To speak frankly, this group sat on the fence with the editorial writers.

This was natural. As members of an anti-communist group, the industrialists are in fear of, and dislike, the Mainland Regime from reasons both ideological and national; as businessmen, they (especially the Kansai and Kyushu members not constituting the majority in the group) tended to deal with the Mainland Regime. For them, no doubt, ideology and national interest should be defended, but to gain profit in trade with *all* countries irrespective of ideological taste, should also be realized. In trade there is no state boundary: this is their motto. And so long as they were not determined or had no chance to give final, exclusive determination, the way open to them as businessmen was to follow the editorial writers.

With this dilemma, and due to the characteristic of a businessman (distaste for drastic change with high risks), the industrialists supported government policy of maintaining diplomatic relations with ROC (*status quo* maintaining) on the one hand, and of pushing a line of getting close to the Mainland Regime (in non-political fields, especially in trade and other intercourses) on the other, with the motive that this policy was a necessary step for recognition of the Mainland Regime if change of the *status quo* should so require in future. This was nothing less

than a two China policy ; it guided their view on the recognition-issue as well as on the UN representation issue.<sup>28)</sup>

Thus the opinion that *zaikai*'s view on China was in a fluid condition or a 'state of nebulousness' due to differences in age, thinking, and view on life,<sup>29)</sup> as a general proposition, becomes problematical. Such individual differences exist in other groups too, and even among the Japanese at large. Indeed such state of nebulousness exists in case of crisis and common to all Japanese.

This statement was proved by the French Recognition Situation, in which *zaikai*'s real view about US China policy also became plain.

In early 1964, France recognized the Mainland Regime, apparently with the intention of breaking through the China dilemma with some sort of two-China solution ; to it nearly all circles in Japan responded with stir and bustle, and the potential feeling of pragmatic "reasonableness" of a two-China plan among the general public came onto the surface. In that Situation, it was the industrialist circle and the Foreign Ministry that remained calm and maintained the traditional line of prudence.

Faced with the French typhoon in 1964, the industrialist group, though acknowledging the seriousness of the Situation, kept in its cautious view. It is not deniable that after that Situation, on the solution of the China Problem the group seemed to become a little positive and active ; however, within this group no one urged, like many intellectuals did, for immediate change of Japan's non-recognition policy.<sup>30)</sup> More concretely, this circle did not recognize the need for Japan to be in a hot haste, but rather warned that in such crisis Japan should be patient and careful. On this point at least, it was more patriotic than many intellectuals ; that is, it reacted more in terms of national interest.<sup>31)</sup>

Of course, it can be observed here that reluctance to follow France and prediction about the impossibility for realisation of



a two-China plan in the French Recognition Situation were the decisive factors. But it is significant that even after ROC severance of formal relations with France, this group remained (and remains up to the present) unchanged in its traditional two-China line.

Change in nuance, however, is discernible from this 'traditional' attitude after the French Recognition Situation: a tendency in favour of the Mainland Regime in the UN, on condition that Taiwan's status (its territorial status as well as political status of the Nationalist Government) be determined by its inhabitants or in the UN.<sup>32)</sup> This is the substantial, though still latent, impact of the French Recognition Situation.

This impact also gave rise to the new situation between USA and the ruling groups in Japan.

As a timely expression of dissatisfaction of the Japanese, hidden since the end of the war, with US policies in many fields (among them US China policy and especially US restrictions upon Japan's trade with the Mainland Regime), Iwasa, Head of Japan's Economic Mission to USA, in his speech made in New York (in April 1964), clearly informed his counterparts that it became a myth that Japan was US automatically anymore.<sup>33)</sup> Such move was not the least anti-US in nature, but was a natural and understandable request for broadening Japan's independence (margin to act) in foreign affairs the most critical issue of which is the China Problem.

This is not at all a new phenomenon. It is a ring in the chain of Japan's struggle for a power position equal to or close to USA's (in Asia at least). In fact, for many times has Japan shown resistance for the purpose of reducing the quantity of US diplomatic restraints—a defence for freedom of action, within the limit of the fundamental principle of cooperation with USA: the centrifugal force goes as far as the centripetal force permits. Once more the move of the Industrialist Circle to protract the

radius of Japan's action was guided by Japan's national interest.

## B. The Bureaucrats in the Foreign Ministry

While the stratum of *chishikijin* influences Japanese press and periodicals, and the *zaikai* indirectly controls the ruling Liberal-Democratic Party (hence similar to the *Gaiko-kondankai* which at one time had informal influence on Prime Minister Ikeda who had the last word in the Cabinet), the bureaucrats in the Foreign Ministry directly and materially, though sometimes informally, determine the current of that ministry which, in Japan, not only executes, but in most cases makes foreign policies. It is well known that Prime Minister Ikeda was a student of top-class bureaucrats of the Foreign Ministry even about the basic direction of diplomacy.

It must be pointed out at the outset that the category of bureaucrat, like the *zaikai*, is basically anti-communist; being bureaucrats, they respect established order of things and are reluctant to break existing balance. This is especially true of the bureaucrats in Japan's Foreign Ministry.<sup>34)</sup>

In this regard, the ex-professional diplomats occupy an exceptionally important position.

Representing the ex-professional diplomats group is ex-Prime Minister Yoshida whose opinion, at least during the first two years of the Ikeda period, was absolute for the bureaucrats in the Foreign Ministry as well as for the Prime Minister.

Yoshida's view on the China Problem in the Ikeda period may be summed up as follows: The China Problem was a dangerous bomb, and Japan must not be in a hurry to try to touch it. In other words, the China Problem had to be solved in the historical context, and Japan should not disturb the balance in Asia by her selfish and heedless action; for, the present Taiwan Straits situation would continue for a quite long period to come. Recognition of the Mainland Regime was therefore matter for

due consideration in the context of world situation and change thereof. The existence and status of the Nationalist Government were not deniable so easily as many thought they were; nor was it to Japan's interest to talk about a two-China (though he did not deny that this remained a possibility for remote future). With regard to Taiwan as territory, he was of opinion that its status according to the view of the ex-Allied Powers was still uncertain and undetermined; however he warned that Japan must not say anything on this issue, because she had no voice whatsoever.<sup>35)</sup>

Representing the view of bureaucrats in the Foreign Ministry proper, on the other hand, may be raised Shima's opinion given to the *Gaiko-kondankai*.<sup>36)</sup>

Shima's views on the China Problem were quite complete:

(1) The *status quo* in the Taiwan Straits

Clear explanation on this point was purposely avoided, but inference of a negative view of the existence of the Chinese civil strife may be drawn from his opinion as a whole and from the majority opinion within the Foreign Ministry.<sup>37)</sup>

(2) Territorial Status of Taiwan

Shima was ambiguous on this issue. He stated that China's relation with Taiwan was much differed from Japan's potential sovereignty over Okinawa. From his wordings and the tide among the bureaucrats in the Foreign Ministry, it is reasonable to presume that he implied that Taiwan's international territorial status was uncertain and undetermined.<sup>38)</sup>

(3) The Object-Issue

There was no direct reference to this point, but a two-China theory can be inferred from Shima's explanation that "the view that the state of war between Japan and China had been ended (a view held by the Japanese Government)

can be realised only when Communist China succeeds to the present standing of Nationalist China, and as an actual question it is unthinkable that Communist China will do so, hence recognition of Communist China, as a practical problem, can be made only by treating Communist China as a new state."<sup>39)</sup>

#### (4) The Recognition Issue

According to Shima, Japan recognised the Nationalist Government to be the Chinese government exactly the same as the pre-war Chinese government. Under traditional international law, in Shima's opinion, Japan could not recognise the Mainland Regime at the same time. However, traditional international law was, according to him, unrealistic on this point, as well as on the phenomenon of split-state in general. The implication of a two-China theory—recognizing both—needs no comments.

#### (5) The UN Representation Issue

In the case where this issue be determined in favour of the Mainland Regime, he said, it was necessary to keep Taiwan from that regime. This is a result of the view about recognition.

#### (6) The Restrictive Issues

Shima thought the Sino-Japanese Peace Treaty (referred to by Shima as 'the Sino-Japanese Treaty', and the omission of the word 'peace' was no doubt intentional) was made with the Nationalist Government not necessarily as 'the' government of China, hence Japan's recognition of that government was limited recognition, although "at present (in 1960) the Japanese Government has taken the stand that the Nationalist Government is *the* legitimate government of China." In case of recognizing the Mainland Regime, Shima added, to put an end to the state of war the making of a document (peace treaty, etc.) might become necessary<sup>40)</sup>.

The above clearly shows many contradictions some of which are far from being to Japan's interest. It is significant, however, that nothing was said about the war-reparation issue. This was the general trend among the bureaucrats in the Foreign Ministry.<sup>41)</sup>

Thus the general line of this group may be stated as follows : It denied a civil strife in the Taiwan Straits and China's sovereignty over Taiwan ; potentially the two-China thought prevailed within the group ; recognition was considered matter of timing ; UN determination on the Chinese representation issue in favour of the Mainland Regime was treated as the inevitable in (remote) future ; though a peace treaty or something of the kind may be required for opening formal relations with the Mainland Regime, that regime's admission of the renunciation of war indemnity made by the Nationalist Government would be a condition for Japan's recognition of that regime.

To the Japanese Progressives, who by and large pressed for recognition of the Mainland Regime, the position of this group appeared very stiff. In fact, the ambassadors, the backbone of this group, were stiffer in formal conferences held in the Foreign Ministry. For times they warned that impatient trial against reality of Japan's relations with the Mainland Regime would be unwise as well as dangerous;<sup>42)</sup> even more, they requested that Japan should make herself clear of its anti-Communist stand.<sup>43)</sup>

### III. The Ruling Liberal-Democratic Party (LDP)

The ruling party, like Prime Minister Ikeda, depended very much on the views of the ex-professional diplomats and the bureaucrats for its making of a line of foreign policy, and its line was in turn checked by the *Zaikai* from time to time. In fact, experience tells that, for many reasons attitudes of LDP could not depart from the views of the *Zaikai*, of the ex-pro-

fessional diplomats, and of the bureaucrats, given in the above.

In the year 1960 when Ikeda succeeded Kishi, within the LDP (and within the government too), hence among the factions therein, there were so far no concrete conclusions on the issues of the China Problem, nor were there true discrepancies among the factions on ideological plane like those which would appear in the present Sato Administration. Serious study of China policy however was undertaken *ad hoc*, and the factional views on China were fluid, by dint of the fact that the line of the Kishi Cabinet, which evidently had been challenging the Mainland Regime, was still followed by Ikeda.

With the coming into being of the Kennedy presidency in USA as the background, however, confronted with the predicted urgency of Chinese representation issue in the UN in 1961 due to delicate moves of the Afro-Asian states, the controlling-group of LDP, for the purpose of adjusting opinions within the party, adopted a formal report on the China Problem.

Entitled "Interim Report regarding the China Problem",<sup>43)</sup> this report was significant as well as symbolic. It was significant, in that it made clear for the first time in a complete form views on the issues. It was symbolic, in that although it had been made by the Sub-Committee on China of the Foreign Affairs Committee and approved formally by the Party's Executive Board (*Somukai*), hence had become the formal view (*Togi*—Party view or Party decision) of the party as a whole and, as such, was binding on the government,<sup>44)</sup> nonetheless in the Report it was shown that no unanimous view had existed among the factions within the party. There did exist some divergences between the majority and the minority,<sup>45)</sup> and this point was clearly remarked in the Report.

The content of the Report may be summed up in simple terms as follows:

(1) The Taiwan Straits Situation

The existence of the Mainland Regime and its actual control of the China mainland were undeniable facts. But that the Nationalist Government existed was also an undeniable fact, and Japan was in recognition of, and had a peace treaty with, this government.<sup>46)</sup>

(2) Territorial Status of Taiwan

This was considered in terms of the previous issue. Question of ownership of this area was "still internationally undetermined"; but as the state having renounced sovereignty over Taiwan, Japan was not qualified to voice on this issue. Nevertheless she could not agree that this area be made under the sway of the Communist Camp.<sup>47)</sup>

(3) 'One China, or Two Chinas?'

According to the apology of the Report, Japan had never undertaken to make a two-China situation.<sup>48)</sup> In fact, Japan should not talk about this because "both sides in China had been opposed to it."<sup>49)</sup> But emphasis was put on the dualism that "whereas Communist China is ruling China mainland, the Nationalist Government is ruling the Taiwan area". It affirmed and denied a two-China at the same time.<sup>49)</sup>

(4) The Recognition Issue

Japan's recognition of the Nationalist Government as the legitimate government of the State of China, and her (peace) treaty relations with that government, the Report pointed out, should be duly considered when contemplating Japan's recognition of the Mainland Regime. Furthermore, Japan's recognition of the Mainland Regime must also be subject to attitude of the latter toward the international society, to voting tendency on the UN representation issue, and to opinions in UN about Taiwan's status (meaning status of the Nationalist Government).<sup>50)</sup> And, for the moment, conditions making feasible (Japan's) recognition of the Mainland Regime were not fulfilled so far.

## (5) The UN Representation Issue

This, according to the Report now in question, was matter of 'representation' of government, and not question of admission of new member. "Many have discussed two ways, both possible: whether to give the Nationalist Government a new seat in the UN as representing the area of Taiwan, or to recognise Communist China as a new member to the UN". The Report continues: "However, on these (solutions) both Communist China and Nationalist China show strong opposition; seen from *present international situation* these questions are complicated and the solutions (so offered) difficult of realisation".<sup>51)</sup>

## (6) The Restrictive-Issues

These issues were stressed in the Report for many times. It impressed on the readers that the Sino-Japanese Peace Treaty (1952) was made the shield for probable claim of war reparation from the Mainland Regime in remote future (hence on the recognition issue the importance of the existence of the ROC was not overlooked). In fact, in the Report the centre was rather put on the war-reparation issue. "Part of our country (men) discuss our reparation toward Communist China, (but in the view of the LDP) this question has already been resolved". It was specifically mentioned that the majority opinion in LDP was that Japan had not been at war with the Mainland Regime, and, naturally, that she was under no obligations whatsoever toward that regime. "The majority opinion (is) that it should be made clear that for Japan absolutely there does not arise question of reparation toward Communist China."<sup>52)</sup>

Thus, on the face the LDP through this Party View appeared to be quite flexible to adapt itself to changeable world situation. It began with 'caution' and ended with 'prudence'.<sup>53)</sup> LDP



wanted to win friendship from both Chinese entities, but this could not be realised within a brief period and short of a two-China solution (unless one of the Chinese entities would disappear). But it nevertheless could not but clearly declare that it had not undertaken a two-China policy. This pushed the LDP to fall into a difficult position, and for times the Party attitudes were in conflict with one another. Such a position, indeed, was less easy than to actively profess a two-China policy.

The above view was, as a matter of fact, a result of compromise between the majority and the minority within the LDP. In other words, it was a compromised consensus among the members (in contradistinction to the factions they might have belonged to) of the party as a whole.

The same was also true within the Socialist Party, and between this and the Democratic-Socialist Party. Indeed, such compromised consensus existed, and still exists, among the political parties at large (excepting the Japanese Communist Party) without which consensus, to repeat, the multi-party system can not withstand challenges to democracy. And, again, such compromised consensus among the parties should not be in direct opposition to the national absolute consensus.<sup>54)</sup>

With the above View, it is true that there is no evasion for one to conclude that the LDP on the China Problem (and on foreign affairs in general) judged according to casual idea, hope, and opportunity.<sup>55)</sup> And the unexpected and hazardous consequences of such a policy line were proved at a later date in the French Recognition Situation.<sup>56)</sup>

On March 25, 1964, after the Foreign Ministry had made to the public the unified view of the Japanese Government on the French Recognition Case,<sup>57)</sup> the LDP published the Unified View of the party on the same case.<sup>58)</sup> A comparison of this Unified View with the Interim Report of 1961 just examined, shows that some changes did occur during the Ikeda period.

In a very simple manner, the changed points in the LDP Unified View of 1964, as seen from a comparison with the Interim Report (1961), are as follows :

- (A) While during the former part of the Ikeda Cabinet the two-China thought had been potential and kept in ambiguity due to its nature of a taboo, at the time of, and after, French recognition of the Mainland Regime, this line came to the surface as some sort of consensus between the government and the ruling Liberal-Democratic Party.
- (B) Some conditions were, however, put on realisation of a two-China line, the mostly stressed one was guarantee for the existence of the Nationalist Government; ROC seat in the UN was made the pre-condition for Japan's recognition of the Mainland Regime (here it is no mere guess that Japan intended to use this arms to debar the Mainland Regime from demanding any war indemnity).
- (C) Thus, the China policy of the LDP had changed in weight, from one debarring the Mainland Regime from 'entering' into the UN (hence justifying Japan's non-recognition policy), to one defending Japan's national interest through defending the status of the Nationalist Government in the UN; although there was no alteration in the fact that ROC seat in the UN was used as justification for Japan's non-recognition policy which in 1964 had seemingly become a little flexible.
- (D) Furthermore, from 1964 Japan's conditions for recognising the Mainland Regime, which, except in an abstract way, had not been seriously considered in the former periods, were to a great extent crystallised, namely: (i) if recognition be based on one-China, such recognition must be conditioned by succession of the Mainland Regime to the Sino-Japanese Peace Treaty (here the point of maintaining Taiwan for the Free World was pushed to the shadow), and (ii) if a two-

China situation be realised, recognition should be pure and simple, that is, unconditional on the part of the Mainland Regime (thus excluding any admissibility of claim of war-indemnity of the Mainland Regime as a condition for "normalisation" or "re-opening" of formal relations).

Except the above, on other points there were no changes between the two documents. But the above changes are more than sufficient to tell how seriously defective was the China policy of the LDP: it had no vision even on the starting line of 'one China, or two Chinas?'. And, as French recognition showed, a two-China situation under usual circumstances would be hardly feasible due to the absolutely uncompromising stand of the Mainland Regime (and, as a result of Japan's marginal position, this would become nearly impossible in case Japan would take the initiative), while LDP had no means to guide the Japanese government to meet this trouble.

But if this was so, was the Japanese government able to lead LDP and the State of Japan in the matter?

## CHAPTER 9 FORMAL AND INFORMAL VIEWS OF THE GOVERNMENT

The phrase 'formal and informal views' has special implications for the present Chapter. However, it does not signify that we are here to deal with both the formal and the informal views respectively under separate headings. To do so is by no means desirable, nor is it practical for our aims, nor, again, possible in this study. We shall deal with the formal *and* the informal "views" as a whole. That phrase is only a guide, that is, something to show that in making judgment on a government attitude in this Chapter, the informal views on certain matter will be duly considered as supplemental to the formal views on same matter, and no more. Informal views as such, that is to say, are not to be identified with the formal views pure and simple. This warning is of course valid and necessary also in other cases. But we take this into consideration in this Chapter, because the most serious, and by far the most likely, errors occur in case of "government views".

Both formal and informal views express intention and feeling. They are two important (exterior) shapes of 'attitude' (other shapes being posture and action). In our present context, formal views include official written or oral statements, or quasi-official explanations supplemental thereto *and* consistently repeated, by competent government organs. They are government views, hence are views of a state toward foreign states. Informal views, on the other hand, mean oral explanations, replies to questions, and statements made or postures assumed by policy-makers in the Diet (committee) or in other less formal, or informal, occasions (from viewpoint of traditional diplomacy). They may be considered 'formal views' only when and if there is no reasonable doubt for it to be so treated; though, of course, they are in many instances highly relevant for the ascertainment of

'formal views' if such formal views be ambiguous or wanting.

Furthermore, attention must be drawn to the fact that there is some difference between formal or informal (oral) views made in usual time, on the one hand, and those in time of crisis, on the other. Oral views made known without deliberation or without being repeated in time of crisis should be very carefully dealt with when they are subject of criticism. That is to say, words/posture not result of deliberation or without being repeated, must not be confused with written views formally representing the attitude of the government (hence the state) on international plane. This difference bears the most cardinal importance for interpreting the pros and cons in interpellations and replies thereto in the Diet.

All these seem to be matter of course, but they have always been overlooked. Actually, not infrequent is the inexcusable but generalised tendency that a statement be wilfully, and even maliciously, strained in its meaning, for the *ad hoc* purpose of justifying irresponsible criticism which otherwise would be clearly groundless.

A policy-maker, be he a prime minister or a foreign minister, as a human being does not become wiser owing to his specific capacity or position alone. Though hasty answers to questions are sometimes vital for knowing true intentions, it remains true that discovery, comparison and interpretation of contradictions in oral statements (and reasons lying behind them) in a fragmentary way, are unjust as well as debatable. To determine a real intention by quoting some statements with the implication "he has once said so, therefore, etc." without proving repetitions of the content of such statements, is, frankly speaking, one of the worst human habits and the chief reason for erroneous judgments.

The above paragraphs will guide the present Chapter.

## I. Government Attitudes in Usual Time

The line of the ruling Liberal-Democratic Party in the main was, as it should be, stereotyped in formal views of the Japanese Government.<sup>59)</sup> On the China Problem, the starting point of the Japanese government in the Ikeda Cabinet period, was to let it be resolved as time passed by; and to make cautious contacts with both Chinese entities was, naturally, considered necessary and expedient. "Our country is desirous to have our relations with China mainland improved... (she is) always mindful of their relevancy to international politics in general."<sup>60)</sup>

### (1) *Status quo* in the Taiwan Straits

No formal view had been given by the Ikeda government on this issue, but implied reference to it could not be avoided because this is the basis for the views on other issues.

It is safe to say that generally speaking the line of the Kishi government was followed in the Ikeda period. And that line, by inference, was to admit that there was some sort of civil strife in the Taiwan Straits. "Communist Chinese Regime is in *de facto* control of China mainland, while the Republic of China's government is in actual reign of Taiwan and part of the islands along the mainland coast; and (this situation) gives rise to a very great difficulty, in that each claims for itself sovereignty even over the area controlled by the other *and each struggles against the other...*"<sup>61)</sup> There was no sign of change in this position during the Ikeda Administration. In 1964, when France recognised the Mainland Regime, Ikeda's this attitude was for times made clear. As a matter of fact, this position was reiterated, with some differences in nuance, in the latter period of the Ikeda Cabinet<sup>62)</sup>.

### (2) Territorial Status of Taiwan

On this issue, the view of the Japanese Government was firm. "By the San Francisco Peace Treaty our country has renounced

this area and left it to the Allied Powers, and it is not proper for us to say anything about it.”<sup>63)</sup> With the line of the LDP in mind, we may judge that the above view implies that it refers to law. However, it does not stop here. “From higher plane of Japan’s security and peace”, it goes on, “it is in any case necessary that Taiwan’s *status quo* be maintained, or that Taiwan be neutralised so as to avoid its being communised.”<sup>63)</sup> In general terms, Japan, like USA (the Senate’s Understandings on the Mutual Assistance Treaty with ROC, referred to in the above), treated ROC as a state-in-exile.

### (3) ‘One China, or two Chinas?’

As a matter of course, on formal plane the Japanese Government had been no more careful to avoid touching this issue directly, for fear that lest she might be attacked by both Chinese entities. But, as Foreign Minister Ohira hinted, the Japanese Government did not talk about a two-China theory *formally*.<sup>64)</sup> There is no doubt that the Japanese Government had in mind a picture of two Chinas. As early as 1952, the abnormal content of the Sino-Japanese Peace Treaty already told everything.<sup>65)</sup>

On this fundamental line, there were many instances, formal and informal, where Ikeda himself repeated his view. As early as 1960, though on Taiwan’s future Ikeda was highly cautious and endeavoured to avoid giving stimulative statements, what really occupied him was the thought ‘to preserve Nationalist China in the form of two-China, if possible’.<sup>66)</sup>

Thus, Ikeda was a pioneer on this point. In his conference with Kennedy in 1961 in USA, his suggestion for crystallisation of Taiwan, to the end that a two-China settlement be adopted, therefore, was rather something anticipated. Kennedy refused his suggestion, partly because it was still infeasible for its realisation, and partly because Kennedy knew the Senate would not approve it.<sup>67)</sup> This was at length dropped in the conference

between the two Heads. However, it reappeared in the form of 'successor-states' proposal on the talking-paper of the Rusk-Kosaka conference held immediately after the Kennedy-Ikeda Talk.<sup>68)</sup>

This quasi-formal (concealed) view, however, is not peculiar to the Ikeda Cabinet. As having been mentioned above, from the Yoshida Cabinet onward, the two-China line had been controlling the government. In the Hatoyama Cabinet, the Prime Minister even unreservedly declared to the public that he supported a two-China plan.<sup>69)</sup> During the Kishi period, such thought turned underground, and in the period of the Ikeda Administration, it rose again. Ikeda only pushed the line more skillfully.<sup>70)</sup>

#### (4) The Recognition Issue

In his letter to Dulles in 1951, Yoshida (then Prime Minister) had guaranteed that Japan would not recognise the Mainland Regime. This was the guide for the Ikeda period, although the Foreign Ministry declared that that letter was no binding document.<sup>71)</sup>

Japan's recognition policy in the Ikeda period, like that in the preceding periods, was conditioned by maintenance of friendship with the ROC.<sup>72)</sup> This was Ikeda's first principle declared. It had many legal reasons behind it, and in fact it constituted the backbone of Japan's traditional two-China theory. Even in the highly anti-communist Kishi Cabinet, the formal view of the Japanese Government was that: "Our country has a peace treaty with the Nationalist Government, and has maintained the stand of non-recognition of Communist China. However, the reality that Communist Chinese Regime holds *de facto* control over China mainland can not be overlooked."<sup>73)</sup>

Whatever may be thought about the recognition issue, it was, and is, for Japan, always and inalterably conditioned by a solution of the UN Chinese representation issue. Throughout the Kishi and the Ikeda periods, the principle of 'UN Centre' had



been maintained; and on the China Problem (the two means-issues) the Japanese Government put all weights on 'world opinion', which was actually nothing but the opinion in the UN General Assembly as shown in voting attitudes. On this point, Ikeda's China policy, whatever its appearance, succeeded Kishi's without qualitative change.<sup>74)</sup>

Thus the difference between the thoughts of the top policy-makers (the Prime Minister and/or the Foreign Minister) and the current in the Foreign Ministry was clear. The Foreign Ministry had considerably far-reaching plans, but it kept them in its own officialdom. Even the ministers may not have knowledge of such plans sometimes.<sup>75)</sup>

#### (5) The UN Representation Issue

As having been said in the above, Japan's attitude on this issue determines her attitude on the recognition issue, and the former attitude is in turn determined by 'world opinion' (in the UN General Assembly). This position has ever since been maintained up to the present, and the reason for this was best demonstrated by Okazaki, acting as Japan's chief delegate to the UN, in his speech in the UNGA in 1961 (16th Session), which was a clear recourse to the two-China line.<sup>76)</sup>

As basic attitude for 1961 and 1962, on this issue Japan's formal view was that this was so complicated and might greatly influence world peace according as what solution be adopted, that hence this was to Japan a vital question to be handled with utmost care, that an 'equitable (just)' solution agreeable to all might be found out.<sup>77)</sup>

This however must be understood in the context of the posture, that any solution whereby the Nationalist Government would be ousted from the UN, while the Mainland Regime would take its stead, was not helpful for solving the issue, hence that Japan could not agree to such solution.<sup>78)</sup> Implied in such an attitude was of course nothing less than a two-China policy in

the UN.

For the Japanese Government, accordingly, "the China Problem in general is nothing but the China Problem in the United Nations".<sup>79)</sup> This was the main current in the Foreign Ministry too. Of course, it may give place to criticism that Japan followed US China policy. But this on the other hand was referred to as Japan's independent policy and to Japan's national interest.<sup>80)</sup>

#### (6) The Restrictive Issues

There was no direct formal statement on what had happened to the state of war between China and Japan, hence Japan's relation *in futuro* with the Mainland Regime was also not clear. But since the formal relation of Japan's having a peace treaty with the ROC had for too many times been emphasised,<sup>81)</sup> it may be judged with assurance that the Japanese Government took the stand that the state of war between the two countries had *ipso jure* come to an end through the making of the Sino-Japanese Peace Treaty in 1952.

On this point Ikeda was clear. In his replies to interpellations in the Diet and in his written views at different occasions, he maintained the formal view which was exactly the same as that which is demonstrated in the preceding paragraph. "I consider the war between Japan and China has already been ended as a matter of law" he said; and his Foreign Minister (Kosaka) commented that "Japan was at war with the Republic of China, and she surrendered to that country (Republic of China) and made peace treaty with the government representing that country."<sup>82)</sup>

About this point, commenting on the applicability of the Sino-Japanese Peace Treaty Mr. Hayashi, Secretary-General of the Legislative Bureau of the Cabinet, in his additional (supplementary) explanations to the Prime Minister's view in the Diet, pointed out on the same day that "Japan made a peace treaty

with the government of the Republic of China, and in this case, it is a matter of course that Japan considers the other signatory, the government of the ROC, as the legitimate government of China. Accordingly, the statement that with this treaty the state of war was ended, is to be valid for China as a whole, and since it was made with the government representing this China, Japan's state of war with the State called China, as a juridical relation, was ended once and for all. In the same peace treaty there was also attached a Protocol and Exchange of Notes...(but) since ending of a state of war is a matter of relations of state to state, it has nothing to do with the restrictions of the territorial application (under the Exchange of Notes)<sup>83</sup>.

In this connection, in law as in fact the Japanese Government refused to the Mainland Regime any right to demand war reparation. Stress of the peace-treaty relations with the ROC was considered the legal ground supporting such refusal. Ikeda made this clear enough equally.<sup>84</sup>

The Foreign Ministry, like its counterparts in other countries, insists upon strict application of international law on these matters. Such insistence, together with the reasonings at the back, has never suffered any change up to the present. And the juridical logic may be summed up thus: (a) The content of the Sino-Japanese Peace Treaty is divided into two parts, and the part that is subject to restriction of territorial sphere of application is that which includes in it the provisions on trade, civil air transportation, fishery, and nationality, which are "changeable provisions"; (b) the ending of the state of war and the settlement of war reparation belong to different category, which is of the nature of normalising the relations between the two states; (c) Japan has recognised the Nationalist Government as the legitimate government representing whole China, and has settled all these questions with that Government; (d)

hence restriction of territorial application of the said peace treaty has nothing to do with this part of the peace treaty, (under item (b) above); (e) accordingly the Mainland Regime can never have a right to war reparation.<sup>85)</sup>

But this is only the "formal" view. In the green room, the Foreign Ministry had at least since 1958 considered these restrictive issues seriously and more realistically. It considered the timing for normalisation of relations with (recognition of) the Mainland Regime to be closely connected with the latter's possible demand for war reparation.<sup>86)</sup>

No cleverer way had so far been discovered; and this perhaps will continue for a considerable period in the context of change, if any, of the *China-status-quo*, of world situation at large, of Japan-US relations, and of the reactions and attitudes of the two Chinese entities toward Japan (and toward USA).

## II. Government Attitude in Time of Crisis—

### The French Recognition Situation (1964) and the Unified View of the Government on the Situation

A very long story will have to be told if we intend to discuss here in a detailed manner Japanese Government views on the China Problem in time of crisis. Space does not allow us to undertake case study. Our examination will be made very briefly by taking the most influential case as object, so as to know the real intention of the Japanese Government through finding out changes, if any, in its view and attitude.

On January 27, 1964, France recognised the Mainland Regime. On February 10, the Nationalist Government severed diplomatic relations with France, making any form of the rumoured and predicted two-China settlement impossible.<sup>87)</sup> All these happened at a time when relation between ROC and Japan had become no worse as a result of the Chou Hung-ching Asylum Case occurred in September 1963 (reaching the point of quasi-

severance of diplomatic relations).<sup>88)</sup> With this high tension at the background, in Japan the French recognition case appeared to be far more dramatic and sensational than it should be, and the Japanese, especially the press, the intellectuals, and the Reformist Camp (including their political parties), and even part of the LDP and of the *zaikai*, sensitively responded by urging Japan to follow France. Some time from December 1963 to March 1964, therefore, the Japanese Government was in a very difficult position, and this was well reflected in its views and attitudes made known during this period.

It is symbolic that the focus for Japan in this Situation was the two-China theory. Relative to this are, as it should be, the means-issues of Recognition and Representation in the UN. And, supplemental to these are the territorial status of Taiwan, the restrictive-issues of peace treaty and war-reparation (these have been demonstrated in the first part of this Chapter, and they remain unchanged up to the present).

#### (1) The Object-Issue ('one China, or two Chinas?')

Japanese Government very forwardly pushed out its potential two-China line. This was made on many occasions (from the end of 1963 to the beginning of 1964), in informal, quasi-formal, and even in formal ones.

Thus, on January 17, 1964, government quarter (Foreign Ministry) informally commented on French notification to the USA of recognition of the Mainland Regime, that "it is noteworthy that there will be an increase in the possibility of solving the (China) situation by way of a *de facto* two-China... So far as Japanese Government is concerned, it wishes to take a soft forward posture not contrary to this world tide."<sup>89)</sup>

In an *ad hoc* meeting of the Cabinet on January, 18, the outline of the Prime Minister's address to the Diet (together with that of the Foreign Minister's, with similar content on the China

Problem) was discussed. After reiterating maintenance of the established line on the China Problem and expressing the will to restore friendly relations with the Nationalist Government which had been worsened by the Chou Hung-ching Case, on the reported French recognition of the Mainland Regime it was stated in the outline that Japan would realistically take "cognition of the solemn fact that on China mainland there exist six hundred million people".<sup>90)</sup>

The formal content of the Prime Minister's address to the Diet (46th Session), however, underwent a little but important change, in that a two-China line was both in word and in implication made more unreserved:<sup>91)</sup> "China mainland lies at a place only a narrow strip of water away from us, and it is a stern fact that on this huge territory lives a great bulk of a people of six hundred million; on the other hand, questions regarding Communist Chinese Regime are world questions to be determined in the UN... Basing on such cognitions, with my countrymen I (the Prime Minister) wish to develop a realistic policy with prudence".<sup>92)</sup>

As formal expression of Japan's view on the China Problem, this was perhaps the most definite and provocative since Ikeda had come into power. It was more significant, if we compare this with Ikeda's addresses to the Diet made theretofore,<sup>93)</sup> and consider the fact that preceding the above quotation, in the same address the paragraph was on 'another China', which reads:

"It is regrettable that recently there has occurred (a) dispute between us and the Republic of Chinese Government, which is traditionally in friendly relations with us. It has already been clear enough that our policy line is to maintain friendly diplomatic relations with the government of the Republic of China (and to trade with China mainland on the principle of 'severing the political from the economic', etc.)"<sup>94)</sup>

Though Ikeda did not make it plain as to what his 'realistic policy' might be, from the form as well as from the content of this address it may be inferred with certainty that a two-China line was pushed out in an unreserved manner. What was pending was timing (US and ROC attitude) only<sup>95)</sup>.

Our above interpretation would be confirmed by a top-level meeting held on January, 22, 1964, among the Prime Minister, the Foreign Minister, and the *kanbu* of the Foreign Ministry. Agreed upon in this meeting were some vital points, *inter alia*, that in the case where a two-China situation would become feasible due to the *fait accompli* of France's recognition of the Mainland Regime with her recognition of the ROC kept intact, Japan should persuade the Nationalist Government not to cut off its relations with France (hence to persuade it to admit this two-China situation).<sup>96)</sup>

## (2) The Means-Issues(recognition and UN Chinese representation)

About these two issues, much more is to be observed.

First to be pointed out is the fact that while stressing on the face the traditional line of maintaining diplomatic relations with the ROC, the Foreign Ministry, contradictorily, tended to urge for a change of this policy,<sup>97)</sup> the content of which change in effect would destroy the very traditional line *in toto*.

This on the one hand has a lot to do with the painfulness between formal maintenance of 'one China' and potential desire for 'two Chinas'.<sup>98)</sup> It is also connected with another point, that is, with the fact that the UN representation issue came to the surface as the absolute condition for Japan's recognition of the Mainland Regime.<sup>99)</sup>

The UN representation issue had been so strongly and frequently stressed by the Japanese Government, that one doubts whether it was not made used of as a justification for its non-recognition policy, and conditions for solution of the UN

representation issue was so indefinite even after the so-called de Gaulle Typhoon had passed, that one may judge too, that facing this drastic Situation the Japanese government had lost its direction<sup>100)</sup>.

This need be examined a little in detail.

When asked "Under what conditions will the (Japanese) Government recognise Communist China?", Prime Minister Ikeda raised as conditions 'peace-loving' and 'world public opinion' (in the UN), and added immediately that due to the Aggressor-Resolution of the UN General Assembly (1951), the Mainland Regime to him had not fulfilled the condition of 'peace-loving'<sup>101)</sup> for 'recognition'. Recognition and UN representation were mixed, or, when Japan faced with the French Recognition Situation, recognition was absorbed into the UN issue which was its negative justification.<sup>102)</sup>

On the UN representation issue in particular, the picture was this:

(a) Japan would not change the line of solving the China problem (recognition) in the UN;<sup>103)</sup> (b) the UN was (and is) the mirror of world public opinion, which Japan ought to follow;<sup>104)</sup> (c) in case Mainland Regime be recognised in the UN as a *legitimate (rightful, seito)* member, Japan would *consider* to normalise relation with it.<sup>105)</sup>

The third point of the above picture is by far ambiguous. It had been doubted whether it was the formal view at all. With a view to making this more easily understood, Foreign Minister Ohira himself commented that "when the situation is such, that Communist China is admitted into the UN, we have to duly consider and deal with it."<sup>105)</sup> And, one week later, on February 27, the Government formally unified its formal view on this point, that "In the event Communist China will participate in the UN in the form of its being blessed by the UN, Japan will consider normalisation of diplomatic relations



with it". Doubts remained as to what was it meant by the word 'blessed'.<sup>106)</sup> The matter was made more mysterious.

### (3) The Restrictive Issues

The necessity for Prime Minister Ikeda to defend his non-recognition policy and to add something to the conditions for recognition, clearly came from considerations of the restrictive issues that, for Japan, the Mainland Regime should succeed to (in case of one China) or recognise (in case of two Chinas) the Sino-Japanese Peace Treaty and that with this it should admit also the renunciation of war reparation.

In this regard, the fact that solutions of these two issues were made the 'preconditions' was not the least accidental, nor had it anything to do with suddenness.

Early on January, 22, 1964, before French recognition of the Mainland Regime, in the top-level meeting, as having been pointed out, the Prime Minister, his Foreign Minister and the *kanbu* of the Foreign Ministry agreed on some points, one of which was that "Japan should continue to maintain recognising the Nationalist Government *as the legitimate government of China due to the existence of the Sino-Japanese Peace Treaty of 1952*".<sup>107)</sup> And, on January 29 and 30, immediately after France had recognised the Mainland Regime, Ikeda stated the same thing in the Diet.<sup>108)</sup>

Thus the war-reparation issue was, as it should be, absorbed into the peace-treaty issue. But this does not mean that no special references were made to it in particular.

In reply to LDP Member Aichi's question, above referred, Ikeda pointed out that "it is necessary that we remember the generosity of giving up war reparation and keep engagements with Nationalist China. I intend to insist on this virtue of Japan."<sup>109)</sup> More clearly, a few days later Ikeda stated that "Concerning war indemnity, Japan was at war with the Re-

public of China, and has signed a peace treaty with her. It must be made clear that that State (Republic of China) has given up claims of war-indemnity".<sup>110)</sup> There was to him no question of war indemnity between Japan and the Mainland Regime. On this issue, the view of the Japanese Government had been consistent.<sup>110)</sup>

(4) In connection with the restrictive issues, of particular importance is the fact that on the basic point the attitude of the Japanese government had been inconsistent or, rather, made equivocal. This is the territorial status of Taiwan; it, as having been shown in Part I, is basic to all other issues of the whole Problem.

In the top-level meeting on January, 22, 1964, already referred, by inference<sup>111)</sup>, Taiwan was not recognised as Chinese territory. On January 30, in reply to Socialist Member Yokomichi's interpellations the Prime Minister said: "I do not consider the Republic of China controls the whole of China."<sup>112)</sup> More specifically, he stated that transfer of sovereignty from Japan to China had not been completed, and that hence in law Taiwan's territorial status had not been determined. And, when asked whether this did not mean that the ROC was a government-in-exile, he replied that "Though the final disposition of Taiwan and Penghu is legally undetermined, according to the war-time arrangements (the Cairo Declaration) among the Allied Powers these territories are to be restored to the Republic of China; and Japan through accepting the Potsdam Proclamation also recognised this. Accordingly at that time these were expected to be restored to the Republic of China, and under this expectation the Nationalist Government has occupied them up to the present. Furthermore, the Nationalist Government *also* effectively rules part of the inherent territory (of China) such as Kinmen and Matsu."<sup>113)</sup>

But to accept this as the formal view of Prime Minister

Ikeda on this very point, there is not without reasonable doubt. It is absurd to maintain a view which is equivalent to saying that the territory of the Republic of China includes Kinmen and Matsu but excludes Taiwan. In such a case, excluding the legal constructive control of mainland by the ROC, and we shall see that the result will be very serious. In connection with the peace treaty and the war indemnity issues, suppose that the Islands of Kinmen and Matsu be lost to the Mainland Regime in future, Japan would be in a very miserable position. But the Ikeda Cabinet did not seem to have been aware of such a juridical consequence of our supposition. Foreign Minister Ohira even went so far as to say that "Taiwan's status is, in theory, matter for the Allied Powers of the world war (to decide), but what would become of Taiwan is a matter to be determined by Taiwan itself (meaning by the inhabitants therein, hence not excluding a "plebiscite")", though he added immediately that "Japan is not in a position to say anything in regard thereto."<sup>114</sup> But, in fact Japan had said much on this issue, and with contradictions. The point therefore needs further clarification and ascertainment to the extent beyond reasonable doubt, before the views may be identified as that of the Japanese Government's.

Due to existence of such contradictions, on February 29 the Prime Minister made a little change (to him, a little clearer) on this issue. After confirming the view that Taiwan's status was undetermined, he commented before his colleagues that "At present the government on Taiwan is in control of Taiwan, the Pescadores, and Kinmen and Matsu, but it does not mean that it has no control over mainland... Chiang's government represents China. For the time being its administration does not cover Peking or Shanghai and so forth"<sup>115</sup>; then he repeated the view that Taiwan did not belong to China, and echoed Faure's view in the Figaro, by pointing out that he himself recognised that "it (the Nationalist Government) does not

stretch (its control) to mainland",<sup>115)</sup> that "this is a question where the law and the fact do not adapt to each other". He added, moreover, that "from viewpoint of a series of facts it (Taiwan) belongs to the Republic of China, but in the peace treaty this had not been determined..."<sup>115)</sup>. His view thus became more metaphysical for comprehension. And when reminded that "On March 29, 1961 you, as Prime Minister, replied in this Diet that 'Taiwan is Chinese territory'... Are you not self-contradictory?", Ikeda could not help withdrawing his 1961 statement, and his real view remained unknown as before.<sup>116)</sup>

#### (5) The Final View—Unified View of the Japanese Government on the Situation

To clarify the replies and postures given and assumed on the above occasions, the Foreign Ministry on March 5, 1964 made to the public the formal Unified View of the Japanese Government on the China Problem (thus putting a period to the French Recognition Situation for Japan).

The relevant points in this Unified View are as follows:

(a) Two facts are presupposed by Japan's China policy: (i) Japan has peace treaty relation with the Nationalist Government and maintains normal diplomatic relations with it; so far as Japan is concerned that government represents the State of China; (ii) Japan can not but hold some *de facto* relations with China mainland due to historical and geographical reasons, and this point tells everything about the differences between Japan's position and US position.

(b) Both Chinese entities claim sovereign rights to whole China. But it is impossible for Japan to have diplomatic relations with both of them simultaneously. To recognise the Mainland Regime Japan will have to withdraw recognition of the ROC. But such policy is *at present* (in 1964) contrary to Japan's national interest, and is also in opposition to the desire of

majority of the Japanese people.

(c) The (present) situation in China is not a normal one, but normalisation of this situation is not a task possible of accomplishment by Japan alone; in fact, the situation remains as it is, severance of relations with the Nationalist Government and recognition of the Communist Regime on mainland, are not normalisation of the situation, but will rather give rise to confusion; this is by no means a measure in the cause of promotion of peace in Asia.

(d) The China Problem, therefore, should be justly solved in the UN, after due discussions and with world public opinion in support. This is the only solution. The UN representation issue should be determined with care, and not be disposed of as a matter of form (credentials). This was (and is) Japan's fundamental attitude.

(e) In this regard, it is clear that the statement (by Foreign Minister Ohira) "In the event Communist China will participate in the UN..." as a rightful (legitimate) and blessed member, signifies a situation wherein Communist China be given (its? a?) UN seat in a satisfactory way, after careful discussions from all angles (and with world public opinion at the back), thus be proven that its "admission" is necessary and desirable for maintenance of peace. (Note that in such a formal document the word "admission" bears affirmative nuance and hints at a two-China settlement.)

(f) In such a case, it is a matter of course that Japan will consider normalisation of diplomatic relations with (and recognise) Communist China. But it is too early to decide Japan's attitude in the 1964 Session of the UN General Assembly, for Japan must be sure about the direction of world public opinion.<sup>117)</sup>

On other issues, however, the Unified View remain silent. In this regard, it may not be useless to remind that the LDP Interim Report of 1961 remained valid up to 1964, and the

government views made known before the occurrence of French recognition of the Mainland Regime, that is, government views in usual time, remain unchanged.<sup>118)</sup>

## Notes

- 1) Fukushima S. in the *Chuokoron* (Aug. 1956) p. 72; Minutes of the *Gaiko-kondankai* (No. 7, Dec. 13, 1960) p. 39. There are too many examples, and the 'Unified View' of the Party (Aug. 12, 1963) may be cited as one of the most evident cases.
- 2) 15 years of intimate friendship with, and understanding of, Japanese Dietmen of the political parties leads the present writer to this conclusion. There is no other way than private talks and oriental 'feelings' for knowing the true thoughts of Japanese politicians (including LDP Members) who hold two faces on the China Problem and their real attitudes toward USA.
- 3) Socialist Party's *Kokuminkoyaku* (Pledges to the People) Oct. 25, 1960, see the *Mainichi Shimbun* and the *Tokyo Shimbun* (Nov. 14, 1960); Foreign Policy determined by the Party Convention (Mar. 1961); Outline of Foreign Policy at the Party Convention (Nov. 1962); Foreign Policy Line determined by the Central Committee of the Party (Aug. 27, 1963), etc. This was the basic line of the JSP. However, there were for times delicate nuances in its top-leaders' explanations of this line. Even a leftist leader like Sata, when he was the Chief of the Party's Bureau of International Affairs, said in 1961 (in his reply to the *Tokyo Shimbun*) to the effect that though his Party considered the regime on China Mainland the only legitimate government, the real answer as to which of the present regimes in China had legitimacy, was to be determined by world public opinion (and this was the line of the ruling Liberal-Democratic Party). Cf. Kawakami (then Party Chairman) in the *Yomiuri Shimbun* (Apr. 7, 1961).  
 For JSP stand on the *status quo* in the Taiwan Straits, see Sata in the *Tokyo Shimbun*, Series 'All about the China Problem' (J), No. 8, Apr. 1961; Eda in the *Asahi Shimbun* (a discussion with Foreign Minister Kosaka) Jan. 3, 1962; Kawakami's press conference on Sept. 20, 1963 (Outline of the Party's Policies for the General Election).
- 4) Foreign Policy determined by the Party Convention (Mar. 1961); Eda in the *Asahi Shimbun*, Jan. 3, 1962. This was another basic line of the Socialist Party, and it was subject to the double-face phenomenon of the JSP members in the Diet.
- 5) Party Pledges to the People in 1960; Television-Discussion among Leaders of the Three Parties (see the *Yomiuri Shimbun*, Nov. 17, 1960); Foreign Policy determined by the Party Convention (Mar. 1960); Party Pledges for the Election of the Councillors (Jun. 7, 1962); Outline of the Party's Foreign Policy at the Party Convention (Nov. 1962); Wada (then Chief of the Bureau of International Affairs), "The Foreign Policy of the Socialist Party" (Feb. 12, 1963); Unified

- View of the Party (Aug. 12, 1963); Foreign Policy determined by the Party's Central Committee (Aug. 27, 1963); Policies for the General Election (Oct. 25, 1963); The Shakai Shimpo (a JSP official organ), additional issue on "The Sino-Soviet Conflict" (Feb. 10, 1963), and *ibid.*, editorial (Mar. 8, 1964).
- 6) Foreign Policy determined in the Party Convention (Mar. 1961); Outline of Party's Foreign Policy (Nov. 1962); Wada's "The Foreign Policy of the Socialist Party" (Feb. 12, 1963); Foreign Policy determined by the Party's Central Committee (Aug. 27, 1963); Policy for the General Election (Oct. 25, 1963); Editorial of the Shakai Shimpo (Mar. 8, 1964).
  - 7) Japanese Communist Party would deny the reality to the extreme. But the assumption that the state of war still exists between China and Japan, hence that Japan shall make peace anew, was common to both.
  - 8) Foreign Policy determined by the Party Convention (Mar. 1961); Sata's reply to the Tokyo Shimbun in 1961, cited in *supra* note 3 of this Part; Kawakami's interpellation (representing the Party) in the 40th Ordinary Diet (Plenary Session, House of Representatives) Jan. 23, 1962; Outline of New Foreign Policy approved by the Party Convention (Nov. 1962); Wada's view at the Party Conference (Feb. 23, 1964, the Yomiuri Shimbun); Wada in the Gekkan Shakaito (a JSP official organ, the "Socialist Party Monthly"), Apr. 1964, pp. 84f. This peace treaty was even considered as the 'Nikka Kihon Joyaku' (Basic Treaty between Japan and the Republic of China), but recognition of the validity of this treaty remains unchanged, see *ibid.* discussions among top-leaders of JSP, p. 88 and p. 89.
  - 9) For instance, Wada at the Party Conference (see the Asahi Shimbun and the Yomiuri Shimbun, both of Feb. 23, 1964); the Gekkan Shakaito (Apr. 1964) p. 85 and editorial on p. 87.
  - 10) Wada at the Party Conference, *ibid.* It must be pointed out that this Conference had the French Recognition Situation as background; and only in time of crisis is it possible to know the real intention behind official attitudes.
  - 11) This was so due not only to the balance of the right-wing force but also to the fact that during the Ikeda period the Socialist Party was substantially controlled by the somewhat right-tended *Sohyo* of that period. *Sohyo*, as is well known, is Japan's most powerful labour organisation and the only strong sponsor to JSP, hence it may be considered in terms of informal influence like LDP's *zaikai*. Though *Sohyo* favoured "recovery of diplomatic relations" with the Mainland Regime, it was nonetheless a Japanese labour organisation. The Socialist Party was therefore different from the JCP in quality.
  - 12) This was a strong tendency in the right-wing and was similar to



the line of the Democratic-Socialist Party. Homogeneity to Communism disappears before national interest. The Socialist Party is after all a 'Japanese' political party, and it is also a 'Socialist' party having the inclination similar to that of its brethren the Democratic-Socialist Party, so far as the latter's "one China, one Taiwan" policy is concerned. See (B) below.

- 13) On the UN representation issue, the Kawakami and the Wada factions even formally retreated from Japan's 'pushing forward' attitude (to vote in favour of the Mainland Regime) to Japan's abstention from voting in the UN, see the Asahi Shimbun, May 28, 1963. The China Problem, like in case of the ruling LDP, is the typhonic centre within the Socialist Party. See on this point, the Tokyo Shimbun, Feb. 18 and Feb. 20, 1964.
- 14) See infra Ch. 9 (I) (1) and (II) (1).
- 15) The Gekkan Shakaito (Apr. 1964) op. cit., pp. 90—91; Katsumata, Chief of Bureau of International Affairs of JSP, in *Hyo* (Apr. 1965) p. 24 ff.
- 16) This party, though at present not strong enough to hold a casting vote in Japan's politics, is, however, the only party that has many top-leaders of the *chishikijin* category (especially the most famous critics and professors) at the back (and in fact it is named by many as 'a party of the critics and professors'), hence its view is more significant than other opposition parties such as Japanese Communist Party or the Komeito (the Sokagakkai). Though it may be interesting to know the views of the latter two parties, we skip them because in the Ikeda period they were so far not counted as significant political forces. For a representative and complete view of DSP, see Sone E. (a DSP top-leader) in the Japan Quarterly (Oct.-Dec., 1957) pp. 437—438.
- 17) Party Pledges to the People, Oct. 25, 1960; *Sekai*, Nov. 1960, p. 111; the Tokyo Shimbun, Series on 'All about the China Problem', Apr. 30 and after, 1961, No. 7; Katayama, ex-Prime Minister and DSP supreme advisor, representing the Party in reply to the Tokyo Shimbun in early 1961. Cf. Nishio (Party Chairman) in the Yomiuri Shimbun, Apr. 7, 1961.
- 18) See the Tokyo Shimbun, Nov. 19, 1960 (Policies of the Four Parties); Katayama's reply to the Tokyo Shimbun in 1961, op. cit.; Sone (Party Secretary-General) in the Tokyo Shimbun (Jan. 5, 1962, in "A Symposium among Top-Leaders of Three Parties").
- 19) Party Pledges to the People for Election of the Councillors, June 7, 1962; Party Policies for the General Election, Oct. 25, 1963. In the policies for general election in 1963, it is rather significant that Japan's relations with US were strongly emphasised, and the line toward the Mainland Regime on 'recovery of state relations' was expressed in the wordings of 'expansion of economic and cultural

exchanges'. This was, and still is, exactly the line of the ruling LDP (and that of the government). For this, and for other reasons too, DSP has, improperly, been called 'the second government party'. As a matter of fact, DSP cares very much to draw a line between itself and the ruling party, and another line between itself and JSP. And exactly due to these two lines, DSP has been very much painful: policy of the ruling party is criticised by DSP as something "following US", while that of JSP is refused as 'pro-communist diplomacy'. It seems that DSP wants to follow the line of the European Socialist-Democratic parties. But this, though welcome as nationalistic by many *chishikijin*, has not been well understood nor accepted by the people at large.

- 20) Katayama's reply to the Tokyo Shimbun in 1961, op. cit.; Nishimura (Party Secretary-General) in the Mainichi Shimbun, Feb. 11, 1964; the *Chuokoron* (July 1961) p. 100.
- 21) On Feb. 22, 1964, after the Nationalist Government had severed relations with France, Nishio, Party Chairman, in his press conference unreservedly asserted that there would be no other solution except a 'one China, one Taiwan' plan.
- 22) This warning was expressly or impliedly made in nearly all the views of DSP, official or otherwise.
- 23) It may be challenged that the Japanese press and the *chishikijin*, etc., too, are part of the invisible Japanese government. But from the viewpoint of strong grouping and of 'control without heterogeneous opposition, (that is, absence of anti-government nature), our treatment of these two groups in our way may be justified. See on this question, Fujiwara, *Kanryo (the Bureaucrats)* (J) (1964) p. 21ff.
- 24) Cf. Suzuki, *Seiji o Ugokasu Keieisha, (Thoughts and Actions of the 'Industrialist World')* (J) (1966) pp. 14, 15—16, and pp. 29—30. The question as to whose opinions are representative of this group is again difficult to answer. It is fortunate, however, that, unlike the case of the *chishikijin*, in the industrialist group there is at the least a minimum consensus traceable from the Mainstream (within the all embracing organisations like the *Keidanren*, the *Nikkeiren*, and the *Shokokaigisho*), owing much to the fact that there exists in this group no serious ideological split among the representing figures.
- 25) Kato, *Zaikai* (1966) p. 186.
- 26) Cf. Oyama in the Economist (J) Special Issue (Apr. 1964) p. 51.
- 27) The Economist (J) Oct. 9, 1962, p. 7.
- 28) Some went so far as to suggest publicly that Japan should be prepared for a two-Ch'na situation given birth by probable sudden change in the *status quo* of the representation-issue in the UN, see report on 'Japanese View on China', op. cit., p. 19.

- 29) The Sekai (Dec. 1963 issue) p. 65. Note that at the time this issue was published (sometime in Oct.-Nov. 1963) there had so far been no crisis yet.
- 30) See Oyama in the Economist (J), op. cit., p. 51. But cf. the Mainichi Shimbun Feb. 12, 1964, in which it was also stated that a unified view was not possible for this circle which included rightist, neutral, and even leftist members. But there are in fact too few really 'leftists' in the *zaikai*. Some of the industrialists are leftists, if they are leftists at all, not because of ideology, but because of their attitudes, disguised or otherwise, necessitated by trade with mainland. This is different from the ruling Liberal-Democratic Party of the Sato Cabinet period, within which party many members become so much 'left' in ideology than the Socialists, that we may cast doubt on their party-identification.
- 31) In this regard, it is noteworthy that no one within this group would say with the leftists that the Mainland Regime may claim war-reparation from Japan. On this point, see Fujii in the *Sekai Journal* (J) (Apr. 1964) Special Issue on the China Problem, p. 7.
- 32) See representing this line, Fujii in the *Gendai no Me* (June 1964 issue) pp. 102, 103 and in the *Jitsugyo no Sekai* (Jan. 1965 issue) p. 7. This tendency can also be clearly seen by inference from the zeal-cooling-down attitude of the Taiwan-Korean-Lobbists like Adachi and others in the Situation and after, in that they seem to lean toward South Korea instead of Taiwan. Some of them, indeed, even become compromising with the Mainland Regime in later period.
- 33) *Zaikai*, op. cit., p. 190.
- 34) See results of a secret poll among the bureaucrats referred to in Fujiwara, *The Bureaucrats*, op. cit., p. 147. See for a list of confidential investigation of ideological stands of Japan's bureaucrats, the *Zenbo* (J) (Nov. 1965 issue), p. 11. It must be noted that on the China Problem as well as on more fundamental questions (cooperation with US for instance), there are differences among top-officials of the Foreign Ministry, see Yada in the *Economist* (J), (Dec. 15, 1964 issue), p. 18. See further, the *Yomiuri Shimbun*, Apr. 7, 1961 and the *Chuokoron*, (Jan. 1965 issue) p. 122.
- 35) See for instance his article in the Tokyo Shimbun, Mar. 31, 1961. Yoshida's view during the Ikeda Cabinet period had been consistent, though in the last months of that Cabinet he seemed to have given different nuance in similar suggestions, by asserting the desirability of making Taiwan a show-window and a distinct political unit.  
 There were of course some in this group against Yoshida's line. One example is Nishi, in the *Mainichi Shimbun* (Feb. 16, 1964) and in his *Reflexions on Japan's Diplomacy* (J) (1965), pp. 210, 211, 213—5. By and large, however, overwhelming majority of this group adopted

the line similar to Yoshida's, though on details opinions may not be unanimous. See Kase in the Tokyo Shimbun (Apr. 21, 1961), in *Kindai Nihon no Gaiko* (1962) p. 190, and in the Tokyo Shimbun (Sept. 18, 1963); Okazaki in the Tokyo Shimbun (Sept. 27, 1963); Ohno in the Yomiuri Shimbun (July 14, 1964); Matsumoto in the Jiyu (Apr. 1964), pp. 73, 74, 75 (on page 76 the war-reparation issue was also considered), but cf. the Nation and Politics (Mar. 1964) p. 47; Asakai in the Economist (J) Nov. 11, 1964, p. 42; Fukushima in the Sogo Jahnarizumu Kenkyu (Dec. 1964 issue) p. 5 and p. 6. Cf. also Sugihara, *Gaiko no Kangaekata* (1965) pp. 158, 179—80; Kajima, *Japan's Foreign Policy* (J) (1966) pp. 38, 245f., where renunciation of war-reparation is declared a condition for Japan's recognition of the Mainland Regime, but on the recognition and UN representation issues, a two-China line was maintained. On the *status quo* in the Taiwan Straits, the territorial status of Taiwan, and the Sino-Japanese Peace Treaty of 1952, see Nishimura in the Sekai Shuho (Feb. 28, 1961), cited supra; Tajiri in the International Affairs (J) (Mar. 1965) pp. 8—9.

- 36) Though these views, when given, were expressly modified as 'personal', due to Mr. Shima's qualification of a top-official in active service (*Kanbu*) of the Foreign Ministry and to the quasi-official nature of his presence at the *Gaiko-kondankai*, they nonetheless represented the main current of the bureaucrats in that ministry.

But attention must be drawn here to the fact that there was in the Foreign Ministry no agreed view on the China Problem, especially on the timing for recognition and change of Japan's voting attitude in the UN. However, on other issues there was minimum consensus among the bureaucrats. Though such consensus was not made known to the public in a plain form, the figures of different streams in this category were identified. See the Mainichi Shimbun Feb. 9, 1964; Yada in the Economist (J) Dec. 15, 1964, p. 19 f.

- 37) The Chuokoron (Jan. 1964), p. 117 ff.; Yada, 1. c.  
 38) Minutes of the *Gaiko-kondankai*, No. 9 (Jan. 17, 1961) p. 55, and materials cited in notes 36 and 37 above.  
 39) *Ibid.*, No. 12 (Feb. 21, 1961) pp. 19—22, translation and brackets mine.  
 40) Minutes of *Gaiko-kondankai*, No. 8, Dec. 27, 1960, p. 5 ff., and Minutes No. 12, Feb. 21, 1961, p. 19ff, translation, brackets, and italics writer's.  
 On the application of the Sino-Japanese Peace Treaty, Shima was once more ambiguous, see Minutes No. 9, Jan. 7, 1961, pp. 54 et seq.  
 41) This has its origin in Yoshida's view when Yoshida was the Prime Minister. In fact, as early as before the peace-making period, amongst top-officials in the Foreign Ministry (then under control by the UN Supreme Commands) this point was to some extent considered, see Hagiwara, *Kowa tō Nihon* (1950) pp. 72—73, 85 f., pp. 208—209.  
 42) The Tokyo Shimbun, July 1, 1961 and June 13, 1963.

Such kind of formal conference (*Kokancho Kaigi*) is held periodically. It is not clear to what extent are conclusions of these conferences influential upon top-level decision-making. However, it does express another current among the bureaucrats outside, in contradistinction to that which may exist inside the Ministry. As a rule, before or after such conferences the participants are invited to discuss with journalists on problems of foreign affairs. In such cases, the ambassadors/ministers would give no more than what have been made known. But from the nuances of what they have said, it is interesting to see that differed from the case of formal conferences, in such discussions they rather incline to express the real thought which they could not tell in formal conferences. And the real thought on the general line for the China Problem among the ambassadors/ministers in the Ikeda period were that: (1) cooperation with US was the categorical imperative; (2) support for the Nationalist Government was absolutely necessary; (3) it was, however, somewhat unnatural (or abnormal) that Japan remained for so long in the condition of holding no relations (meaning formal relations) with the Mainland Regime. See the Tokyo Shimbun, July 4, 1961; *ibid.*, Jan. 1, 1963; the Asahi Shimbun, Aug. 7, 1963. Under the circumstances, there seems no need to prove that for this group the only way was a two-China settlement.

- 43) The Seisaku Geppo, LDP official organ, vol. 64, May 1961, pp. 48—52.
- 44) *Ibid.*, p. 52; Report of the Foreign Affairs Committee of LDP, July 25, 1962, p. 116. This was subject to doubt as to its actual effectiveness over party members. Formally, however, it had remained effective up to 1964 when the Party made its Unified View on the China Problem to put an end to the French recognition situation, see *infra* chapter 9(II)(5).
- 45) In this Sub-Committee there were three main streams on the China Problem: (1) Wait-and-see line, (2) gradual-push line, and (3) forward-positive line. At the last stage, due to factional discrepancy the choice was left as a question for final judgment by the Party President. And Ikeda could not (or, considering a high probability of worsening factional struggles, would not) give his final political determination. Cf. The Asahi Shimbun, Apr. 17, 1961.

But though "the view of the Liberal-Democratic Party was divided at the final line", since no ideological colour had been involved so far, "when the Party view is unified, there will come in sight a wait-and-see policy" despite the fact that "the Party as a whole could not but take the wait-and-see 'attitude' (hence no policy)", so long as the discrepancies remained as they were; Studying Group on China, Report No. 10 (Feb. 10, 1961), pp. 179—180, and p. 181. See also the *Bungeishunju* (J) (1957 Apr. issue) p. 76, where policies of LDP were referred to as 'political tactics' or as 'abstract lines'

which could not be 'basis of policy (cf. the late Prof. Otaka T. in *ibid.* Apr. 1956, p. 117).

On the other hand, the line laid down in this Interim Report was rather traditional to LDP; it had its origin going back to the Kishi period, and had suffered no material changes during the Ikeda period, see *Wagato nō Kihon-hoshin*, LDP Publ., Feb. 1961, Jul. 1962, Jan. 1963, and Jan. 1964; Questions and Answers on Policy (J), published by House of Councillors (LDP Policy Study Committee) May 1962, pp. 17—19; The Advancing Japan—Explanations of Policies (J), LDP Publ. (1962), pp. 86—88; The Bases of Our Party's New Policies (J), published by the Political Affairs Committee of LDP (Sept. 1963) pp. 15 and 26; the Sekai tō Nihon (Oct. 1963), LDP Publ., Commentary on Policy, Appendix, pp. 191, 198.

- 46) It was not clear as to the nature of this *status quo*, but it at any rate implied the starting point of a two-China settlement, though without going any further.
- 47) This seems to have been the agreed point among all members to the Committee. Confirming this point, see Chairman of the LDP Political Affairs Committee Tanaka's interpellation (representing the Party) in the 40th Ordinary Diet (Plenary Session, House of Representatives, Jan. 22, 1962), see the Seisaku Geppo, vol. 73, Feb. 1962, p. 284 and Reference Materials, special issue, Interim Report of the Subcommittee on Asia, in Report of the Foreign Affairs Committee of the LDP (July. 25, 1962), p. 7. Cf. the Yomiuri Shimbun, Jan. 24, 1961, where Nomura, then Chief of the Foreign Affairs Committee of LDP, even said that since Taiwan was not Chinese territory there was no question of two-China.
- 48) This of course can not be accepted with its face value. See the Economist (J) Oct. 9, 1962, p. 12 and p. 13, where it was pointed out, correctly, that the two-China line had been basic and potential in the LDP. See also *infra* point (5) of the present Section.
- 49) The Seisaku Geppo, *op. cit.*, p. 50, translation mine. The evident contradiction reflects Japan's pain on the China Problem. The picture was the same in a formal statement by LDP Secretary-General Maeo, against the Joint Communiqué made between the Mainland Regime and JSP, see Report of the Foreign Affairs Committee, *op. cit.*, p. 130. In fact, even as among the Taiwan-Lobbyists the two-China idea was deeply rooted, and was considered the only solution practicable, see on this point, the Economist (J) May 23, 1961 issue, p. 29 and *ibid.*, May 30, 1961 issue, pp. 12—13.
- 50) This made clear the principle that in solving the China Problem the issue of UN representation takes precedence over the means of recognition. The former is the shield of the latter: it is indeed the justification for Japan's non-recognition policy toward

the Mainland Regime. This would guide Ikeda's China policy during the whole period; and it was given expression in the statement "The China Problem must be solved according to world opinion (opinion in the UN)", confirmed and reconfirmed by Ikeda and his Foreign Ministers. See the Tokyo Shimbun, Nov. 9, 1960; Ohira (then Secretary-General of LDP) in a television discussion with top-leaders of other parties on Nov. 17, 1960, and his Party's formal Promised Policy Line to the Electorate (general election), in the Mainichi Shimbun, Oct. 25, 1960. In the Outline of Japan's Asian Policy (J) (July 25, 1962), it was stated that "We maintain our existing relations with the Republic of China...(and) especially attach importance to such relations" (Interim Report of Sub-Committee on Asia, in Report of the Foreign Affairs Committee, *op. cit.*, p. 2, and pp. 7-8, translation and brackets mine).

- 51) Translation, brackets and italics mine. This is the same picture as in the case of the object-issue, affirming and denying a two-China policy at the same time, see *supra* point. (3) under this Section and note (48) of this Part. Valid justification of Japan's non-recognition was found in the UN representation issue, but no effective shield in turn could be given to the latter. Thus, contradiction could not be hidden without the matters' being pushed to the point of nonsense. This however is not new of the Ikeda period. In and even before 1957, the situation was, to quote an authority, that "fundamental condition of Sino-Japanese relations should be founded on the UN Charter; the circumstance in the UN is therefore the precondition" (Prof. Royama M., *Kokusaiseiji to Nihongaiko*, 1959, p. 284, my translation).

- 52) Translation, brackets and parentheses mine. Even the 'Progressive' (pro-Mainland Regime) leaders in the LDP agreed on this point, see the Sekai Journal (J), Special Issue on the China Problem (Apr. 1964), p. 5. The stress on the importance of the Peace Treaty also appeared in the Unified View of the LDP (Jan. 26, 1962) against the Joint Communiqué made between JSP and the Mainland Regime, see Report of the Foreign Affairs Committee, *op. cit.*, p. 128.

Be this as it may, some of the Party leaders did consider the reparation issue seriously, hence they urged for cautious and gradual 'diplomacy by degree', and warned any move to attempt solving the China Problem at a stroke, so as to avoid leaving room to Mainland Regime for a claim (and that is, on the other side of the picture, to make more probable the Mainland Regime to succeed to obligations under the Sino-Japanese Peace Treaty of 1952), see the Tokyo Shimbun, Series on 'All About the China Problem', No. 11, *op. cit.*

- 53) About one year later, the conclusion of cautious attitude reached at the Sub-Committee on China was translated in more emphatic terms: "...The question of breaking through our relations with Com-

munist China, though important, should be solved in the tide of world politics. In other words, the question...does not stop at being a problem concerning our country only, but ought to be discussed *realistically, cautiously, and steadily...*" (Report of the Foreign Affairs Committee, *op. cit.*, p. 8, translation, italics mine). Note that this was fully in line with ex-Prime Minister Yoshida's "advice" in the Tokyo Shimbun on March 31, 1961, referred to in the above.

- 54) It is therefore conceivable that such consensus among the parties (and the consensus within the LDP as shown in this Party View) might have changed had the balance of power among the parties (or among the factions within the Party) altered. This may be said even more emphatically of the present Sato Cabinet. In any case, it was due to the merits of such consensus, compromised or *ad hoc* as they might have been, that the LDP did not split and Japan's party system survives all political, social crises. Cf. The Economist (J) June 30, 1959, p. 15.
- 55) Fukushima in the Chuokoron, Aug. 1956, p. 73.
- 56) For inside stories and sharp criticism, see the *Mainichi Shimbun*, Feb. 10, 1964; *Economist* (J) Special Issue (Apr. 10, 1964) p. 53.
- 57) See *infra* Chapter 9 (II) (5).
- 58) This was formally entitled "The Unified View of the Liberal-Democratic Party on the China Problem", see Kajima, *Nihon no Gaiko Seisaku* (1966) pp. 144 ff. esp. pp. 144—146. Materially, this unified view went no further than a confirmation of the unified view by the Foreign Ministry. To avoid repetition, we will give only a very brief account of the results of comparison between the two party views.
- 59) But there may exist (informal) 'view of the Foreign Ministry' as distinct from the view of the Japanese Government. The former is the greatest common measure among the bureaucrats who in fact still "hold high degree of influence (on policy-making) not far from absolute" (The Chuokoron Jan. 1965, p. 119, translation and brackets mine). Such 'view of the Foreign Ministry' may not follow the formal view of the LDP; it may even not always be harmonious with that of the Prime Minister and of the Foreign Minister (except when such ministers are ex-professional diplomats and are also strong political leaders). As a matter of fact, disagreement between the Prime Minister and the Foreign Ministry has not been rare, and repulse of the latter against the former is rather the rule than the exception. V. The *Sekai* (Dec. 1963) p. 65.
- 60) Translation and brackets mine. *Waga Gaiko no Kinkyō* (Green-book of the Foreign Ministry) No. 5 (Aug. 1961), covering the period as from Jan. 1960 to Mar. 1961, p. 5. This basic attitude was not far from that which had been maintained in the Kishi period, that "...There is necessity (for Japan) to consider the future of her relations with China mainland which is historically close to our country. Adjustment



of relations .... consists of many essences that should be solved in the tide of world politics" (*ibid.*, No. 4, Jun. 1960, covering the year 1959, p. 6, translation and brackets mine).

- 61) *Waga Gaiho no Kinkyō*, No. 1, Sept. 1957, covering that year, p. 45, translation, italics and brackets mine.
- 62) *Ibid.* No. 9, 1965, covering the period as from Apr. 1964 to Mar. 1965, p. 21. Note that here the 'Communist Chinese Regime' is referred to as 'the government of the PRC'. Cf. *Ibid.* No. 8, Aug. 1964, covering the period as from Apr. 1963 to Mar. 1964, pp. 14—15, where such position can only be scrupulously inferred in juristic logic. See Ikeda's attitude in 1964, *infra* (II) (4) of this Chapter.
- 63) Formal view of the Japanese government, quoted from the Yomiuri Shimbun, Apr. 7, 1961, my translation. See also Foreign Minister Kosaka's reply to interpellation in the Diet (Standing Committee for Budget, House of Representatives) on Feb. 4, 1961; Speech by Ambassador Okazaki in the UN General Assembly, Dec. 7, 1961, in *Gaimusho* (Foreign Ministry) Press Releases, 1961, p. 59 and p. 60. Prime Minister Ikeda himself, on the other hand, repeated the same view in the Diet at least twice.

From here comes the image of a two-China situation, though the Japanese Government would leave the initiative to USA and/or UK.

- 64) The Tokyo Shimbun, Dec. 11, 1963.
- 65) The Tokyo Shimbun, Series on 'All About the China Problem' No. 10, *op. cit.* and *ibid.*, Apr. 8, 1961. Since the Yoshida period, this had been the established line in the Foreign Ministry, see, the Chuokoron, Jan. 1965, quoting "confessions" of top-officials of the Foreign Ministry, on p. 119 ff.
- 66) The Mainichi Shimbun, Sept. 16, 1960; The Yomiuri Shimbun, Jan. 24, 1961. To tell the truth, Ikeda was one of the stoutest protagonist for a two-China policy. In 1954, when he was the Secretary-General of the LDP, this fact was well-known to all. See the *Sekai tō Nihon*, Jun. 1961, pp. 11—12. On demonstration of Ikeda's intention for realisation of a two-China, see a special report in the Economist (J) Aug. 8, 1961, pp. 33 *et seq.*
- 67) The Economist (J) May 23, 1961, p. 29.
- 68) *Ibid.* Jul. 18, 1961, p. 7 and pp. 9—10. But there was strong opposition against this line within the LDP at that crucial point of time, see *ibid.* pp. 17—18. On opposition against Ikeda's two-China plan in the conservative camp in general during and immediately after 1961, see the Free World (J) May 1964, editorial and p. 51 *l. c.*

Cf. Ikeda's this intention at the last phase of his administration, in his address at Fukushima (The Tokyo Shimbun, Nov. 4, 1963), and in his New Year Message to the People of 1964; see also his replies to interpellations in the Diet (Standing Committee for Budget, House

of Representatives, Jan. 31, 1964, etc.)

- 69) In a press conference with foreign correspondents in Japan, Mar. 14, 1955, cited in the *Sekai Shuho*, Nov. 1, 1955 issue, p. 37; also the *Chuokoron* Apr. 1955 issue, p. 63.
- 70) See the *Asahi Journal* (J), Jan. 14, 1962, p. 9. "Ikeda's contention that Japan's relations with Communist China were all private in nature is some kind of sophism. Many a members of the Diet and many a leaders of the LDP, who went to mainland or got into contacts with Communist Chinese leaders, did talk about matters highly political in nature; and all these had been undertaken with prior understandings from Ikeda" (Report No. 16, Study Group on China, Oct., 15, 1964, p. 376, my translation). This is best interpreted as Ikeda's preparation of the way to recognise the Mainland Regime in case of urgent need; and is also the reason why Ikeda's view and attitude on the China Problem were always made ambiguous. There is no denial that this special way of handling vital problems is a result of Ikeda's personal character which tended to play double-blade sword. In other words, he applied his political technique of dealing with the right and the left camps inside Japan, to treatment of the two Chinese entities. He even applied this to deal with the Free World and the Communist World, the Afro-Asian states and their European counterparts.

For Kishi's two-China line, see the *Sekai Shuho*, June 22, 1957, p. 32 f. In this regard, it may not be irrelevant to point out that Ikeda's expression of his two-China line was the principle of 'severing the political from the economic', which had been laid down originally in 1957 by Kishi equally expressive of the two-China thought (*Waga Gaiko no Kinkyō*, No. 1, *op. cit.*, pp. 45-46). This is deeply rooted in Japan's diplomatic tradition of weakening any possible rival, especially a strong neighbour (China), by whatever means available. On the two-China line, therefore, the difference between Kishi and Ikeda is only matter of degree.

- 71) Northedge in *Yearbook of World Affairs* (1957) p. 171. On the legal nature (binding force) of the Yoshida Letter of 1951, see Yokota, cited in note 24 of Part Four.
- 72) *Waga Gaiko no Kinkyō*, No. 8, Aug. 1964, covering the period from Apr. 1963 to Mar. 1964, pp. 14-15.
- 73) *Ibid.* No. 1, Sept. 1957, *op. cit.*, pp. 15-16. Cf. The Japan Quarterly (1955) p. 24. It must not be forgotten that in the Kishi period non-recognition was emphasized (*Waga Gaiko no Kinkyō* No. 1, p. 15 and pp. 45-46), but in the Ikeda period, such emphasis disappeared and a two-China line became more evident. See *ibid.* No. 9, p. 21.
- 74) *Waga Gaiko no Kinkyō*, No. 1 p. 7, pp. 45-46; *ibid.* No. 2 (covering the period from July 1957 to Dec. 1957) pp. 5-6 and p. 7. Ikeda and his foreign ministers, Kosaka and Ohira, had made clear this:

condition of world opinion on the recognition issue in all circumstances during their respective terms of office. This was so far in line with the formal view of the LDP.

However, like in the case of the LDP, the formal view of these ministers was not the unanimous opinion within the government, e. g., not within the Foreign Ministry *officially*. From the end of 1960, in compliance with instructions from the Prime Minister, the *Kanbukai* (top-official meeting) and the Policy-Planning Committee of the Foreign Ministry started considering the question of recognition of the Mainland Regime. The study was completed in early 1961, with the result that no agreed opinion could be suggested; instead, many separate reports were submitted to the Foreign Minister. The reports may be divided into two main groups: (a) those which tried to promote a two-China theory as a necessary means of maintaining Taiwan in the hands of the Free World, and (b) those which put weight on 'admission' of the Mainland Regime into UN, and treated the two-China theory as matter of expediency. See on these reports, the *Asahi Shimbun*, Dec. 17, 1961; Lin Chie-shan in *Szdai-piping* (Chinese) (C) Hongkong, vol. 14, No. 7, Apr. 1, 1962, p. 18. There were of course some agreed points among those reports too: (a) There was inevitability of 'admission' of the Mainland Regime into the UN (in remote future), and it would be necessary for Japan to recognise that regime in that event; (b) whether or not, and the timing, to recognise that regime, must be determined with highest degree of prudence, since the China Problem should be dealt with from viewpoint of world politics at large and in a long-range manner; (c) 'at present' (in 1961) it was too early to recognise that regime; and (d) reservation should be made on a two-China situation, by way of keeping Japan's attitude equivocal. See the *Yomiuri Shimbun*, Apr. 7, 1961; The *Tokyo Shimbun*, Apr. 8, 1961. The conclusion of the Foreign Ministry itself was that the matter should await political judgement (of the Prime Minister).

At the end of 1961, Foreign Minister Kosaka instructed the Foreign Ministry to make overall reconsideration of the China policy (recognition). A provisional conclusion was reached, in which "Taiwan's status" (status of the ROC) was stressed as a precondition, and continuation of the wait-and-see attitude was suggested "because at the present it is difficult to make Communist China to recognise this precondition."

- 75) Yada in the *Economist* (J), *op. cit.*, p. 17. In fact, Prime Minister Sato may be raised as one of the examples. The line of the Foreign Ministry on the China Problem did not become concrete till 1960's. In or before 1958, this line had already been established (the Sekai, Oct. 1958, p. 121; the *Economist*(J), Feb. 28, 1959, p. 14). But the ruling LDP, described by some as the counterpart of the pre-war military authorities so

far as foreign policy making-process is concerned, blocked any plan from the Foreign Ministry that might not adapt to the reality of the *ad hoc* power balance situation in the LDP (Mugino in the Chuokoron, Aug. 1956, p. 83; The Bungeishunju, Oct. 1958, p. 72). One of the examples is LDP Secretary-General Maeo's denial of a two-China line in the UN, see Report of LDP Foreign Affairs Committee, *op. cit.* p. 130.

- 76) *Gaimusho Press Releases*, 1961, p. 57 *et seq.* About government thought on the juridical aspect of this issue, see Hayashi, ex-Secretary-General of the Legislative Bureau of the Ikeda Cabinet, in *Today's Topics*, Apr. 1965, pp. 48–50. It is significant that he too tended to a two-China theory as a solution to the UN Chinese representation issue. The Okazaki speech, indeed, was based on the Interim Report of the LDP Sub-Committee on China, see Report of the LDP Foreign Affairs Committee, *op. cit.*, p. 117 and pp. 124–125.
- 77) *Waga Gaiko no Kinkyō*, vol. 6, Jun. 1962, covering the period from Jan. 1961 to Mar. 1962, on p. 20.
- 78) *Ibid.*, pp. 21–22. The Okazaki Speech (on the occasion of Japan's becoming a co-sponsoring state of the 'important question' proposal at the 16th Session of the UNGA) asserted that such solution would mean *de facto* expulsion of a member state, *ibid.* p. 19. This strengthened Japan's argument for an 'equitable (just)' solution, that is, a two-China situation crystallised. See also Fukushima, chief delegate to UN at a later period, told US Press about Japan's two-China line in the UN. Cf. the Sekai, June 1961 issue, p. 127.
- 79) Yada, *op. cit.*, p. 20, my translation.
- 80) The Yomiuri Shimbun, Jan. 3, 1962. Note that in the *Waga Gaiko no Kinkyō*, the two-China line, though implied only, was considered "the policy that is the best for maintaining our national interest" (No. 9, 1965, p. 21, translation writer's).
- 81) *Waga Gaiko no Kinkyō*, No. 1, *op. cit.*, p. 15, No. 8, p. 14, and No. 9, p. 21, etc. Indirectly, this can be seen in the clause "(the Nationalist Government and Japan) have once more entered into friendly relations as a result of the end of the war" (*ibid.* No. 1, p. 45 parentheses and translation the present author's).
- 82) *Records*, Standing Committee for Budget, House of Representatives, Feb. 4, 1961, translation and brackets mine. In his Administrative Policy Speech to the Diet (39th Extraordinary Session, Sept. 28, 1961), Ikeda again emphasised this point, by saying that Japan had concluded a 'Peace Treaty' with 'the Republic of China' (*Gaimusho Press Releases*, 1961, p. 37; note that Ikeda, on many other occasions having no bearings on the war-indemnity issue and/or of the state of war, nearly without exception dropped the word 'peace' when he referred to this 'Peace Treaty' with ROC). At the end of 1963, in reply to questions by the Tokyo Shimbun, Foreign Minister Ohira said the

- same thing, see The Tokyo Shimbun, Dec. 11, 1963.
- 83) *Records, ibid*, translation and brackets mine. See below for the formal view of the Foreign Ministry.
  - 84) See the Nation and Politics (J) Mar. 1964, p. 61.
  - 85) See the Tokyo Shimbun, Series 'All about the China Problem', *op. cit.* No. 11. This tells the true reason why Japan has to support the ROC to the last moment, unless a two-China settlement is certain.
  - 86) The Sekai, Jun. 1959, p. 306. Cf. Kaya in *Gendai no Me*, Jun. 1964, p. 98.
  - 87) On Jan. 27, ROC protested France's action with a memorandum in which any form of two-China was rebuked; on the same day, the Mainland Regime voiced the same thing (by New China News Agency, Jan. 28).
  - 88) For analysis of this case, see the present writer's article in the Journal of Social Science No. 5, ICU Publ. II-B, pp. 251—292.
  - 89) The *Nihon Keizai Shimbun*, Jan. 18, 1964, translation and brackets mine.
  - 90) The Asahi Shimbun, Jan. 19, 1964, my translation. Behind this address there were many vital factors that forced the Japanese government to use expressions full of implications. US opposition against France was considered by Japan in the first instance. Other factors considered by Japanese Government included the fact that the Situation had yet been fluid, hence whether France would succeed in realising a two-China theory was still dubious. Again, within the ruling LDP the anti-communist group was taking the lead (in the Foreign Affairs Committee especially); and majority in the Foreign Ministry at the outset predicted that the Nationalist Government would strongly react against a two-China settlement and would sever diplomatic relations with France (although many in that ministry doubted the latter part of this prediction). These were two other vital factors in this Situation. It must be pointed out that the Foreign Ministry was proved to be correct in its prediction, and that it was mistaken in predicting impliedly that the Mainland Regime might tacitly compromise with France on a two-China plan one way or the other.
  - 91) It was known later that such terms of emphasis like 'stern fact', 'realistic policy', etc., were inserted by Ikeda himself. See the Economist (J) Special Issue, Apr. 10, 1964, p. 54.
  - 92) *Waga Gaiko no Kinkyō*. No. 8, Aug. 1954, Materials, p. 9. Translation and brackets mine. But, in his replies to interpellations in the Diet after it had been clear that a two-China situation became impossible, Ikeda denied that he had "ever thought of a two-China". This was not his "formal view" we mean in this Chapter; but if the delicate timing and the too emphatic wordings of the denial be taken into special account, such denial rather sounded as a trumpet command for emergent retreat. On the content of this denial, see *Records*, Standing Committee for Budget, House of Representatives (Ikeda's

- replies Jan. 31, 1964). Cf. *Ibid.* Feb. 11 (also Ikeda's replies).
- 93) For instance, Ikeda's Address in the former Session (45th Session) of the Diet, see *Waga Gaiho no Kinkyō*, *ibid.* p. 3. He might have kept silent if he had had no volition to act. Of course, his uneasy position must also be paid attention to, e. g., his failure on the China policy would directly weaken his position in the election of the Party President (automatic election of the Prime Minister) slated to be held in July, 1964, and would also push to the front, and deepen, the potential ideological struggles among the factions within the Party on the balance of which factions the Ikeda Cabinet had stood for years.
- 94) *Ibid.* p. 9. My translation and brackets.
- 95) This was hinted in Foreign Minister Ohira's Address in the same (46th Ordinary) Session of the Diet, in which it was concluded on the French Recognition Situation that "...we are watching the development of the situation and moves of international public opinion, and will deal with it cautiously" (*ibid.* p. 12).
- 96) The Tokyo Shimbun, Jan. 23, 1964 and the Mainichi Shimbun of the same day.
- 97) This was so seriously believed, that the Foreign Ministry on Jan. 23, 1964 was obliged to take unusual measure in the form of special press conference by the Permanent Vice-Minister (Mr. Shima) to deny any change of recognition policy on the China Problem.
- 98) See for instance, the Yomiuri Shimbun, Jan. 18, 1964.
- 99) Ikeda's replies in the Diet, *Records*, Standing Committee for Budget, House of Representatives, Jan. 31; Ikeda's replies in the Diet, *ibid.* Feb. 11.
- 100) See, for example, Ikeda's replies in the Diet, *ibid.* Jan. 30. Underlying this was Japan's fear that should Japan push too far in the Situation the Nationalist Government might be thrust into a suicidal determination of 'cooperation' or compromise with the Mainland Regime one way or the other.
- 101) Replies to Socialist Member Yokomichi's question, *Idem.*, brackets added.
- 102) Replies to Democratic-Socialist Member Imaizumi's question, *ibid.* Jan. 31, where Ikeda raised this as one of the 'positive reasons' for Japan's non-recognition of the Mainland Regime, and when asked a little further, the Prime Minister went to the brink, by answering that "if Japan has to be the last nation to recognise, so let it be" (*idem*). Such is of course not a "view" made after deliberation, and cannot be fragmentarily taken up to be the speaker's "real intention" if there be no other proofs, e. g., repetitions.
- 103) *Records*, Standing Committee for Budget, House of Representatives, Jan. 11., Ikeda's replies. This line was emphatically endorsed in the Prime Minister's Address to the Diet (46th Ordinary Session) on Jan.

21, 1964, referred to in the above, hence was part of the formal attitude of the government. See also the "Talk" to the press after Ikeda's reply, by the Chief of the Information and Cultural Bureau of the Ministry of Foreign Affairs, which is the ordinary way of expressing government formal views.

- 104) The Foreign Minister's replies in the Diet, *Records*, Standing Committee for Foreign Affairs, House of Representatives, Feb. 12. Italics and brackets mine.
- 105) *Records*, Standing Committee for Foreign Affairs, House of Councillors, Feb. 20, 1964, translation mine.
- 106) On the meaning of the word 'blessed', Ikeda commented in the Diet that this referred to the situation (1) where the Mainland Regime be not warlike, (2) where it contributes in the cause of peace no less than other countries do, and (3) where Japan's friendly countries are not opposed to it (*Records*, Prime Minister's replies in Standing Committee for Budget, House of Councillors, Mar. 4, 1964). This comment in effect puts more conditions. In the same replies, actually, by implication Ikeda put forth other conditions for recognition, *inter alia*, that the Mainland Regime should recognise the Sino-Japanese Peace Treaty and admit the fact that war reparation had been given up by the ROC; and these were referred to as "preconditions" to Japan's recognition (*idem.*, replies to LDP Member Kajima's interpellations. Note here that Kajima was at that time Chairman of the Foreign Affairs Committee of LDP). Thus, the 'blessed situation' involved Japan's national interest directly. In a word, Japan would recognise the Mainland Regime any time; but USA restraint on the matter being put aside, Japan would not do so unconditionally, as France had done with erred calculations on the probability for realization of a two-China theory through *fait accompli*. It is furthermore highly significant that in those replies Ikeda also made clear that UN admission of the Mainland Regime was a necessary condition, but not the sufficient condition, for Japan's recognition of that regime. "In logic", he explained, "admission into the UN is not necessarily followed by recognition, but is the pre-condition of the latter" (*idem.*, in reply to Socialist Member Hanyu's interpellation). He endeavoured to make himself clearer, by saying that for Japan's recognition of the Mainland Regime, "consents from friendly countries" would be required. This would mean consent of USA and of other countries were conditions of his conditions. Despite his explanations the point was by no means understood better, and it was far from clear whether ROC was counted one of such countries whose consent would be required as a condition to his conditions (that is, in the form of a two-China). But it must be warned that all these replies were made with suddenness, and under excited circumstances, hence they can not be treated as the formal view of the Prime

- Minister or that of the Foreign Minister. To speak frankly, the real meaning of 'blessed' remains a puzzle even as of today.
- 107) The Tokyo Shimbun, Jan. 23, 1964 and the Mainichi Shimbun of the same day, translation and italics mine.
  - 108) Prime Minister's replies to LDP Member Aichi's interpellations; *Records*, Standing Committee for Budget, House of Representatives, Jan. 29; Prime Minister's replies to Socialist Member Yokomichi's interpellations, *Records, ibid.*, Jan. 30. Foreign Minister Ohira did make known the same view, see *Records*, Committee for Foreign Affairs, House of Councillors, Feb. 20, where it was stated that "in law the said (1952) Peace Treaty (between Japan and ROC) does not preclude Japan's establishment of diplomatic relations with the Mainland Regime, but Japan must be faithful to treaty, and it is too early to discuss politically the destiny of this Peace Treaty"(parentheses added). Ohira here clearly adopted the view of an international lawyer, see *Records*, Statement by Irie K. in a public hearing at the Standing Committee for Budget, House of Representatives, Feb. 13, 1964.
  - 109) *Loc. cit.* in note 108; translation mine.
  - 110) The Prime Minister's replies to Democratic-Socialist Member Imazumi's interpellation, *Records*, Standing Committee for Budget, House of Representatives, Jan. 31, translation and brackets mine. See also *supra* notes 82 and 83 of this Part on Foreign Minister Kosaka's replies, and additional(supplementary) explanations thereto, of the Secretary-General of the Legislative Bureau of the Cabinet at the Diet on Feb. 4, 1961.
  - 111) "As a result of the scheduled French recognition of Communist China with recognition of the Nationalist Government kept intact, the 'undetermined' status of Taiwan will be recognised as under the legal control of the Nationalist Government...", see the Tokyo Shimbun, Jan. 23, 1964 and the Mainichi Shimbun of the same day, translation the present writer's, quotation marks added.
  - 112) *Records*, Standing Committee for Budget, House of Representatives, Jan. 30, translation mine.
  - 113) *Idem.*, translation, italics and brackets mine. See this in detail, Kajima, *Nihon Gaiko nō Tenbo*, 1964, Appendix No. 1. pp. 220-221.
  - 114) *Records*, Committee for Foreign Affairs, House of Councillors, Feb. 11, translations mine, brackets added.
  - 115) Prime Minister's replies to Socialist Member Okada's interpellations, *Records*, Standing Committee for Budget, House of Representatives, Feb. 29. Translation and parentheses mine. It was perhaps based on such dubious attitude that Ikeda at the last moment made his decision on the Chou Hung-ching Asylum Case, see "Statement on the Chou Hung-ching Question", Public Information and Cultural Affairs Bureau, Ministry of Foreign Affairs, in *Gaimusho Kohyoshu*, Jan. 1964 (covering the latter part of 1963), pp. 71-72.



- 116) Translation mine. In terms of the Peace Treaty and the war-reparation issues, this is too hurtful to Japan's interests. But Foreign Minister Ohira was so curious when he said that "the Sino-Japanese Peace Treaty has nothing to do with the rights to territory (Taiwan) on the part of Communist China," *Records*, Standing Committee for Foreign Affairs, House of Councillors, Jan. 12 (translation and brackets mine), and he confirmed this on Feb. 29, 1964 (*idem*.)
- 117) Italics and brackets added. For content, see Kajima, *Nihon Gaiko no Tenbo*, *op. cit.*, Appendix No. 1, pp. 214-218. The Unified View of LDP is nearly the same as this, cf. Chapter 8 (III).
- 118) See *supra* Chapter 8 (III), and (I) of this Chapter respectively.

## CONCLUSION

Confronted with the China Problem, Japan's position is unique. The uniqueness lies in differences of restrictions upon, hence of breadth of, States' freedom of action in general and Japan's freedom in particular.

These differences may be observed from political as well as juridical point of view. The characteristics of Japan's position, in the last analysis, come from the existence of a peace treaty between Japan and the Republic of China. This peace treaty becomes the source of bounds of Japan's legal freedom in the China Problem. And, a peace treaty being juridically basic for post-war relations between the states parties to it, legal restrictions upon Japan's freedom of action, as a matter of risks, come to the forefront and occupy a weight at least equal to the weight occupied by conceivable political restraints in the same Problem (Part III).

The China Problem is generally conceived and studied more as a political question than as a juridical one. This is not without good reasons. The cardinal distinction of the juridical aspect of Japan's China Problem is very exceptional. Compared with general freedom of action of other states facing this Problem (Part I and Part II), Japan's freedom, hence her position, differs from the positions of other states qualitatively, whereas among other states the differences in positions, albeit inevitable, are only a matter of quantity (degree of freedom to act or not to act in a situation or change thereof (therein), which may or may not involve change of form or content of the China Problem itself). Japan's position is therefore 'marginal'.

But there is some danger in any over-emphasis of the juridical aspect of the China Problem, just as there is some danger in any over-emphasis of the political aspect of the same Problem which has made a vacuum, or an unbalanced condition, in the

study of this Problem at the present stage.

If it is true that the juridical issues of the China Problem are for Japan factors vital to her policy-making, it certainly leaves little doubt that Japanese policy-makers will resort to domestic (national) consensus (in a broad sense as to include all sorts of public opinion) or its equivalence, if any, as one of the determining factors, to justify their negative policy (inaction) toward the Problem, or to make effective their affirmative decision (action) necessitated by change in a situation of the China Problem, in the form of active or passive supports of the people at large. National consensus, etc., therefore, if it does not take precedence over juridical considerations (risks), at least balances the latter. In other words, taking other external environmental conditions as unaltered, and excluding for the time being political considerations of reactions from USA and/or from the two Chinese policy-target entities vis-à-vis Japan against her action/inaction in the Problem, we may say that the Japanese Government, when it handles the China Situation or any change thereof (therein), and considers to act or not to act in such situation, calculates and judges on the basis of a balance between juridical risks as a price for Japan's going beyond the bounds of her 'marginal' position, on the one hand, and domestic consensus, on the other hand. From this follow the indivisible relations of the marginal position to consensus and/or to Japanese Government views/attitudes (Part IV and Part V).

Thus the most significant feature of Japan's China policy is the mutual check between consideration of juridical risks, and that is the marginal position, and domestic consensus. In the context that the present China Problem has always been made used of by the Japanese political parties as from the early 1950's, or by the factions within a single party later, both as a chief, and in fact an effective, means for domestic political struggle, to the State of Japan the nature of this Problem appears more

domestic than international. And, if, when dealing with this Problem the Japanese Government centers its attention on a balance between international juridical risks and public opinion inside Japan, of necessity it is politically compulsory that it should be very much careful in taking any novel action, that is, something which amounts to vital change in the fundamentals of its China policy, lest Japan be endangered as a result of a probable political turmoil; even if internationally the juridical risks might be worthy as cost for such novel action. This is what the Japanese policy-makers, including the bureaucrats in the Gaimusho (the Foreign Ministry), are most in fear. Here lies the very reason why Japan's China policy has been so inactive and semi-static for so many years. In this sense, Japan's China Problem is in fact Japan's "Japan Problem".

This is the real question for the present study. This question takes the following form: Japan's position being objectively (legally) marginal, how does (did) the Japanese people respond? how do (did) the Japanese political parties? and how does (did) the Japanese Government adjust the one to the other, and adapt itself to them?

The findings of Part IV show that there existed in the Ikeda Administration some relative national consensus on the China Problem. The greatest common measure was a two-China line. In concrete terms, toward this Problem the Japanese people, including the press and the *bunkajin* (*chishikijin*), etc., by and large responded in a discernibly similar direction, with a yet somewhat vague content agreed among the majority to maintain the present non-recognition policy but with a two-China line in the perspective. In this regard, of course, there is no denial that many are (were) impatient as a result of the thinking, which is something in the policy-vacuum, that somehow Japan has to maintain relations with both Chinese entities merely

because they are "Chinese". But this may not justify the opinion that there is no agreement among the Japanese people in their basic attitude toward the China Problem (e.g., Matsu-moto S., in the *Jiyu* (Freedom), Apr. 1964, p. 76).

One step further, in Part V it is clear that there existed in the Ikeda Administration no discrepancies of substance as among the political parties (except JCP and some extreme-left JSP members). Such discrepancies, though not at all mythic, were too much exaggerated: thus an assertion for unconditional recognition of the Mainland Regime of China by Japan, which is only the minority opinion, has been suggested as representing "public opinion" and, in turn, made a measure for desirability of Japan's China policy. Actually, although for the purpose of elections the attitudes assumed by the political parties appear as if they were different and uncompromising, such attitudes, be they not always "shows", must be understood from the peculiarity of Japanese politics in which such "difference for differentiation's sake" is something indispensable for the political parties to survive. Accordingly, it is an inexcusable mistake to believe the face values of the 'formal' attitudes of the Japanese political parties on the China Problem, on which to base one's judgement about the trends.

Without doubt, it would go too far to assume that there is (was) no disagreement at all in Japan as among the political parties on some points of the China Problem. The contrary is true. There is some sign that disagreement on this Problem may in the long run come to the front and may cause a repainting of the political map. The reason for this is that there are too many "willful views which lack in certain common understanding and unified judgement" (Royama, *International Politics and Japan's Diplomacy* (J) 1959, p. 278). This is a serious question for future. What is, however, asserted here is rather the significance of informal attitudes/views of individual

members of these political parties, especially when they are (were) leaders of certain factions in their own parties. From this there comes the phenomenon that side by side formal disagreements on the vertical "party-level" coexist with informal agreements on the horizontal "individual/factional level". Here we have a scene wherein party-interest is in clash with national interest; and our findings in the present study convince us that as a general tendency the latter so far prevailed during the Ikeda Administration (Chapter 9). This is so, if we take into consideration, besides national consensus, that a government responsible to a people must consider rationality, continuity, and consistency of its foreign policy, reactions from the target-entities, and restraints from friendly states. National consensus is therefore not all and everything, nor is an agreement, express or tacit, among the political parties in Japan. Over-simplification of Japan's position in the China Situation and abuse in criticizing as a result of surplus of freedom, are the two main defects of many Japanese leaders of all circles. This might lead to a situation highly detrimental to Japan, in the sense that a solution of the China Problem at the present stage may be no more than a deterioration of the China Problem. In one word, while a solution to a problem is only the means to an end, many a Japanese take a solution to the China Problem for an end in itself. In this context, Japan's China policy in the Ikeda period, though it was one of inaction—a policy not to do anything, was a good, if not the best, policy. It seems that Ikeda's this merit has so far not been justly evaluated or properly appreciated by the critics.

Lurking behind this "inaction" policy was a special technique used by the Japanese Government in the Ikeda period (and this is still so used by it in the present Sato Administration). It was a technique of impudent attack and defence at the same time, but within bounds, to accumulate as much as possible

the gains and to await a timing for change. This fitted Ikeda's taste, adapts to Japan's marginal position and suits the present fluidity of the China Situation. Ikeda was therefore successful to an invisibly great extent. Concretely, once more, his policy was a *de facto* two-China line, translated in the fact of maintaining formal diplomatic relations with ROC under an implied coercion of getting closer to the Mainland Regime of China; and in the fact of using this formal diplomatic relation as a shield to bar any demand concerning the Second World War which the Mainland Regime would not give up, when Japan stretched toward the latter all relations except the formal ones. Although the accumulation process was gradual, and from time to time was stopped due to US check, to ROC violent protest, and to unfavourable reactions from the Mainland Regime, the gain had nonetheless been very remarkable. Avoiding drastic action which would bring with risks, Japan was making a two-China situation through *fait accompli*, with the hope that some state would turn this into a *de jure* situation at best timing, *without Japan's taking the initiative*. Internationally, this released Japan from risks, on the one hand, and made it possible for her to avoid getting into conflict with USA on the China Problem (the one like France did in early 1964), on the other hand. Domestically, this line was also useful for the Japanese Government as a sign that public opinion had been respected, that Japan's national interest had been protected, and that one of Japan's serious problem—trade with Mainland—had been promoted as much as possible. Under the circumstances, the opposition parties and the press were deprived of convincing reasons for strong attacks against the government on its China policy as a whole. This is perhaps an explanation why Japan's semi-static China policy could be maintained for so many years with the opposition parties always remaining passive. In this picture, the Japanese

Government in the Ikeda period succeeded in its trial to keep a balance between Japan's marginal position and national consensus; and the above technique used may be termed a "guerrilla-style two-China line". Although Japan denies this from time to time, the fact remains true that there is no other state on earth that has led so potentially influential in crystallising a two-China situation.

To many this may sound unpleasant, at least strange. But it must be reminded that the fact that Japan has been pushing forward such an underground two-China policy towards the China Situation is no novelty at all. To state adversely, for Japan present a two-China line has rather been a general rule. At least as early as from the Tanaka Cabinet of the 1920's (Tadamiya, *Showa no Seijika* (The Statesmen of the Showa Period) 1963, p. 17), when the phenomenon of dual- or multi-government in China had not been exceptional, there had been too many diplomatic precedents of this kind, which indeed impress one deeply that Japan's China policy has a tradition of making a split-China by whatever means available.

The categorical reason for this tradition has been the fear of a unified and strong China (*Kindai Nihon no Gaiko*, op. cit., p. 191). And, on this point, for better or worse historical repetitions have made Japan an excellent expert by habit. This long tradition/habit could not be thrown away overnight by Ikeda, less can this be done by the bureaucrats in the Gaimusho which always respects its own policy continuity (cf. Horita, in the *Economist* (J) New Year Special Issue for 1965, p. 34; North-edge, "The Divided Mind of Japan" in the *Yearbook of World Affairs*, 1957, p. 170). In this sense, it is true that the Ikeda Administration was faithful to Japan's diplomatic tradition on the China Problem, and that its line is to Japan's national interest (Foreign Minister Kosaka's Policy Speech before the 40th Ordinary Session of the Diet, Jan. 19, 1962, see Gaimusho



Press Releases, 1962, p. 5).

The characteristic of Japan's two-China policy in the Ikeda period is that it was the result of Japan's marginal position. This means that the two-China policy as conceived by the top policy-makers during the Ikeda Administration had as its subject matter the continuing existence of the ROC on Taiwan and another China, and that is, the Mainland Regime at the other side of the Taiwan Straits, with ROC as the traditional China, hence the latter a new entity. This is the rational conclusion of Japan's marginal position. It is clearly not the same in content as the two-China line conceived by policy-makers of USA which has no tradition of making a split-China and which on the present China Situation might prefer a "one-Taiwan, one-China" line because of different motive and aim. Such difference is understandable; it is the result of difference in positions of the two states in face of the China Situation. From this it follows that weights put on the issues of the China Problem are also dissimilar to each other: while Japan gives primacy to the issue of UN Representation, USA gives primacy to the issue of Recognition. This in the two-China line would take the form of difference that, while Japan prefers to push this line in the UN, USA prefers to realise it through recognition. To some extent, these differences, reported as "delicated" and "potential", were admitted by the authorities concerned of the two states after the Ohira-Rusk Talk in Tokyo (Jan. 27, 1964) when they were confronted with the drastic change of situation—France's recognition of the Mainland Regime of China.

This seems to be adjustable. However, with change in international environment and in Japan's domestic political situation this may well become matter of principle.

We do not predict here, because prediction about the China Problem at the present stage is highly dangerous. Nevertheless,

something is not indiscernible at all.

If an exaggeration be allowed, the China Problem is for Japan the pronoun for her traditional diplomacy, both in importance and in frequency. From historical, geographical, economic, cultural, and ethnic viewpoints, before the China Problem, by fate Japan belongs to the absolute category. Leaving to Japan no choice in this regard is her marginal position as a result of the Second World War. But this is not all. Owing to great changes of world situation after 1952 and to Japan's success in economic field, Japan has become a leading power in the Far East. Thus she leads, or is on the way of making herself to lead, in this area in the matter of balancing, not to say striving against, the power of the Mainland Regime of China. This power-relation makes Japan to belong to the relative category in the China Problem. Thus Japan is at the same time a state of the absolute and the relative categories. This naturally makes Japan conscious of her own importance among, if not of a sense of saviour of, the Free World states in the Far East. Such consciousness is of course no trifle; and when it adds to the cherished national volition of "independence in foreign affairs", which has been the long-range aim since the Yoshida Administration of the early 1950's, Japan's China policy and that of USA would encounter in a new sense, for the reason that USA belongs to the relative category while Japan belongs to both categories, if for no better reasons.

Inside Japan, changes on the political stage after 1964 have shown a strong pressure toward such new encounter. Such pressure may or may not push the point to a total departure on the part of Japan from US China policy, but for reasons already given it is quite certain that Japan's resistance will never be weakened. However, this does not mean that the men in the Foreign Ministry will try to engage Japan in some drastic change of policy line even if the form and content of the present China

Problem remain unchanged. For, the Japanese top policy-makers, advised by the figures of the Gaimusho, know well Japan's own position and are aware of the fact that the China Problem is not susceptible of being solved by any single state, pending vital change of world environment. Even Japan be left free on this Problem, she will not try to pick up the chestnuts out of the fire.

Thus, about future tendencies possibilities may be suggested.

(1) If the China Situation remains fluid and if world environment (the determinate factor being the war in Vietnam) remains unchanged—

Considering Japan's own safety and her friendship with the Free World countries, in the foreseeable future there seems no good reason for her to commit herself in a change of some essentials of her China policy. There are good reasons for us to say that, from now on Japan will substantiate her two-China line as her decision-makers conceive it. This means that the Ikeda-line (more properly, the line laid down by Kishi and concretized by Ikeda) would remain the guide, although there might be gradual change of quantity (accumulation of gains in getting close to the Mainland Regime through trade, etc.) in the same line; and the Yoshida Letter of 1964 on the question of (restrictions on) trade with the Mainland would doubtlessly become the hot issue. This is perhaps what the then Japanese ambassador to USA Takeuchi meant, when he said, in connection with French recognition of the Mainland Regime of China, that "Such question (solution of the China Problem) is not one that should be determined today or tomorrow" (Address before the San Francisco Commonwealth Club, Feb. 25, 1964; The Asahi Shimbun, Feb. 26, 1964).

(2) If some vital changes in the international environment appear (including vital changes inside the Mainland)—

Japan's domestic pressure would not remain only potential, but would come up to the surface and make itself a much

more vital factor for the Japanese Government to seriously reconsider its China policy. But, other things being equal, Japan's domestic situation in future would still be subject to international environment; therefore, so long as there will be some factors yet undetermined the Japanese Government would stop at the stage of "serious re-consideration".

In this regard, the question as to what degree of change in the international environment might push the Japanese Government to step over the line of "serious re-consideration", is one for the moment nobody can answer. What may safely be said is perhaps this, that, if there be another recognition-typhoon of 1964 there would highly probably be an answer to this question. In this case, again, other things being equal, there would be a direct clash between Japan and USA. But this does not exclude a possibility that USA would, strangely but not unnaturally in the world of reason(s) of State, turn to follow Japan's line. For, after all, on the China Problem it seems truer that it is Japan, and no more USA, that now holds the casting vote.