

CHINESE PARTICIPATION IN THE UNITED NATIONS:
THE LEGAL IMPERATIVES OF A NEGOTIATED
SOLUTION

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For almost a decade and one-half the Chinese participation question has challenged the United Nations.¹ In its coming session the General Assembly will doubtlessly once again grapple with the question, but past debates do not promise rational solution.² In brief summary, two claimants seek, or are proffered by others, to participate as the "State of China" in the General Assembly, the Security Council, and the Specialized Agencies. The Government of the Republic of China (Nationalist China) has held the seat since the founding of the United Nations. The People's Republic of China (Communist China), however, commands resources of considerable magnitude, and events of recent years have enhanced its claim to participation.³

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¹ For histories of the question, see Appleton, *The Eternal Triangle* (1961), and Higgins, *The Development of International Law Through the Political Organs of the United Nations 131-166* (1963). See also the text below, at notes 16-47.

² Past "representation" resolutions have invariably forced a choice between (1) seating the Communist Chinese and excluding the Nationalist Chinese, and (2) retaining the Nationalist Chinese and excluding the Communist Chinese. Proposals for compromise have been rare, and seldom formally put before the General Assembly. Delegates have, nevertheless, suggested that a special study committee be created, that provisional arrangements be worked out if the "representation" resolution is passed in principle, that the interested parties hold negotiations, that the two claimants be seated in different organs, and that the solution of the participation question be tied in with a general political settlement. See, e.g., remarks of Colombia, U.N. General Assembly, 16th Sess., Official Records, Plenary Meeting 952 (A/P.V. 1073) (1961); Sweden, *ibid.*, Plenary Meeting 913 (A/P.V. 1070) (1961); Ireland, *ibid.*, Plenary Meeting 974 (A/P.V. 1075) (1961); Sierra Leone, *ibid.*, Plenary Meeting 998 (A/P.V. 1076) (1961); Spain, *ibid.*, Plenary Meeting 1009 (A/P.V. 1076) (1961).

Scholars have generally taken somewhat limited views of the problem. The sources are collected in the bibliography of Appleton, note 1 above, at 274-275. See also Boyer and Akra, "The United Nations and the Admission of Communist China," 76 *Pol. Sci. Q.* 332 (1961); Brohl, "Five Lectures on Asia and the United Nations," 102 *Hague Academy Recueil des Cours* 125, 194 (1961); Petrov, *What China Policy?* Part II (1961); Schick, "The Question of China in the United Nations," 12 *Int. and Comp. Law Q.* 1232 (1963); Singh, *Termination of Membership in International Organizations* (1958).

³ E.g., French recognition of the People's Republic of China (see Erasmus, "General de Gaulle's Recognition of Peking," 18 *China Quarterly* 195 (1964) and the Communist Chinese atomic tests (see Halperin, *China and the Bomb* (1965)).

Any decision on the Chinese participation question will have extraordinary value impacts. Immense power is at stake. A participation decision will determine whether and how one quarter of the world's population will share in world community processes of authority, and it will affect the resource-base—material, institutional, and strategic—of international organizations. It will influence the range and type of decisions which world organizations can make in implementing and clarifying the common interest. A participation decision will allocate seats on the Security Council, the General Assembly and the Specialized Agencies. The Security Council seat is permanent, and the veto permits its occupant to influence virtually all Council decisions bearing on international peace and security.⁴ The General Assembly seat carries the rights to vote and debate, the privilege to negotiate in the corridors of the United Nations, and the prestige of U.N. membership. Membership itself promises participation in the U.N. Secretariat, an organ of increasing importance.

Immense power is at stake even outside the institutions of the United Nations. A permanent Security Council seat is a symbol of Great-Power status, with trappings of legitimacy, authority and control over extensive resources. A transfer of the seat, with its attendant symbols, could work important changes in the world power configuration. Some Western countries, and certainly many non-aligned countries, might revise their economic, military and political alliances. Southeast Asian political leaders would certainly face disturbing policy choices. Communist governments and parties may reorient themselves in the Sino-Soviet dispute.

Power, further, is not the only value at stake. A transfer of China's United Nations seats could affect the advancement of human rights, the development of international law, the distribution of wealth by international agencies, the allocation of capital between the developed and lesser-developed countries, the evolution of labor standards, and the dissemination of knowledge bearing on health, meteorology, food production and peaceful uses of atomic energy. The transfer would have impacts on the United Nations space programs. It certainly would influence the rule-promulgating activities of such Specialized Agencies as the International Telecommunications Union, the Universal Postal Union, and the International Civil Aviation Organization.

With the impacts of a decision on the participation question so pervasive, it is not surprising to find elaborate, complex, and sophisticated legal justifications for preferring the delegations of either "China." Three different schools dominate so-called "juridical" analysis of the question. Although these schools make their arguments and state their preferences in the familiar terms of "membership," "representation," and "credentials," they do not give these terms the clear and simple factual referents which clear communication demands. A "membership" school

⁴ A Security Council member may also strikingly influence Council decisions on the "procedural" or "substantive" quality of a particular issue. See, generally, Gross, "The Question of Laos and the Double Veto in the Security Council," 54 A.J.I.L. 118 (1960).

would require the People's Republic of China to apply for "admission" to the United Nations as a "new" state.⁵ A "credentials" school argues that the United Nations need only approve the "credentials" submitted by the Communist Chinese delegation.⁶ A "representation" school purports to distinguish itself from both the "membership" and "credentials" schools, and invokes general Charter norms and seemingly *ad hoc* procedures.⁷

Each of the schools has fashioned its own elaborate supporting argumentation. The "membership" school invokes Article 4⁸ of the U.N. Charter, which establishes procedural and substantive criteria for the admission of a state to membership in the United Nations. Communist China meets none of the substantive requirements of Article 4, the argument goes, because it neither "represents" the Chinese people, nor is "peace-loving," nor is "willing and able to fulfill its international obligations." Almost in passing, the membership school notes that the procedures of Article 4 permit a permanent member of the Security Council (and thus certainly the United States) to veto an application for membership.

The membership school also looks to Articles 5⁹ and 6¹⁰ of the Charter, which, it argues, prevent United Nations organs from excluding the Nationalist delegations. The first article specifies criteria and procedures for suspending a Member; the second, criteria and procedures for expelling a Member. Neither article, it is claimed, is applicable to the Nationalist

⁵ *Cf.*, e.g., the remarks of the delegate from Costa Rica, U.N. General Assembly, 17th Sess., Official Records, Plenary Meeting 630 (A/P.V. 1161) (1962), and the speech of Mr. Cazet (Congo, Brazzaville) who believed it necessary for the Peking Government to evince a desire for admission to membership in the United Nations, and to comply with the Organization's rules. *Ibid.*, Plenary Meeting 597 (A/P.V. 1161) (1962).

⁶ The "credentials school" has for many years been headed by the Soviet Union. With the increasing deterioration in Sino-Soviet relations, Albania has become a principal advocate of Communist Chinese participation in the United Nations.

⁷ The United States, until 1961 a member of the "membership" school, has in past years been an articulate spokesman of the "representation" school.

⁸ Article 4:

1. Membership in the United Nations is open to all other peace-loving states which accept the obligations contained in the present Charter and, in the judgment of the Organization, are able and willing to carry out these obligations.

2. The admission of any such state to membership in the United Nations will be effected by a decision of the General Assembly upon the recommendation of the Security Council.

⁹ Article 5:

A Member of the United Nations against which preventive or enforcement action has been taken by the Security Council may be suspended from the exercise of the rights and privileges of membership by the General Assembly upon the recommendation of the Security Council. The exercise of these rights and privileges may be restored by the Security Council.

¹⁰ Article 6:

A Member of the United Nations which has persistently violated the Principles contained in the present Charter may be expelled from the Organization by the General Assembly upon the recommendation of the Security Council.

Delegation, because the Security Council has not taken "preventive or enforcement action" against Nationalist China, and Nationalist China has not "persistently violated" the principles of the Charter. Again, the membership school notes, the procedures established in both articles would permit a permanent member of the Security Council (and thus the United States) to veto attempts to suspend or expel the Nationalist Government. It is argued, in refutation, that these articles are not applicable to the case of Chinese participation; it would make no difference that the Nationalist Delegations might depart the Organization, for they are simply not the "lawful" representatives of China.

The "credentials" school looks to allegedly pertinent Rules of Procedure, which establish mechanisms for approving the "credentials" of the delegations of Members.¹¹ The principal issue, as this school sees it in a confusion of terms, is to decide which government "represents" China; this decision, in turn, is made to rest on a "factual" appraisal of a

¹¹ The relevant Rules of Procedure for the Assembly read as follows:

Rule 27. The credentials of representatives and the names of members of a delegation shall be submitted to the Secretary-General if possible not less than one week before the date fixed for the opening of the session. The credentials shall be issued either by the Head of the State or Government or by the Minister for Foreign Affairs.

Rule 28. A Credentials Committee shall be appointed at the beginning of each session. It shall consist of nine members, who shall be appointed by the General Assembly on the proposal of the President. The Committee shall elect its own officers. It shall examine the credentials of representatives and report without delay.

Rule 29. Any representative to whose admission a Member has made objection shall be seated provisionally with the same rights as other representatives, until the Credentials Committee has reported and the General Assembly has given its decision. (Rules of Procedure of the General Assembly. U.N. Doc. A/520/Rev. 7 (1964).)

The comparable rules for the Security Council follow:

Rule 13. Each member of the Security Council shall be represented at the meetings of the Security Council by an accredited representative. The credentials of a representative on the Security Council shall be communicated to the Secretary-General not less than twenty-four hours before he takes his seat on the Security Council.

The credentials shall be issued either by the Head of the State or Government concerned or by its Minister of Foreign Affairs. The Head of Government or Minister of Foreign Affairs of each member of the Security Council shall be entitled to sit on the Security Council without submitting credentials.

Rule 14. Any member of the United Nations not a member of the Security Council and any State not a member of the United Nations, if invited to participate in a meeting or meetings of the Security Council, shall submit credentials for the representative appointed by it for this purpose. The credentials of such a representative shall be communicated to the Security Council not less than twenty-four hours before the first meeting which he is invited to attend.

Rule 15. The credentials of representatives on the Security Council and of any representatives appointed in accordance with Rule 14 shall be examined by the Secretary-General who shall submit a report to the Security Council for approval.

Rule 16. Pending the approval of the credentials of a representative on the Security Council in accordance with Rule 15, such representative shall be seated provisionally with the same rights as other representatives.

Rule 17. Any representative on the Security Council, to whose credentials objection has been made within the Security Council, shall continue to sit with the same rights as other representatives until the Security Council has decided the matter. (Sohn, Editor, Basic Documents of the United Nations 70 (1956).)

claimant's effective control over territory and population. Since the People's Republic controls mainland China, the argument continues, it is enough that each U.N. organ approve the "credentials" of the Communist Chinese delegation. This kind of decision, under the invoked Rules of Procedure, is invariably made by majority vote.

The "representation" school, without clearly indicating the meaning of the term, rests its arguments on two United Nations resolutions. The first resolution requires "representation" decisions to be settled "in the light of the Purposes and Principles of the Charter and the circumstances of each case";¹² the second labels the Chinese participation question "important" for voting purposes,¹³ *i.e.*, a decision to seat the Communist Chinese delegation requires a two-thirds majority of the General Assembly. In evaluating the Chinese Communist claim to participation, this school

¹² General Assembly Resolution 396 (V) reads thus:

The General Assembly,

Considering that difficulties may arise regarding the representation of a Member State in the United Nations and that there is a risk that conflicting decisions may be reached by its various organs,

Considering that it is in the interest of the proper functioning of the Organization that there should be uniformity in the procedure applicable whenever more than one authority claims to be the government entitled to represent a Member State in the United Nations, and this question becomes the subject of controversy in the United Nations,

Considering that, in virtue of its composition, the General Assembly is the organ of the United Nations in which consideration can best be given to the views of all Member States in matters affecting the functioning of the Organization as a whole,

1. Recommends that, whenever more than one authority claims to be the government entitled to represent a Member State in the United Nations and this question becomes a subject of controversy in the United Nations, the question should be considered in the light of the Purposes and Principles of the Charter and the circumstances of each case;

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3. Recommends that the attitude adopted by the General Assembly or its Interim Committee concerning any such question should be taken into account in other organs of the United Nations and in the Specialized Agencies . . .

¹³ General Assembly Resolution 1668 (XVI) reads as follows:

The General Assembly,

Noting that a serious divergence of views exists among Member States concerning the representation of a founder Member who is named in the Charter of the United Nations,

Recalling that this matter has been described repeatedly in the General Assembly by all segments of opinion as vital and crucial and that on numerous occasions its inclusion in the agenda has been requested under rule 15 of the Assembly's rules of procedure as an item of an important and urgent character,

Recalling further the recommendation contained in its resolution 396 (V) of 14 December 1950 that, whenever more than one authority claims to be the government entitled to represent a Member State in the United Nations and this question becomes the subject of controversy in the United Nations, the question should be considered in the light of the purposes and principles of the Charter and the circumstances of each case,

Decides, in accordance with Article 18 of the Charter of the United Nations, that any proposal to change the representation of China is an important question.

looks to general standards of international behavior, and more often than not, finds the Communist regime sadly lacking.¹⁴ Its criteria, however, cut two ways, and delegations have, for example, voted to seat Communist China in hopes of including it in disarmament negotiations.¹⁵

Thus do the various legal arguments array themselves in opposing phalanxes. Each has blurred the distinction between fact and legal consequence. Each has kept well concealed the policies basic to decision. Each has failed systematically to investigate past trends, to apply the policies communicated by past trends to the peculiar facts of the Chinese participation question, and to make creative recommendations for solving this perplexing issue.

In this article we shall attempt to suggest at least a framework of inquiry for less confused thinking about the problem.¹⁶ At the outset, we shall briefly review the history of the Chinese participation question, and then sketch the factual context in which general participation questions arise. Next, we shall articulate the more fundamental policies—universality and responsibility—which underlie all participation questions in the United Nations, and the more specific policies which are peculiar to each form of participation controversy. Third, we shall survey past trends for each type of participation decision. Fourth, we shall apply these past trends to the Chinese participation question. Finally, we shall make recommendations for a negotiated settlement.¹⁷

¹⁴ *E.g.*, Ambassador Stevenson's argument before the 17th Assembly rested on three propositions:

1. The government of the People's Republic of China does not represent the Chinese people.

2. The Communist Chinese are both past and present aggressors.

3. The Communist Chinese have purposes antithetical to those of the United Nations, *e.g.*, they seek liberation of Taiwan by force. (U.N. General Assembly, 17th Sess., Official Records, Plenary Meetings 552-554 (A/P.V. 1156) (1962).)

¹⁵ One notable example is India which, when "a raw and naked war, premeditated in plan, (was) being committed by the Peoples Republic of China against (India)," paid tribute to the principle of universality, mentioned the need to bring Communist China into disarmament negotiations, and supported in 1962 a Soviet proposal which would exclude the Nationalist Chinese and seat the Communist Chinese. U.N. General Assembly, 17th Sess., Official Records, Plenary Meeting 597 (A/P.V. 1159) (1962).

¹⁶ It does not escape us that the problem with which we deal could be formulated in much more comprehensive terms. The problem could be formulated as one of how the organized general community can best deal with renegade states which challenge its policies of minimum and optimum order, and effect the changes in the predispositions of the élites in such states in a way necessary to bring them to responsible participation in a common public order. The important question, we would emphasize, extends beyond that of whether Communist China "should" be seated in the United Nations to that of what are the probable constitutive and public order consequences of choice, whether of seating or denial of seat. The basic difficulties might not, further, be resolved by either choice. An inquiry designed to be more effective might include, in addition to appraisal of strategies about granting or denying access to arenas of authority, a comprehensive review of all the potential sanctioning devices available to the general community.

¹⁷ It may be emphasized that the position we take is not incompatible with the many demands recently expressed in the United States for a fundamental rethinking of

I. THE HISTORY OF THE CHINESE PARTICIPATION QUESTION

On October 1, 1949, more than twenty-eight years after the official founding of the Chinese Communist Party, Chairman Mao Tse-tung proclaimed the establishment of the Central People's Government of the People's Republic of China. Within approximately a month and a half, Mao's Foreign Minister had cabled the President of the General Assembly to repudiate the legal status of the delegate of the Government of the Republic of China.¹⁸ Slightly more than a month later the Soviet delegate to the Security Council, Jacob Malik, initiated official debate on the Chinese participation question.¹⁹ Arguing before the Council, Malik proposed that the Council decide not to recognize the credentials of the Nationalist Chinese delegate, and to expel him from the United Nations. His draft resolution was decisively defeated,²⁰ and, ostensibly to protest the decision, Malik walked out of the Security Council—to begin a general boycott of United Nations organs by the Soviet bloc.

This Security Council decision did not end United Nations activity on the participation question that winter. Secretary General Lie feared the dissolution of the United Nations, and the formation of a Communist counterpart to it.²¹ Believing himself obligated to "seek a solution in the best interests of the organization,"²² he actively sought to seat the Communist Chinese.²³ To this end²⁴ he requested that the Legal Department

attitudes toward Communist China. Our purpose is merely to outline, as comprehensively and realistically as possible, the legal bases—the contemporary expectations about the requirements of future decision—upon which any successful negotiations for a different future must depend.

For a broad spectrum of the more important recent demands for a new approach to the problems of Chinese participation, see U. S. Policy with Respect to Mainland China, Hearings before the Committee on Foreign Relations, 89th Cong., 2nd Sess. (1966).

A measured response to some of these demands is offered by Secretary of State Rusk in his statement before the Far East Subcommittee of the House Foreign Affairs Committee, the text of which may be found in *The New York Times*, April 17, 1966, p. 34, cols. 1-8.

¹⁸ U.N. General Assembly, Official Records, Doc. A/1123 (Nov. 18, 1949).

¹⁹ U.N. Security Council, 6th Year, Official Records, 458th Meeting (S/P.V. 458) (1949).

²⁰ U.N. Security Council, 6th Year, Official Records, 459th Meeting, S/1443 (1950); three in favor (India, Yugoslavia, U.S.S.R.); six against (China, Cuba, Ecuador, Egypt, France, United States); two abstaining (Norway, United Kingdom). U.N. Security Council, 6th Year, Official Records, 461st Meeting 3 (S/P.V. 461) (1950).

²¹ See Lie, *In the Cause of Peace* 252-273 (1952).

²² *Ibid.* at 261.

²³ Secretary General Lie spoke with diplomats on both sides of the Iron Curtain, urged the committed delegates to pressure those yet undecided, and even suggested to the Chinese Ambassador in Moscow that the Communist Chinese send delegations to UNESCO and WHO conferences of 1950, which the Nationalist Chinese were not planning to attend. *Ibid.* at 252-273.

²⁴ "Armed with this memorandum" Secretary General Lie "proceeded to discuss (the Chinese participation question) with all the members of the Council." "On the basis of the above, an immediate and practical conclusion was that France, Egypt, Ecuador and Cuba—members of the Council who did not recognize the Communist

of the United Nations Secretariat prepare a Memorandum on recognition and representation.²⁵ The Memorandum initially analyzed issues of recognition and representation; but it went on to state purported criteria for solving representation questions. It proceeded by derivation from Article 4 of the Charter, and concluded that a representation decision should focus on whether "the new government exercises effective authority within the territory of the State and is habitually obeyed by the bulk of the population."²⁶

When the Communist Chinese intervened in the Korean conflict, the Secretary General seemed to change his public position. After this event, he thought that "permanent members just as much as new members are bound by the stipulations of Article 4"²⁷—an article that requires an applicant for membership to be "peace-loving" and "willing to carry out (the) obligations (of the Charter)."

The Korean crisis, and a turn as Council President, brought Malik back to the United Nations, but only to declare, as President of the Security Council, that the Nationalist Chinese Delegation did not represent China, and therefore could not participate in Council meetings.²⁸ Although his ruling was overturned,²⁹ he still persisted in raising the participation issue, and attempted to tie it to the agenda item which dealt with the Korean problem.³⁰ In this attempt, too, he failed.³¹ The General Assembly promised, however, to be a more receptive forum. Two Communist Chinese cables³² had challenged the Nationalist Chinese Delegation even before the Assembly opened, and at its first meeting the Assembly was confronted

regime in China—might vote for the representation of the Peking government in the Security Council, while still withholding recognition. Five members of the Council already recognized Peking. . . ." *Ibid.* at 257. The memorandum, we note, distinguished sharply between recognition and representation, and concluded that a Member state could legally vote to seat the delegation of a government which it did not recognize.

²⁵ Doc. S/1466, "Legal Aspects of Problems of Representation in the United Nations," in U.N. Security Council, Official Records, Supp., 1950, at 18.

²⁶ In its entirety the argument was as follows:

"Article 4 requires that an applicant for membership must be able and willing to carry out the obligations of membership. The obligations of membership can be carried out only by governments which in fact possess the power to do so. Where a revolutionary government presents itself as representing a State, in rivalry to an existing government, the question at issue should be which of these two governments in fact is in a position to employ the resources and direct the people of the State in fulfillment of the obligations of membership. In essence, this means an inquiry as to whether the new government exercises effective authority within the territory of the State and is habitually obeyed by the bulk of the population.

"If so, it would seem to be appropriate for the United Nations organs, through their collective action, to accord it the right to represent the State in the Organization, even though individual Members of the Organization refuse, and may continue to refuse, to accord it recognition. . . ." *Ibid.* at 22.

²⁷ Lie, *op. cit.* note 21 above, at 274. ²⁸ Cf. 1950 U.N. Yearbook 425 (1951).

²⁹ The vote was eight to three (India, U.S.S.R., Yugoslavia).

³⁰ *Ibid.* at 425.

³¹ By a vote of five to five (China, Cuba, Ecuador, France, United States) with one abstention (Egypt).

³² Doc. A/1364; cf. 1950 U.N. Yearbook 428 (1951).

with four draft resolutions. An Indian resolution³³ required the General Assembly to decide that Communist China "should be entitled to represent the Republic of China in the General Assembly," and to recommend that the other organs of the United Nations adopt similar resolutions. Two Soviet resolutions³⁴ sought to expel the Nationalist Chinese Delegations from the General Assembly and its organs and to seat Communist Chinese delegations in their places. A Canadian resolution³⁵ proposed to establish a special committee to study the participation problem. It was this latter resolution (as amended) that was finally adopted,³⁶ and on December 15, 1950, the Special Committee held its first meeting. A day later, however, the Committee voted to authorize its President to report to the Assembly that the Committee was unable to make any recommendation on the matter.³⁷

That fall the *Ad Hoc* Political Committee debated the topic "Recognition by the United Nations of the Representation of a Member State."³⁸ Often confused, the argument revolved around two proposals. A Cuban resolution,³⁹ alleged to be "subjective," recommended that representation decisions focus on a claimant's "ability and willingness to achieve the purposes of the Charter, to observe its principles and to fulfill the international obligations of the State" and the claimant's "respect for human rights and fundamental freedoms." A British draft,⁴⁰ in claimed contrast, was supposedly "objective." It would seat, as the representative of a Member, the delegation of a government which "exercises effective control and authority over all or *nearly all* the national territory, and has the obedience of the bulk of the population of that territory, in such a way that this control, authority and obedience appear to be of a permanent character. . . ."

Debate was sharp but inconclusive,⁴¹ and the question was sent to a subcommittee for compromise. The subcommittee's recommendation eventually became General Assembly Resolution 396(V):

The General Assembly . . .

1. Recommends that, whenever more than one authority claims to be the government entitled to represent a Member State in the United Nations and this question becomes the subject of controversy in the United Nations, the question should be considered in the light of the Purposes and Principles of the Charter and the circumstances of each case; . . .

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3. Recommends that the attitude adopted by the General Assembly or its Interim Committee concerning any such question should be

³³ U.N. General Assembly, 5th Sess., Official Records, Doc. A/1365 (1950).

³⁴ *Ibid.*, Docs. A/1369, A/1370 (1950). ³⁵ *Ibid.*, Doc. A/1386 (1950).

³⁶ *Ibid.*, Plenary Meeting 16 (A/P.V. 277) (1950).

³⁷ *Ibid.*, Doc. A/1923 (1950).

³⁸ *Ibid.*, Ad Hoc Political Committee (Docs. A/AC. 38/SR. 18-24, 57-60) (1950).

³⁹ *Ibid.*, 38th Meeting (Doc. A/AC. 38/L.6) (1950).

⁴⁰ *Ibid.*, 38th Meeting (Doc. A/AC. 38/L.21) (1950).

⁴¹ See the summary in Higgins, *op. cit.* note 1 above, at 148-149.

taken into account in other organs of the United Nations and in the Specialized Agencies; . . .

At the opening of the Sixth General Assembly in 1951, the Soviet representative renewed his demand that the question of Chinese participation be included in the agenda.⁴² Opposing him, the Thai delegate offered the first of the yearly postponement resolutions,⁴³ which, in the form of a General Committee Report, was adopted 37:11:4. From this year through 1960, similar resolutions prevented debate on the merits of the participation issue. Postponement, however, became a less effective strategy as the majorities supporting these resolutions gradually diminished.⁴⁴

To meet the Chinese participation question head on, in 1961 the United States and the United Kingdom backed a New Zealand proposal⁴⁵ to place the problem on the agenda; no longer was a discussion on the merits to be postponed. The United States then joined with Australia, Colombia, Italy and Japan to sponsor a five-Power draft⁴⁶ which would declare the issue of Chinese participation an "important question" within Article 18 of the U.N. Charter. A simple majority would be sufficient to pass this proposal, and, if it were adopted, a two-thirds majority would be required to pass a Soviet resolution⁴⁷ which would replace the Nationalist Delegation with one from the People's Republic of China. An overwhelming majority⁴⁸ approved the five-Power draft and, by a larger margin than the year before, the General Assembly rejected the Soviet draft resolution.⁴⁹ In subsequent years the Assembly has taken similar action, declaring the Chinese participation question "important" under Article 18,⁵⁰ and rejecting resolutions which would replace the Nationalist representatives with a Communist Chinese delegation.⁵¹

II. GENERAL PARTICIPATION QUESTIONS—THE FACTUAL CONTEXT

Participation questions grow out of an extraordinarily complex factual context. A territorial community may change its internal policies, its

⁴² U.N. General Assembly, 6th Sess., Official Records (Doc. A/1941) (1951).

⁴³ This was an oral proposal to the Assembly's General Committee. *Cf.* 1951 U.N. Yearbook 265 (1952).

⁴⁴ Detailed statistics on U.N. voting on this question may be found in Halpern, *Policies Toward China: Views from Six Continents*, Appendix B, pp. 503-507 (1965), with charts indicating both aggregate annual votes as well as specific state behavior through time.

⁴⁵ U.N. General Assembly, 16th Sess., Official Records (Doc. A/4873) (1961).

⁴⁶ *Ibid.*, Doc. A/L. 372.

⁴⁷ *Ibid.*, Doc. A/L. 360; *cf.* Doc. A/4874.

⁴⁸ General Assembly Res. 1668 (XVI) was adopted by a vote of 61:34:7.

⁴⁹ The vote was 48:36:20.

⁵⁰ See, generally, Liang, "Conditions of Admission of a State to Membership in the United Nations," 43 A.J.I.L. 288 (1949); *idem*, "Recognition by the United Nations of the Representation of a Member State: Criteria and Procedure," 45 *ibid.* 689 (1951); Bowett, *The Law of International Institutions* at 311-323 (1963); and Cohen, "The Concept of Statehood in United Nations Practice," 109 U. Pa. Law Rev. 1127 (1961).

⁵¹ For a statistical record, see Halpern, *op. cit.* note 44 above, at 503-508.

external alliances, and its short-term and long-range objectives. It may alter in its cultural orientation—its identification with a particular system of values—and in its dedication to world public order. It may turn from a search for optimum order to the subversion of minimum order. It may increase or decrease its territory or population and change or completely reorganize its resource base. It may abandon diplomatic strategies to make more frequent use of the military instrument. As a participant in the United Nations, it may recommend and execute policies totally different from those of its predecessors and of varying compatibility under the purposes of the organization.

The leadership of a territorial community may also change in varied ways. A “new” government may mean “new” leaders with “new” demands, expectations and objectives. Modes of governmental change range from the persuasive techniques of free election to the coercive methods of violent revolution; the period of change may be short-lived or it may extend for decades as competing élites unsuccessfully struggle for power. The outcomes of change may range along an exceedingly complex factual continuum, from changes in the identity of leaders without change in governmental policy, to major changes in the institutional structure and policies of the territorial community.

As the leadership of a territorial community changes, so may its delegations to international organizations. Here, change may be in the identity, number, personality and identifications of individuals chosen to represent a territorial community at the United Nations. The consequence may be continuity in policy or a sharp turn in a Member’s objectives and strategies at the United Nations.

These changes—of territorial community, leadership, and U.N. delegation—occur in varying degrees and innumerable combinations. Minor changes in all relevant variables may leave a territorial community virtually as it was before. Major changes may give birth to an essentially “new” territorial community, *i.e.*, a territorial community whose leadership, governmental institutions, internal policies, external alignments, objectives, resources and strategies are largely different from its predecessor’s.⁵² For participation in the United Nations, as for other problems in “state” and “governmental” succession, change and continuity in effective control over people and resources are but some of many variables relevant to policy and must take their significance for any particular problem from the whole constellation of variables in a larger context.

Each of these changes—in territorial community, in internal leadership, and in U.N. delegation—may indeed give rise to participation questions

⁵² See, in this regard, O’Connell, “State Succession and Problems of Treaty Interpretation,” 58 A.J.I.L. 41 (1964); Young, “The State of Syria: Old or New?” 56 A.J.I.L. 482 (1962); O’Connell “Independence and Succession to Treaties,” 38 Brit. Yr. Bk. Int. Law 84 (1962). Compare with the highly flexible procedures in GATT: Kunugi, “State Succession in the Framework of GATT,” 59 A.J.I.L. 268 (1965). Comprehensive treatment of earlier trends may be found in O’Connell, *The Law of State Succession* (1956).

for the United Nations. To simplify analysis, we distinguish between questions of "initial participation" and "subsequent participation." Questions of "initial participation" occur in two situations. First, a territorial community not previously in any way a participant in the United Nations may seek inclusion in the Organization. Second, a territorial community which has been regarded, in part or whole, as a Member may have changed so as to become a "new" entity for U.N. membership purposes. The "new" entity then may seek to participate as if it were the "old" territorial community, and the Organization may be called upon to decide on the "new" entity's rights to participation.

Questions of "subsequent participation" assume that a territorial community is a Member of the Organization, and that the territorial community has not changed so as to become a "new" entity for U.N. membership purposes. We divide questions of "subsequent participation" into two categories. "Representation questions" occur when competing *governments* within a territorial community claim to represent the territorial community at the United Nations. "Credentials questions" do not involve competing governments, but occur when questions are raised about the authority of *delegations* from a single government representing a Member at the United Nations.

III. THE RELEVANT POLICIES

Universality and responsibility are the two more fundamental policies that underlie all participation decisions in intergovernmental organizations. "Universal" participation⁵³ assumes that each member of the world community will have equal access to the organization, and that the organization itself will help prospective members to full participation in its structures of authority. It promises that the objectives of the organization will parallel those of the world community, and that the policies of the organization will reflect total political realities and rest on a broad consensus. Each member of the organization will become more aware of the demands, expectations, perspectives and identifications of the other members, and this awareness itself will reduce social and cultural barriers. The organization, it is assumed, would have access to the institutional structures of the entire world, and would acquire a resource-base of considerable magnitude and variety. Members of the organization would communicate with great ease, resort primarily to diplomatic strategies, and, when required, apply sanctions with great flexibility. Wide participation would minimize the opportunity for non-members to band together to thwart the purposes of the organization. By marshaling a greater resource-base, it would give the organization greater control over dissident members of the world community. A "universal" organization, it is further assumed, would be able to advance the production of all values, and promote their equitable distribution to the entire world community.

⁵³ See, generally, Green, "Membership in the United Nations," 2 *Current Legal Problems* 258 (1949); Higgins, note 1 above, at 55-57 (1963); Schwarzenberger, *The League of Nations and World Order* (1936).

The principle of responsibility⁵⁴ is complementary to that of universality, and grants participation rights only to those who are capable and willing to assume the responsibilities of membership. Irresponsible participants in the world community, *i.e.*, those whose perspectives and operations are inimical to the purposes of the organization, are simply denied membership. "Responsible" participation assumes that the members of the organization—with similar demands and expectations—will act quickly and effectively together to fulfill the objectives of the organization. Similar perspectives and identifications will diminish mutual distrust, enhance mutual tolerance, and reduce social and cultural barriers. Members will presumably be willing to grant the organization access to national institutions, and to entrust the organization with important resources. With these resources, the organization—it is assumed—will be able to apply extensive sanctions with great flexibility, even against non-members. The organization, further, will be able to produce values for each member of great magnitude and quality.

Policies unique to each type of participation question intertwine the two basic principles of universality and responsibility. Universality and responsibility will govern questions of "initial participation" when a territorial community, not previously a Member, seeks inclusion in the Organization. They are supplemented, however, by the principles of stability and flexibility when a territorial community which *has been regarded as a Member* undergoes change so as to become a "new" entity for membership purposes.

The principle of stability posits that the United Nations must have a relatively fixed membership if it is to act effectively. Repeated questioning of a Member's qualifications, the principle argues, could impede the speed with which the Organization responds to crises. The principle of flexibility, on the other hand, would permit the Organization to appraise changes in a Member. Changes in the constitutional structure of an entity may affect its willingness and capability to perform the obligations of membership; a Member may have changed so that its objectives and actions are antithetical to the purposes and operations of the United Nations. The principle of flexibility would require Members of the Organization to exclude such a territorial community from the United Nations. Including it would violate the Members' expectations about the constitution and operation of the Organization.

The principles of stability and flexibility link directly with the policies of universality and responsibility. A territorial community which has undergone minor changes could not seriously threaten the activities of the General Assembly, the "universal" body of the United Nations. If, on the other hand, it has become a "new" entity, and, in addition, rejected prevailing standards of minimum order, the "new" entity might turn to

⁵⁴ See, *e.g.*, Higgins, note 1 above, at 56: ". . . a mechanical addition of members does not always add to the strength of the association; differing ideologies within one family may accentuate mistrust, and frequent conflicts within an organization may weaken or paralyze its functions."

diplomatic and procedural devices to delay and disrupt the workings of the Organization. At this point the principle of flexibility joins with the policy of responsibility: both demand that the Assembly alter the participation rights of this "new" territorial community.

The same four policies, but in different degree and combination, govern participation of a "new" entity in the Security Council, an organ of limited membership and responsible functions. So small in size is the Council, and so great in potential impact are its decisions, that minor changes in a territorial community may affect its functioning. A territorial community that has undergone major changes, rejecting principles of minimum order, could seriously threaten the operations of the Council. Including it on the Council may violate the expectations of both the Council members and the other participants in the world community.

Quite different policies govern questions of "subsequent participation." Four policies peculiar to representation cases interlace the more general principles of universality and responsibility. The first assumes that a representation decision should not prejudicially affect the outcome of civil conflict, and would postpone a decision "approving" one of the claimants. The second policy equates incipient or actual revolution with a breach of order in the world community. It would favor the claim of the older and established government against the revolutionaries. A third policy would prevent a "watering down" of "membership rights" in the United Nations, and would prohibit a multiplication of a "Member's" "representatives." It would grant participation to only one government, namely, the government that would best fulfill the purposes of the Organization and that would best represent the inclusive and exclusive interests of the Member. The fourth policy would permit this multiplication and grant access to the representatives of both the established and the revolutionary government. Its purpose would be to insure a voice in community processes of decision to each individual living under the adversary governments.

Only one policy governs "credentials" questions. It would look to the validity of the documents presented by claimant delegations, and would award the claimed seat to the delegation which represents, and was in fact appointed by, the government of a Member.

These policies are at the heart of all participation decisions in the United Nations. As commonly stated, their terms are abstract and complementary, furnishing but the barest guidelines for decision. To give them operational meaning for purposes of choice, we must ground them in the facts of community change and the decision processes of the United Nations.

IV. PAST TRENDS IN THE APPLICATION OF POLICIES

The two more general policies—universality and responsibility—find substance in both the constitutional framework and the practice of the United Nations. Participation questions have not dealt solely with "in-

cluding" or "excluding" entities in the United Nations; the principles of universality and responsibility have affected the structure of the United Nations,⁵⁵ the voting rights of Members,⁵⁶ the staffing of the Secretariat,⁵⁷ and the apportionment of assessments.⁵⁸ The General Assembly, thus, is the "universal" organ of the United Nations. Yet to qualify for membership, an applicant must be willing and able to carry out Charter obligations;⁵⁹ and to remain a Member with full rights of participation, a Member must neither persistently violate Charter principles nor so act as to cause the Security Council to take preventive or enforcement action against it.⁶⁰ These last requirements clearly allude to the principle of "responsibility." Conversely, the Security Council, whose decisions under Chapter VI⁶¹ of the Charter have major impacts on international peace and security, is supposedly the more "responsible" organ of the United Nations. Its membership is limited, and certain of its members can cast decisive votes on particular issues.⁶² The two principles, however, find their most important meaning in the two types of specific participation questions we have indicated above.

A. QUESTIONS OF INITIAL PARTICIPATION

1. "Non-Member" Territorial Communities

United Nations decision-makers have invoked a great variety of criteria and procedures to solve questions of initial participation. When territorial communities, not previously Members of the United Nations, have sought participation in the Organization, these decision-makers have turned principally to the "membership" provisions of the United Nations Charter; yet they have also creatively revised membership procedures and criteria, and on occasion they have invented criteria and procedures unknown to the Charter-framers. The history of these criteria and procedures is a study in the competing policies of universality and responsibility.

(a) The Charter Provisions.—Delegates to the Dumbarton Oaks and San Francisco Conferences sought to create a "universal" world organization, but one whose Members had demonstrated and would assume a minimal degree of international responsibility.⁶³ The Dumbarton Oaks Proposals measured responsibility by requiring that an applicant to membership be "peace-loving."⁶⁴ Amendments to the Proposals suggested more comprehensive analysis of an applicant's internal policies and external

⁵⁵ See, generally, McDougal, Lasswell and Vlasic, *Law and Public Order in Space* 910-923 (1963).

⁵⁶ *Ibid.* at 923-929.

⁵⁷ *Ibid.* at 929-934.

⁵⁸ *Ibid.* at 943-953.

⁵⁹ U.N. Charter, Art. 4.

⁶⁰ *Ibid.*, Arts. 5, 6.

⁶¹ *Ibid.*, Arts. 33-51.

⁶² *Ibid.*, Art. 27.

⁶³ See, generally, Goodrich and Hambro, *The Charter of the United Nations* 6-9, 112-139 (1949); Russell and Muther, *A History of the United Nations Charter* 349-362, 843-851 (1958).

⁶⁴ Dumbarton Oaks Proposals for the Establishment of a General International Organization, Chap. 3; 39 A.J.I.L. Supp. 47 (1945).

ties,⁶⁵ but the Charter framers decided on only five criteria for subsequent membership in the United Nations:⁶⁶ an applicant had to (1) be a state, (2) be peace-loving, (3) accept the obligations of the Charter, (4) be able to carry out these obligations, and (5) be willing to do so. The framers noted, however, "that in passing upon the admission of a new member, considerations of all kinds (can) be brought into account."⁶⁷

(b) The Provisions in Practice.—In the Organization's first decade and a half, considerations of all kinds have in fact been brought into account.⁶⁸ Even in the early years, when Article 4 analyses were most juristic, the stated qualifications for admission proved so abstract and so broadly phrased that virtually all the characteristics of a prospective Member were examined.⁶⁹ The requirement that an applicant be a "state" expanded to permit inquiry into the size of its territory and the definiteness of its borders, the stability and effectiveness of its government, and its independence. To determine whether an applicant was "peace-loving," delegates looked to its conduct during World War II, and to its willingness to use peaceful methods to settle postwar disputes. They examined the degree of coercion an applicant employed in hostilities with its neighbors, in border incidents, and in interferences with shipping. Evidence of an applicant's ability to carry out its international obligations touched on diverse factors. In the United Nations' first year, the Committee on New Members thought it appropriate to investigate the composition of Jordan's and Outer Mongolia's budget;⁷⁰ it further asked Outer Mongolia for "detailed information regarding . . . (t)he Constitution of the Mongolian People's Republic and other pertinent facts relating to its system of government." An applicant's defense arrangements, its con-

⁶⁵ Proposed qualifications for membership included the following:

- (1) the applicant's political institutions must insure that the state is a servant of its citizens.
- (2) the applicant must observe the principle of *pacta sunt servanda* or the doctrine of the inviolability of obligations. Doc. No. 202 I-2-9, 7 U.N. Conf. Int. Org. Docs. 18 (1945), henceforth cited as "UNCIO."
- (3) the applicant must *not* be a neutral. *Ibid.* at 19.
- (4) the applicant must "love . . . the democratic system." 7 UNCIO 284 (1945).
- (5) the applicant must repudiate the use of force. 3 UNCIO 557-558 (1945).
- (6) the applicant must respect human rights. 1 UNCIO 304 (1945).
- (7) the applicant must be freedom-loving. *Ibid.*

⁶⁶ U.N. Charter, Art. 4.

⁶⁷ Report of the Rapporteur of Committee I/2 on Chapter III (Membership), 7 UNCIO 324, 326 (1945). This phrase was omitted from the report of the Rapporteur of Committee I. *Cf.* 6 *ibid.* 248 (1945).

⁶⁸ Some description and citation of factors deemed relevant for admission may be found in the text and footnotes at notes 63, 69-77. For general treatment, see Cohen, *loc. cit.*, and Liang, *loc. cit.*, note 50 above.

⁶⁹ These characteristics are exhaustively surveyed in Cohen, *loc. cit.* note 50 above, and in Prudente, Admission to the United Nations as a Diplomatic Instrument (June, 1959) (unpublished thesis in U.N. Library and Univ. of Southern Calif. Library).

⁷⁰ Telegram from the Acting Secretary General, in U.N. Security Council, Official Records, Supp. No. 4, at 123-124 (1946); Letter from the Chairman of the Committee on the Admission of New Members . . . , *ibid.* at 143.

stitutional authority to conduct foreign policy, and its dependency on foreign Powers have all been objects of scrutiny. In more recent years, it has been important that an applicant had a democratic constitution,⁷¹ was devoted to goals of human dignity,⁷² and possessed sufficient economic, intellectual, social and political resources.⁷³ Delegates have turned to equally varied sources to prove an applicant's willingness to carry out its international obligations. The history of an applicant's transition to statehood,⁷⁴ particularly if a ward of the United Nations,⁷⁵ its membership in international organizations,⁷⁶ the extent of its diplomatic relations,⁷⁷ the degree to which it has been recognized and accepted into the international community,⁷⁸ and its adherence to the principle *pacta sunt ser-*

⁷¹ Telegram from the Acting Secretary General. *Ibid.* at 124.

⁷² At both San Francisco (7 UNCIO 326) and Potsdam (13 Dept. of State Bulletin 159 (1945)), it was stated that states whose regimes had been established by the Axis were ineligible for membership. In the first three years of activity, nine of the eleven applicants who were rejected had either been under the control of, associated with or neutral to the Axis Powers during the war. Among the numerous examples of subsequent practice, see the remarks of Barnes of Liberia regarding Tanganyika's "deep consciousness of the importance of civil liberties and political rights": Security Council, 16th Year, Official Records, 986th Meeting 3 (1961); of Berard of France, *ibid.* at 6; of Stevenson of the United States, *ibid.* at 8-9. See remarks of Loutfi of the United Arab Republic on Kuwait: Security Council, 16th Year, Official Records, 984th Meeting, at 2-3 (1961).

⁷³ See remarks of Sir Patrick Dean in regard to Tanganyika, Security Council, 16th Year, Official Records, 986th Meeting 2 (1961); of Barnes of Liberia, *ibid.* at 3-4; of Malasekera of Ceylon, *ibid.* at 4; of Berard of France, *ibid.* at 6; but see remarks of Zorin, *ibid.* at 12-13. See remarks of Loutfi of U.A.R. on Kuwait, *ibid.*, 984th Meeting, at 2-3 (1961).

⁷⁴ This factor was of particular concern in the Mongolian application: see Security Council, 1st Year, Official Records, Supp. No. 4, at 65, for Russian contention that Mongolian independence was a result of a democratic plebiscite, and Security Council, 2nd Year, Official Records, Spec. Supp. No. 3, at 13, for "the Committee on Admissions" negative conclusion. In the case of the Jordanian application, Poland contended that unilateral action by the United Kingdom (the former Mandatory) was an inadequate mode of establishing independence: *ibid.*, Supp. No. 4, at 70. For an analysis of the modality of transition to statehood as a factor in admission, see Higgins, *op. cit.* note 1 above, at 27-31.

⁷⁵ See remarks of Sir Patrick Dean regarding Tanganyika, *loc. cit.* note 73 above, at 1-2.

⁷⁶ Thus, the representative of Ceylon noted, in the debate on Tanganyika's membership, that the applicant was a member of the Commonwealth. U.N. Security Council, 16th Year, Official Records, 986th Meeting 4 (1961).

In the debate on Kuwait's application, the U.A.R. noted that the applicant was a member of the Arab League, IMCO, UPU, ITU, ICAO, WHO, FAO, UNESCO, OPEC and the ILO, and that such participation indicated its recognition as a state. U.N. Security Council, 16th Year, Official Records, 984th Meeting, at 3 (1961).

⁷⁷ In 1946 the U.S.S.R. opposed the applications of Ireland, Portugal and Trans-Jordan, *inter alia*, because of the absence of diplomatic relations between the applicants and Russia. Security Council, 2nd Year, Official Records, Spec. Supp. No. 3, at 15. In the debate on Kuwait's application, the United Arab Republic noted that sixty-two states in Europe, Asia and Africa had recognized the applicant. Security Council, 16th Year, Official Records, 984th Meeting, at 3 (1961).

⁷⁸ Thus M. Berard of France in regard to Tanganyika's application noted that the application had been approved by the former mandatory government. Security Coun-

vanda,⁷⁹ have all been thought factors testifying to an applicant's adherence to Charter principles.

However admirable this multifactoral analysis, inconsistency has marred the actual application of Article 4. The eleven-member Security Council has denied membership to applicants thought qualified by the General Assembly.⁸⁰ It has excluded candidates in one year, only to recommend them in subsequent years, but without any apparent change in the applicant's ability to qualify under Article 4.⁸¹ Procedural abuses,⁸² inconsistent application of membership criteria,⁸³ pointed disregard of Article 4⁸⁴—all mar U.N. "membership" practice.

cil, 16th Year, Official Records, 986th Meeting 6 (1961); the U.A.R. in the debate on Kuwait noted that the applicant had been recognized by 62 states, the majority of the community. *Ibid.* 984th Meeting, at 3 (1961).

⁷⁹ The community's concern in application procedures with colorable compliance with the basic norms of international law is nowhere better demonstrated than in the rejection in 1947 of Albania's application. The Committee on Admission of New Members considered it significant, if not decisive, that Albania had refused to reaffirm prewar bilateral treaties, had conducted itself inappropriately in the Corfu Channel case, had not paid proper respect to the Security Council's recommendation and had not cooperated with the organization in the Greek case. *Cf.* Security Council, 2nd Year, Official Records, Spec. Supp. No. 3, at 3-8 (1947).

⁸⁰ *E.g.*, General Assembly Resolutions 35 (I); 113 (II); 197 (III); 296 (IV); 450 (VI); 620 (VII).

⁸¹ *E.g.*, Albania, Austria, Bulgaria, Ceylon, Hungary, Iceland, Italy, Jordan, Libya, Nepal, Outer Mongolia, Portugal and Rumania were non-Members in 1954 and Members in 1955.

⁸² When Nepal applied for membership in the United Nations, the Security Council routed its application to the Committee on New Members. Initially the Soviet Union moved that the question of Nepalese admission be postponed for lack of information. In response, the delegates suggested either that Nepalese be brought before the Committee for questioning or that specific questions be asked of the Katmandu government. The Soviet delegate objected to this proposal, presumably because he thought information might be forthcoming even if the question of Nepalese admission were postponed.

Delegates then proposed a resolution that provided for special machinery to gather the information requested by the Soviet delegate. The Soviet Union, however, objected to this resolution. It also faulted an Argentine compromise amendment that would have postponed the consideration of the Nepalese application for two weeks to "enable the government of Nepal to submit the (necessary) information." The amendment allegedly would have impaired Nepalese sovereignty. Eventually the Chairman of the Committee wrote the Nepalese authorities for more specific information. When received, the data was distributed to the delegates on Aug. 10. The Committee met again on Aug. 16; yet the Ukrainian delegate still thought he needed additional time to study the documents. The committee postponed decision for one week, and when it met again the delegate from the Soviet Union had this to say:

"(The delegation of the USSR) while not opposed to acceptance of the application of Nepal, would not vote for it, as it would be unfair to accept Nepal while the applications of a number of other governments had been systematically rejected." U.N. Security Council, 4th Year, Official Records, Committee on New Members, Meetings 31-34 (Doc. S/C.2/SR. 34 at 2) (1949).

(The summary above is based on Meetings 31-34 of the Committee on New Members.)

⁸³ In 1946 the Soviet Union vetoed the application of Portugal and Ireland without mentioning their wartime affiliations. That same year the Soviet Union voted for the admission of Siam, which had signed a Treaty of Friendship and Co-operation with

There has been a pattern, however, to voting on membership applications, and it is this pattern that has been crucial in determining the "weights" particular criteria have had in the membership process. In the early years of the Organization, when the Cold War was at its height, only "neutral" candidates were certain of admission to the United Nations. "Pro-Western" applicants invariably met a Soviet veto: "pro-Communist" applicants lost to a primarily "Western" voting majority.⁸⁵ With the Cold-War thaw in the mid-fifties, both camps in the bi-polar world relaxed their standards for determining the "neutrality" of particular candidates,⁸⁶ and traded applications one against the other.⁸⁷ "Neutral" candidates, by definition, were "willing to carry out (their Charter) obligations" to all the blocs in the world community. "Committed" applicants, again by definition, were "willing to carry out (their Charter) obligations to only one (or two) of the camps in our bi- (or tri-) polar world." For admission to membership, "neutral" candidates had only to possess certain physical characteristics, namely, a sizeable territory and population and a Foreign Office.⁸⁸ For "committed" applicants (with

Japan and then had declared war on Great Britain and the United States. In 1947 the Soviet Union charged that Ireland and Portugal had been sympathetic to the Fascist Powers, and had not offered justification for their wartime behavior. It again vetoed the two applications.

In 1946 the Soviet Union vetoed the applications of Ireland and Portugal and Jordan on the sole ground that these nations had not established "diplomatic relations" with the Soviet Union. That same year the Soviet Union voted for the admission of Siam, though it is not at all clear that that nation had recognized the Soviet Union or had exchanged diplomatic representatives with it at that time. See, generally, U.N. Security Council, Official Records, 55th-58th Meetings (Docs. S/P.V. 55-58) (1946); *ibid.*, 186th, 190th Meetings (Docs. S/P.V. 186, 190) (1947).

⁸⁴ *E.g.*, in 1946 the Soviet Union vetoed three membership applications on grounds that the applicants did not have "diplomatic relations" with a permanent Member of the United Nations, although this is not a criterion mentioned in Art. 4. More importantly, the Soviet Union did not take the trouble to relate the absence of diplomatic relations to a state's ability or willingness to carry out its international obligations.

⁸⁵ "In fact, of course, though founder members (particularly permanent members of the Security Council) have invoked each set of (membership) arguments, without much regard to consistency, they have generally been guided in their voting by a cruder set of considerations—namely whether a given applicant, if admitted to membership, would strengthen their 'side' in the United Nations or not. In general, as might be guessed, this has meant that the West has supported new admissions and the Communist bloc has been suspicious of them. It has also meant in fact and contrary to the clear intentions of the Charter, that applications have seldom been considered on individual merits but rather as a part of a general bargain, like the celebrated 'package deal' in 1955." Nicholas, *The United Nations as a Political Institution* 73 (1959). Mr. Nicholas' conclusions are documented in Goodman, *Some Thoughts on Chinese Representation in the United Nations* 20-44 (1962) (unpublished divisional paper on file at the Yale University Law Library).

⁸⁶ In 1956 the Soviet Union supported Japan's application for admission, and both the United States and the Soviet Union have voted favorably on the applications of the non-committed countries.

⁸⁷ *E.g.*, the deal involving Outer Mongolia and Mauritania in 1961.

⁸⁸ Rosalyn Higgins makes a different case. See Higgins, note 1 above, at 11-57, and her earlier article; Cohen, note 50 above.

the same characteristics) it was necessary first to find counterparts for them in another of the world camps, and second, to strike a deal for their admission.

United Nations procedures, as conceived in the early years, later tended to give way to insistent demands for "universality." Prior to 1955 the Security Council and the General Assembly voted on separate and single vetoable membership applications.⁸⁹ That year the delegates created a new and flexible procedure—the package deal—which one representative has described thus:

. . . the draft resolution (recommending fifteen applications) was proposed on the basis of an understanding that there be an over-all or en bloc admission; that is to say, it seeks a solution as a result of prior negotiations rather than on the basis of the application of well-known principles.⁹⁰

Since 1955, delegates have held these "prior negotiations" even outside the Security Council, and they have traded Assembly votes on one participation question for Council votes on another.⁹¹

Other techniques have also eroded the apparent formalities of Article 4; on occasion the United Nations has processed "membership" applications with but the slightest concern for procedural technicality. In 1947 Pakis-

⁸⁹ Note that in 1946 the U. S. proposed that a group of applicants be admitted in a "package deal." The Soviet Union, however, thought each candidate should be considered on its merits. Compare the following quote from the opinion of the International Court of Justice in the "Conditions of Admission of a State to Membership in the United Nations":

"The second part of the question concerns a demand on the part of a Member making its consent to the admission of an applicant dependent on the admission of other applicants.

"Judged on the basis of the rule which the Court adopts in its interpretation of Article 4, such a demand clearly constitutes a new condition, since it is entirely unconnected with those prescribed in Article 4. It is also in an entirely different category from those conditions, since it makes admission dependent, not on the conditions required of applicants, qualifications which are supposed to be fulfilled, but on an extraneous consideration concerning States other than the applicant State.

"The provisions of Article 4 necessarily imply that every application for admission should be examined and voted on separately and on its own merits; otherwise it would be impossible to determine whether a particular applicant fulfils the necessary conditions. To subject an affirmative vote for the admission of an applicant State to the condition that other States be admitted with that State would prevent Members from exercising their judgment in each case with complete liberty, within the scope of the prescribed conditions. Such a demand is incompatible with the letter and spirit of Article 4 of the Charter." [1948] I.C.J. Rep. at 64-65.

⁹⁰ U.N. General Assembly, Official Records, Ad Hoc Political Committee, Plenary Meeting 3 (Doc. A/AC.80/P.V.31).

⁹¹ In 1961 a package deal set Mauritania (and the votes of the West African states against Nationalist China on the participation issue) against Outer Mongolia (and the Nationalist Chinese veto on the Mongolian membership application). If the Nationalist Chinese rejected the Outer Mongolian membership application, the Soviet Union would veto Mauritania's application and this would trigger the West African vote to swing against retaining Nationalist China in the United Nations. Mauritania was admitted.

tan split from India (a Member of the United Nations),⁹² and sought participation in the Organization.⁹³ After modest controversy, its membership application was routed through the United Nations on the basis of a Secretariat memorandum,⁹⁴ which held Article 4 procedures and criteria applicable because Pakistan was a "new" state.⁹⁵ Pakistani membership, however, was a "*fait accompli*."⁹⁶ Pakistan's application was handled with unusual speed and without significant objection—more on the basis of informal consensus than strict procedures.⁹⁷

Article 4, moreover, has not been the only route to U.N. participation for territorial communities that were not Members of the Organization. In 1958 the U.A.R. sought participation after the merger of Egypt and Syria; in 1961 Syria sought participation after the dissolution of the U.A.R.⁹⁸ Neither claimant, when seeking participation, was then, in its form as claimant, a Member of the United Nations. In both cases, U.N. decision-makers included the claimants within the Organization, but by remarkably informal and *ad hoc* procedures, and without attempting to articulate criteria for decision. In 1961, for example, the President of

⁹² Cf. The Indian Independence (International Arrangements) Order of 1947, U.N. Doc. A/C.6/161.

⁹³ See generally Higgins, note 1 above, at 321-322; Laing, "Admission of Indian States to the United Nations," 43 A.J.I.L. 144 (1949); and Schachter, "The Development of International Law Through the Legal Opinions of the United Nations Secretariat," 25 Brit. Yr. Bk. Int. Law 91, 101-109 (1949).

⁹⁴ U.N. Press Release PM/473.

⁹⁵ "In the view of Dr. Ivan Kerno, Assistant Secretary General for Legal Affairs, the problem was analogous, from the viewpoint of international law, to the situation which arises when part of an existing state breaks away and becomes a new state. According to that theory there would be no change in the international status of India which continued as a state with all treaty rights and obligations as well as the rights and obligations in the United Nations. Therefore, following that theory of state succession, Pakistan would be regarded as having broken off and become a new state and, as a new non-Member state, must seek admission to the United Nations pursuant to the provisions of Article 4 of the Charter. . . . While this legal opinion was only intended for the guidance of the Secretariat, its ultimate effect was to plot the course which the Security Council and the General Assembly subsequently followed." Laing, *loc. cit.* note 93 above, at 146.

⁹⁶ Laing, *loc. cit.*

⁹⁷ "Some support for (the contention that Pakistan should be admitted automatically) was to be found among other delegations but it was not pushed with . . . vigor, the feeling being that the question of membership in this case was of the order of a *fait accompli* and that it was more important to set up principles applicable in future cases. . . . Throughout the controversy, there was never any question as to the desirability of India and Pakistan as Members. . . . Following established procedure, (Pakistan's) membership having been favorably reported upon by the Security Council, it was referred to the First Committee and reported by that Committee to the General Assembly. In the subsequent balloting the admission of Pakistan was approved by a vote of fifty-three to one. The negative vote was cast by Afghanistan, with which Pakistan was having some border disagreement. However, in accordance with later instructions received from his government, the Afghanistan delegate withdrew his negative vote and the admission of Pakistan was unanimous." Laing, *loc. cit.* note 93 above, at 146-148.

⁹⁸ See Security Council, 16th Year, Official Records, Supp. at 59-60 (Docs. S/4957 and S/4958).

the General Assembly spoke privately to its Members, and found no objection to the seating of Syria. In a morning session of the Assembly he proposed that Syria be seated that afternoon, but only if there were no protests.⁹⁹ There were none, and Syria that day assumed full participation in the United Nations.¹⁰⁰

2. "New" Territorial Communities that Claim to be "Members"

The United Nations Charter provides for neither systematic nor continuous appraisal of fundamental changes in the composition of the territorial communities that are Members of the United Nations.¹⁰¹ At best, Articles 5 and 6 of the Charter specify procedures and criteria for suspending and expelling Members.¹⁰² The vote under these articles is vetoable, however, and decisions occur when a territorial community already is acting as a participant in the Organization, rather than when it claims participation. Perhaps to circumvent these obstacles both the General Assembly and the Security Council have created informal methods for appraising change in a Member territorial community.

(a) *The General Assembly*.—The Credentials Committee of the General Assembly has been primarily responsible for appraising change in a Member.¹⁰³ It has generally ignored drastic changes in a Member's external alignments, even when a revolution meant that a United Nations Member would switch allegiances in the bi-polar world. Hungary is the one important exception.¹⁰⁴ In 1956 and for several years thereafter the

⁹⁹ U.N. Doc. A/4914, cited in Higgins, *op. cit.* note 1 above, at 324.

¹⁰⁰ Syria could have been classified—under state and governmental succession doctrine—as a "new" state, much as Pakistan was, and could have been forced through the formalities of Art. 4 procedures. In both the Syrian and Pakistani cases, the claimants' responsibility was unquestioned, and formal procedures were sacrificed for "universality" in the Organization.

¹⁰¹ Cf. Charter of the Organization of American States, Art. 3. Delegates to the San Francisco Conference virtually overlooked the consequences for the Organization of division within a Member body politic. See, generally, 3 UNCIO at, *e.g.*, 31-32, 60-61, 454-455, etc., and 7 *ibid.* at 11-12, 18-19, 24-25 and 34.

Delegates were more concerned with Chap. VI of the Dumbarton Oaks Proposals, which designated by name the permanent members of the Security Council. Mexico, for example, proposed that the permanent seats on the Council be called "semi-permanent" and that the Assembly review at the end of 8-year periods the allocation of seats in this category. 11 UNCIO 289.

¹⁰² McDougal, Lasswell and Vlasic, note 55 above, at 908-910; Sohn, "Expulsion or Forced Withdrawal from an International Organization," 77 Harvard Law Rev. 1381 (1964).

¹⁰³ See U.N. General Assembly, Official Records, Credentials Committee Reports, as follows: 6th Sess. (A/1983); 7th Sess. (A/2234); 8th Sess. (A/2490) (A/2593); 9th Sess. (A/2752) (A/2880); 10th Sess. (A/3027) (A/3091); 11th Sess. (A/3536); 12th Sess. (A/3773); 13th Sess. (A/4074); 14th Sess. (A/4346); 15th Sess. (A/4578) (A/4743); 16th Sess. (A/5055); 17th Sess. (A/5395); 18th Sess. (A/5676/Rev. 1).

¹⁰⁴ Note that in the Credentials Committee meetings for the 18th Session, Algeria, the U.S.S.R., and Liberia thought "the time had come for the U.N. to undertake a review of the validity of the credentials submitted by (South Africa)." The South African Government, in their view, was not "representative of the people of South Africa and . . . persistently violated the principles of the U.N. Charter and continued

Credentials Committee of the General Assembly refused to pass on the credentials of the Hungarian Delegation, purportedly because Hungary had not obeyed certain Assembly resolutions.¹⁰⁵

(b) *The Security Council*.—Except for the 1958 Iraqi revolution, the Security Council has not addressed itself to participation questions relating to change in the body politic of a Member. Not one of the major post-World-War-II revolutions has occurred in a body politic when it was a non-permanent member of the Security Council. The Council has never had to decide that a particular nation-state was, or was not, a body politic whose "newness" promised rejection of Charter principles. At best the Iraqi case¹⁰⁶ sketches a few relevant criteria. Iraq, a non-permanent member of the Security Council, had participated in Council discussions of the Lebanese question in 1958, when Kassim led a successful revolution against the Iraqi authorities. Almost immediately the new government sought to issue credentials to a new Iraqi representative at the United Nations;¹⁰⁷ concurrently, the Soviet Union challenged the credentials of Mr. Abbas, the then Iraqi representative.¹⁰⁸ In Council discussion, certain members thought it relevant that the revolutionary government was unrecognized.¹⁰⁹ A few argued that it came to power by unconstitutional means,¹¹⁰ and some questioned the continuing validity of the Iraqi-Jordan Union.¹¹¹ The Security Council delayed seating Kassim's delegation for some seven meetings. Here the principles of responsibility and flexibility seem to have influenced decision. Whether the same two principles will guide decision when the credentials of a permanent Council member are challenged is a question yet to be answered.

B. QUESTIONS OF SUBSEQUENT PARTICIPATION

1. *Representation Cases*

The United Nations Charter offers no explicit provisions for solving representation questions. United Nations practice, however, demands a

to defy numerous resolutions adopted by the U.N. organs . . ." U.N. General Assembly, 18th Sess., Official Records, Report of the Credentials Committee (Doc. A/5676/Rev. 1) at 2.

In the Credentials Committee meetings for each of the sessions cited at note 103, the Soviet Union has invariably challenged the credentials of the Government of the Republic of China.

¹⁰⁵ Cf. U.N. documents cited above, note 103, from the 11th Sess. through the 18th Sess. See also Higgins, *op. cit.* note 1 above, at 158-159.

¹⁰⁶ See, generally, Higgins, note 1 above, at 159-161.

¹⁰⁷ See the statement of the Secretary General to the Security Council, U.N. Security Council, Official Records, 827th Meeting, at 2 (Doc. S/P.V. 827) (1958). The letter was cited by the Russian delegate, Mr. Sobolev, at 3 and, according to him, had "been sent" to all the members of the Council.

¹⁰⁸ Per Sobolev, *ibid.* at 1, 2 and 3.

¹⁰⁹ *I.e.*, Panama, U.N. Security Council, Official Records, 827th Meeting, at 3, 5 (Doc. S/P.V. 827) (1958); United Kingdom, *ibid.* at 2-3.

¹¹⁰ *Ibid.* at 5.

¹¹¹ *Ibid.* at 2, 3-4; U.N. Security Council, Official Records, 834th Meeting, at 3 (Doc. S/P.V. 834) (July 18, 1958).

full contextual analysis before decision: representation questions are to be decided "in the light of the Purposes and Principles of the Charter and the circumstances of each case."¹¹² Past United Nations and League decisions¹¹³ have looked openly to the authority of the claimants (measured by their adherence to constitutional forms and principles),¹¹⁴ the stability and effectiveness of their control over territorial and other resources,¹¹⁵ and their capacity and willingness to fulfill their international obligations.¹¹⁶ Two unstated factors have also been pertinent to League

¹¹² U.N. General Assembly, Res. 396 (V).

¹¹³ *I.e.*, in the U.N. the representation of Yemen in 1962 and the representation of the Congo in 1960; in the League of Nations, the representation of Ethiopia. The first two decisions are well summarized in Higgins, *op. cit.* note 1 above, at 161-164. The Ethiopian case is summarized in Walters, *History of the League of Nations* 623-669 (1952).

¹¹⁴ *E.g.*, the Congolese decision seemed to turn largely on the interpretation of the Congo's Loi Fondamentale. See the remarks of the delegates from Ghana, U.N. General Assembly, 15th Sess., Official Records, Plenary Meeting, at 883 (Doc. A/P.V. 918) (1960); the Camerouns, *ibid.* at 885-886 (Doc. A/P.V. 918); the Philippines, *ibid.* at 892 (Doc. A/P.V. 919); the Soviet Union, *ibid.* at 894-896 (Doc. A/P.V. 919); Guinea, *ibid.* at 907-911 (Doc. A/P.V. 920); the Congo (B), *ibid.* at 917-920 (Doc. A/P.V. 921); Czechoslovakia, *ibid.* at 924-925 (Doc. A/P.V. 921); Liberia, *ibid.* at 926 (Doc. A/P.V. 921); Poland, *ibid.* at 927 (Doc. A/P.V. 921); Bulgaria, *ibid.* at 933 (Doc. A/P.V. 921); Haiti, *ibid.* at 938-939 (Doc. A/P.V. 922); Albania, *ibid.* at 940 (Doc. A/P.V. 922); the Central African Republic, *ibid.* at 944-945 (Doc. A/P.V. 922); and the United States, *ibid.* at 957 (Doc. A/P.V. 923).

On the Yemen representation question, see, *e.g.*, remarks of the delegates of Jordan, U.N. General Assembly, 17th Sess., Official Records, Plenary Meeting, at 1220 (Doc. A/P.V. 1201) (1962); of Saudi Arabia, *ibid.* at 1222 (Doc. A/P.V. 1201) and at 1230-1231 (Doc. A/P.V. 1202); and of the U.A.R., *ibid.* at 1228 (Doc. A/P.V. 1202).

On the Ethiopian representation question, in its second report to the second session of the League Assembly, the Credentials Committee noted that the Ethiopian credentials were "derived from the same authority as had more than once in the past issued the full powers of the Ethiopian delegation to previous sessions of the Assembly." League of Nations Official Journal, 17th Assembly, at 40.

¹¹⁵ In the Congolese representation question, the issues of control were not at all clear when Mobutu and Lumumba sought to have their delegations represented at the United Nations. See, generally, U.N. Doc. A/4557 (1961), and the remarks of the representatives from Ghana, U.N. General Assembly, 15th Sess., Official Records, Plenary Meeting, at 884 (Doc. A/P.V. 918) (1960); and of the Philippines, *ibid.* at 892 (Doc. A/P.V. 919).

In regard to the Yemen representation question, *cf.* the remarks of the delegates of Jordan, U.N. General Assembly, 17th Sess., Official Records, Plenary Meeting, at 1220 (Doc. A/P.V. 1201); of Saudi Arabia, *ibid.* at 1222 (Doc. A/P.V. 1201); and of the U.A.R., *ibid.*

In the Ethiopian representation question, the League Credentials Committee described the Ethiopian situation thus:

"The Head of the State is in a foreign country; the Government is no longer in the capitol; according to some of the documents submitted a governmental authority is stated to be established in another part of the country. It seems exceptionally difficult to judge of the nature and extent of the power of that authority, and of the strength of the connection still existing between it and the Head of this State." League of Nations Official Journal, 17th Assembly, at 40 (1936).

¹¹⁶ In the Congolese representation question the Soviet Union and other Communist-bloc countries justified their votes against seating the delegation appointed by Mr.

and United Nations decisions: the legitimacy of origin of the candidates,¹¹⁷ and their dedication to a system of world public order.¹¹⁸ It is dangerous, however, to generalize about the "importance" of these factors to decision, for representation cases have been few in number and greatly diverse in factual context.

Considerable flexibility marks the procedures of past representation cases. In three cases, a Credentials Committee, acting by simple majority, appears to have been the responsible decision-maker.¹¹⁹ In one of these cases, however, the Credentials Committee was in effect a small summit, with representatives of the Great Powers replacing the regular Committee members.¹²⁰ In the two others, the full membership of the world organization debated the report of a Credentials Committee at considerable length and with great attention to the substantive impacts of decision.¹²¹

2. Credentials Cases

Credentials questions were all but ignored at the San Francisco Conference. Neither in the Charter nor in United Nations documents are there

Kasavubu on grounds that his regime was subservient to the United States, Belgium and colonialism generally. See, *e.g.*, the remarks of the Soviet Union representative at U.N. General Assembly, 16th Sess., Official Records, Plenary Meeting at 894-901 (Doc. A/P.V. 919). Questions of capacity and willingness to fulfill international obligations did not arise in the Yemeni case, but were of undoubted importance when the League Assembly voted to seat Haile Selassie's delegation. See, generally, Walters, *op. cit.* note 113 above, at 690.

¹¹⁷ This was a factor of undoubted importance in the Ethiopian case. The Credentials Committee decided to seat the Ethiopian Delegation because "(t)oo many Members of the Assembly were resolved not to be dragged any further along the path which they considered dishonorable." Walters, *op. cit.* note 113 above, at 690. On the Congolese decision, see, generally, the comments cited in footnote 93 above.

¹¹⁸ This was a factor of undoubted importance in the Ethiopian case. On the Yemen decision see the remarks of the Royalist-appointed delegate from Yemen, U.N. General Assembly, 17th Sess., Official Records, Plenary Meeting at 1221 (Doc. A/P.V. 1201) (1962). On the Congolese decision see the remarks of Czechoslovakia, U.N. General Assembly, 15th Sess., Official Records, Plenary Meeting at 922-923 (Doc. A/P.V. 921) (1960); of Bulgaria, *ibid.* at 933; and of the Ukrainian S.S.R., *ibid.* at 945 (Doc. A/P.V. 922).

For two representation decisions in the International Labor Organization, see Liang, "Recognition by the United Nations of the Representation of a Member State: Criteria and Procedure," 45 A.J.I.L. 689, 690 (1951).

¹¹⁹ *I.e.*, The Congolese, Yemeni and Ethiopian representation decisions.

¹²⁰ F. P. Walters has described the Ethiopian decision thus:

"In the past, the appointment of the Credentials Committee, and its proceedings, once appointed, had been a matter of quick-moving routine and necessary to the Assembly as to every other international conference, but totally devoid of political interests. Membership had been neither coveted nor avoided: the Secretary drew up a list, the Assembly accepted it. But on this occasion it proved difficult to find nine delegates willing to undertake so invidious a task. . . . Finally Eden and Delbos had to serve in person and Litvinov joined them, together with other willing delegates—an unexpected event, since hitherto the Committee had always been composed of delegates of the second and third rank." Walters, *op. cit.* note 113 above, at 690.

¹²¹ Debate on the Congolese question thus covers more than one hundred pages of General Assembly records.

explicit statements of the criteria for credentials decisions, and procedures for credentials approval originate in the Rules of Procedure for each organ, rather than in Charter articles.¹²² In United Nations practice, the Assembly's Credentials Committee has usually examined only the authenticity of the documents submitted to it, the identity of the delegates and the scope of the powers conferred on them.¹²³ There appear to have been no genuine credentials questions in the Security Council.

V. PAST TRENDS IN DECISION AND THEIR APPLICATION TO THE CHINESE PARTICIPATION QUESTION

In factual context the Chinese participation question is unique among past participation decisions. The two claimants each control more extensive bases of power than do many United Nations Members; one, indeed, is the world's most populous country. Nationalist China, which has always sat as the "State of China" at the United Nations, has had astonishing continuity in leadership, institutions and policy since the San Francisco Conference. Yet the bases of power it now commands, however extensive, are but a fraction of those it controlled when it became an original Member of the United Nations. Communist China, on the other hand, now governs the mainland of "China," but in leadership, cultural identification, social structures, institutions, objectives and strategies it is radically different from the "China" that participated in the founding of the United Nations. Nationalist China and Communist China—spatially separate and at loggerheads for some fifteen years—have in fact become two distinct territorial communities. Yet both are loath to admit this, and neither is willing to adjust its participation claims to contemporary realities. No international organization has ever faced a participation question so complex in factual context or so consequential in potential value outcomes.

A. PAST TRENDS IN SUBSEQUENT PARTICIPATION QUESTIONS AND THEIR APPLICATION TO THE CHINESE PARTICIPATION QUESTION

The Chinese participation question is not simply a problem of subsequent participation in the United Nations. It is distinct in factual context.¹²⁴ It is only indirectly concerned with the validity and authenticity

¹²² See note 11 above.

¹²³ See, *e.g.*, the documents cited at note 103 above.

¹²⁴ In a relatively recent press conference (May 27, 1964; note No. 2932, p. 8), Secretary General U Thant offered a summary of perspectives as follows:

"The question of the admission or representation of China is sure to come up in the next session of the General Assembly. Regarding this question, as you are no doubt aware, there are two schools of thought. One school maintains that the question is one of the admission of China—the admission of a new Member State. This position has been held by the majority of the Member States. On the other hand, there is another school of thought which maintains that the question is one of representation and not admission. They argue that China is already a Member of the United Nations, China being a founding Member of the United Nations. The question is,

of a delegate's credentials; its real thrust goes to the authority of the individuals who, and the territorial communities which, issue the credentials.¹²⁵ Similarly, although it is commonly labeled as such, the Chinese participation question is not merely a "representation" question. Whatever the Chinese claim, China's civil war has been stalemated. Two competing governments are not struggling for power within one territorial community; rather, two different territorial communities seek disparate goals in the world arena.

In facts relevant to law, the China participation question bears no resemblance to past questions of subsequent participation. In legal essence it is a problem in the interpretation of fundamental constitutional prescription, and should be determined in accordance with the more fundamental policies sought by the Charter.¹²⁶ United Nations practice on the Chinese participation question is sharply distinct from its practice on questions of subsequent membership. Both the Security Council and the General Assembly have passed on the Chinese participation question; the Security Council has never decided on questions of subsequent participation. A Security Council seat and Great-Power status are at stake in the Chinese participation question; past subsequent participation decisions have never dealt with issues of such overriding importance. The Chinese participation question has been considered important for voting purposes under Article 18; past subsequent participation decisions have invariably been decided by a simple majority. Debates on the Chinese participation question have examined all characteristics of the two claimants; the criteria for past credentials questions are extraordinarily narrow in focus, and the criteria for past representation decisions are few and poorly articulated. Decision on the Chinese participation question, finally, could exclude a territorial community from the United Nations. No subsequent participation decision has had such extraordinary impacts.

In terms of immediate policy consequences it is likewise untenable to classify the Chinese participation question as a subsequent participation question. Let us assume that Communist China were seated by special majority vote as "China" in the General Assembly. It would not necessarily follow that Communist China would sit as "China" in the Security Council.

First, the Assembly resolution seating the Chinese Communists could not and would not dictate voting in the Security Council. Assembly Resolution 396(V) stipulated only that Assembly resolutions on "representa-

who should represent China? This is a concept held by some of the Members who, of course, form the minority. So, on this, I am not competent to take a public position. Of course, I have to abide by the decision of the General Assembly when it meets in the fall."

¹²⁵ Fitzmaurice, "Chinese Representation in the United Nations," 6 Year Book of World Affairs 36 (1952), notes that, in passing on the Chinese participation question, Members will vote "in the light of their view as to the status (of the authority issuing credentials) and its right to act on behalf of the State concerned . . ." (p. 39).

¹²⁶ See Pollux, "The Interpretation of the Charter," 23 Brit. Yr. Bk. Int. Law 54 (1946).

tion" questions should be "taken into account" by other organs of the United Nations. Often-repeated doctrines which might prevail in this context, though requiring qualification in others, are that each organ of the United Nations is autonomous in interpreting the Charter, and that Assembly resolutions are "recommendatory" and not "binding." Members, finally, have noted that their position on the Chinese participation question in the Assembly would not prejudice action elsewhere in the Organization.¹²⁷

Second, the Council vote on the Communist Chinese participation question is a question of substance under Article 27.¹²⁸ Assuming that a permanent member vetoes the Communist Chinese claim, the United Nations would face the dilemma of having Nationalist China sit as "China" on the Security Council, and Communist China sit as "China" in the General Assembly.

This seating pattern could be disastrous for the Organization. Nationalist China could sit in the General Assembly only if it were to apply for membership as a territorial community other than "China"; it would further be in the unusual position of passing on its own membership application. It would be extraordinarily difficult to apportion the budget between the two Chinas, to select members of the Secretariat from "China," and to recruit United Nations forces from "China." On issues requiring votes in both the General Assembly and Security Council, the two Chinas may cast opposing ballots. Conceivably Communist China could not be elected to non-permanent membership in the Council.

The results would be equally unwelcome if the Security Council vote should, by some quirk, be regarded as procedural. There would still be lack of uniformity in the seating of "China" if Nationalist China won the procedural vote. If, however, Communist China were seated on the Council, Nationalist China, with a territory and population larger than those of many U.N. Members, and with an enviable record in the United Nations and in the international community, would be perpetually excluded from the Organization. As a permanent member of the Council, Communist China would possess a veto on membership applications. It would be fanciful to imagine that Communist China (in the absence of prior agreement) would refrain from vetoing a Nationalist China membership application.

B. PAST TRENDS IN INITIAL PARTICIPATION AND THEIR APPLICATION TO THE CHINESE PARTICIPATION QUESTION

In factual context the Chinese participation question resembles past questions of initial participation. The "State of China" is a signatory of the United Nations Charter and an "original Member" of the United

¹²⁷ See the statement of the representative of the United Kingdom explaining his government's vote on the China question in the 17th Session of the General Assembly: General Assembly, 17th Sess., Official Records, 1162nd Meeting, at 648, 649 (1962).

¹²⁸ See text below.

Nations. The original state of China has, however, undergone tremendous changes in patterns both of authority and effective control, and two different territorial communities now claim to be the state of China. The community that is called the "Peoples' Republic of China" has, indeed, changed so drastically that its present perspectives and operations are completely antithetical to the basic principles of the U.N. Charter and even threaten the Organization itself. Some further examination of the factual context, spotlighting patterns both of change and continuity in authority and effective control over people and resources, is an indispensable prelude to rational appraisal of past trends of decision in relation to the Chinese participation question.

1. *Communist China as a "New" Entity*

To appreciate the extent of change in Communist China, it is enough for present purposes to review an insightful analysis by a leading modern Sinologist, Professor A. Doak Barnett.¹²⁹ Change in Communist China, writes Professor Barnett, has been "more far-reaching, rapid and thorough than at any time in (China's) long history."¹³⁰ In comparative perspective, it is one of the "few instances in history . . . where the process of social, political, and economic change has appeared to be so drastic, rapid and extensive."¹³¹ Although post-1949 change finds its roots in Chinese history,

the Communists have accelerated the pace of change so greatly that what has occurred in recent years appears, in many instances, to bear little relation to what went on before 1949. The change in degree has in many instances been so great, in short, that it amounts virtually to a change in kind.¹³²

This "process of revolutionary change" has occurred at a "breakneck pace."¹³³ "In many areas of Chinese life, the pace of change has been maintained, and even accelerated, despite all the resistance deeply imbedded in Chinese culture."¹³⁴ "Every aspect of Chinese society has been

¹²⁹ What we seek to establish by this review is that the mere fact that Communist China now has control over most of the people and territory of the original state of China does not identify it as the "Republic of China" upon which the United Nations Charter conferred membership. A state, it may be recalled, is more than mere territory and people: it is a "body politic" which exhibits both an internal governmental and social organization and a pattern of external relations. The state of China upon which the framers and ratifiers of the United Nations Charter thought they were conferring membership certainly is not in any factual sense the same state, as Professor Barnett's detailed description makes clear, which today exhibits itself upon the mainland. If a decision be taken, by way of legal fiction, to regard it as the "same" state, the question becomes: for what policies and with what probable consequences for world public order?

¹³⁰ Barnett, *Communist China in Perspective* 27 (New York: Frederick A. Praeger, Inc., 1962); we are indebted to the author and to the publishers for permission to make extensive use of materials from the book. Cf. Schurmann, *Ideology and Organization in Communist China* (1966).

¹³¹ Barnett, *op. cit.* 27.

¹³² *Ibid.* at 46.

¹³³ *Ibid.* at 38.

¹³⁴ *Ibid.* at 39.

affected, and virtually every one of China's 650-700 million people has been touched in significant ways."¹³⁵

The Communist Chinese have worked profound change in the demands and expectations of their citizenry. Their "Marxist-Leninist-Stalinist-Maoist" ideology "has become a new orthodoxy in China, one that the Chinese Communists insist should replace totally not only traditional Confucian values but also the many competing ideological forces that have penetrated China from the West during the modern period."¹³⁶ The new regime would replace the "ideas of harmony, compromise, adjustment, and stability, which have been so important in the past,"¹³⁷ with "a very different set of values and attitudes, emphasizing struggle, change, progress and innovation."¹³⁸ The family "is currently undergoing a fundamental transformation."¹³⁹ The Communists "are trying as rapidly as possible to minimize the family's functions and to make it clearly subordinate to other political and economic institutions." They propose to "create a new generation whose loyalties to the Party and the state will be so strong as to take precedence automatically over loyalties to the family or any other group."¹⁴⁰ "The traditional relationships of different age groups appear to be changing basically." Women are to have "an entirely new role."¹⁴¹

There has also been fundamental change in the individual's group relations. "A new class structure ("very different from any in China's past")¹⁴² has already emerged." A number of traditional classes—including the landlord-gentry class—"have, for all practical purposes, disappeared . . ."¹⁴³ The military has experienced a "spectacular rise" in "social prestige."¹⁴⁴ The older intellectuals "have . . . been subjected to vigorous indoctrination and severe political controls," and "a new young Communist intelligentsia . . . has slowly begun to replace them."¹⁴⁵ The "business, industrial and commercial" classes have been almost completely "absorbed"¹⁴⁶ into the Communist Chinese economic bureaucracy. The mainland populace has been politicized, bureaucratized, and regimented at an "accelerated rate."¹⁴⁷

Even the individual's cultural life has been affected. The Chinese language, in both its written and spoken forms, is "undergoing a revolutionary change."¹⁴⁸ No longer is there free expression in art; art now is to "serve the cause of revolution." Indeed, "a new utilitarian and revolutionary philosophy of aesthetics motivates the Chinese Communists' approach to art and literature."¹⁴⁹

¹³⁵ *Ibid.* at 27.

¹³⁷ *Ibid.* at 37-38.

¹³⁹ *Ibid.* at 34.

¹⁴¹ *Ibid.* at 35.

¹⁴³ *Ibid.* at 32.

¹⁴⁵ *Ibid.* at 33.

¹⁴⁷ *Ibid.* at 30.

¹⁴⁹ *Ibid.* at 36.

¹³⁶ *Ibid.* at 37.

¹³⁸ *Ibid.* at 38.

¹⁴⁰ *Ibid.*

¹⁴² *Ibid.* at 33.

¹⁴⁴ *Ibid.* at 35.

¹⁴⁶ *Ibid.*

¹⁴⁸ *Ibid.* at 35.

More dramatic has been the change in leadership objectives:

The Chinese Communist aim has been to alter, fundamentally, the entire nature of Chinese society; its political system—the exercise of leadership and the distribution of power; its economic structure—the ownership, organization, and management of production, as well as the distribution of output; its social structure—the pattern of existing classes and groups and their inter-relationships; and its basic ideology and system of values—the common assumptions generally held about the nature of man and his relationship to the universe, to society, and to his fellow man.¹⁵⁰

To achieve these objectives, the Communist Chinese have transformed the institutions of mainland China. The governmental structure, based on the Soviet model, is a “great innovation . . . for China,”¹⁵¹ and governmental functions have increased “enormously.”¹⁵² “An even more striking innovation has been the creation of innumerable mass political organizations. . . .” which “serve as unprecedented channels for extending the outreach of central political power. . . .” The Communists have also created “the strongest and most unified, centralized, modernized, and politicized army in Chinese history. . . .”¹⁵³ Economic institutions have been “fundamentally altered”¹⁵⁴ to yield “an unprecedented degree of state mobilization, allocation, and direction of China’s material and human resources.”¹⁵⁵ “Almost all the traditional, nongovernmental social institutions that were so important in China in the past have gone into eclipse.”¹⁵⁶

At the base of these institutional changes has been the Communist Party of China. “The political, social, and economic leadership of China has changed hands at almost every level . . .” since 1949, and “an almost entirely new leadership group—the Chinese Communist Party and its various supporters—has assumed control.” A “new political elite, a new ruling ‘class,’ has taken over.”¹⁵⁷ And this party practices a type of discipline “that most observers, before the Communist take-over, would have labelled ‘un-Chinese’. . . .”¹⁵⁸

These institutional developments dramatize Communist Chinese control over mainland resources. China’s “first effective totalitarian regime” has restored “centralized rule over most of the traditional Chinese empire. . . .”¹⁵⁹ “The entire economy has been restructured.” “Property and income have been drastically redistributed, and . . . wealth has been dramatically leveled.” As for the mainland Chinese populace,

[t]he Communists in China are true believers in, and practitioners of, “totalism,” involving maximum control and supervision of ordinary people’s lives, maximum involvement of the entire Chinese population in state-directed activities, maximum control over people’s thoughts and behavior, and maximum mobilization of China’s millions to serve the purpose of the nation’s new Communist regime.¹⁶⁰

¹⁵⁰ *Ibid.* at 27.

¹⁵² *Ibid.* at 30.

¹⁵⁴ *Ibid.* at 32.

¹⁵⁶ *Ibid.* at 33–34.

¹⁵⁸ *Ibid.* at 29.

¹⁶⁰ *Ibid.* at 31.

¹⁵¹ *Ibid.* at 29.

¹⁵³ *Ibid.*

¹⁵⁵ *Ibid.* at 31.

¹⁵⁷ *Ibid.* at 28.

¹⁵⁹ *Ibid.* at 28.

It is added that "remarkable new techniques and methods for propagandizing and indoctrinating the population have been developed to a level of great effectiveness."¹⁶¹

In the international arena change in Communist China has been equally obvious. Communist China has not merely "leaned to one side." It has moved in political orientation from the right-center of the free-world nations to the extreme left of the Communist bloc,¹⁶² and its alliances differ drastically from pre-1949 China's.¹⁶³ Communist China's short-term and long-range objectives are totally different from its predecessor's, and its actions, instead of promoting the peaceful resolution of disputes, threaten the foundations of world order.¹⁶⁴ Communist China, indeed, has virtually proclaimed itself a "new" state, for it has claimed for itself the exclusive right to decide which of its predecessor's treaty obligations it would honor, and which it would not.¹⁶⁵

¹⁶¹ *Ibid.* at 30.

¹⁶² *Ibid.* at 30. For general analyses of Communist China's foreign policy, see Barnett, *Communist China and Asia* (1960) and sources cited at pp. 558-559; *idem* (ed.), *Communist Strategies in Asia* (1963); Boyd, *Communist China's Foreign Policy* (1962) and sources cited at pp. 142-144; Cooley, *East Wind Over Africa* (1965); Clubb, *Twentieth Century China* (1964), esp. pp. 368-395; Halperin, *China and the Bomb* (1965); Halperin and Perkins, *Communist China and Arms Control* (1965); Halperin and Tsou, "Mao Tse-tung's Revolutionary Strategy and Peking's International Behavior," 59 *Am. Pol. Sci. Q.* 80 (1965); Halpern, "China in the Postwar World," 21 *China Quarterly* 20 (1965); *idem*, "Communist China's Foreign Policy: The Recent Phase," 11 *China Quarterly* 89 (1962); *idem* (ed.), *Policies Toward China: Views from Six Continents* (1965); Hinton, *Communist China in World Politics* (1966); *idem*, *Communist China's External Policy and Behavior as a Nuclear Power* (1963); Hsieh, *Communist China's Strategy in the Nuclear Era* (1962); Pentony (ed.), *China, The Emerging Red Giant* (1962), particularly the North and Whiting articles at pp. 48 and 53, respectively.

¹⁶³ For charts listing, as of March 1, 1965, the countries recognizing either the People's Republic of China or the Government of the Republic of China, see Halpern, *Policies Toward China: Views from Six Continents* 496-501 (1965).

¹⁶⁴ Authoritative statements of Communist Chinese views on war and peace occur throughout *The Polemic on the General Line of the International Communist Movement*, a volume published by the Foreign Languages Press, Peking, in 1965, which contains major editorials from the People's Daily and Red Flag from the 1963-1964 period (cited as "Polemic").

For comparative analysis of, and documents on, Communist Chinese and Soviet views of minimum order and other issues, see Brzezinski, *The Soviet Bloc: Unity and Conflict* (1961); Crankshaw, *The New Cold War: Moscow v. Peking* (1963); Dallin (ed.), *Diversity in International Communism* (1963), especially the introduction; Griffith, *Albania and the Sino-Soviet Rift* (1963); Griffith, *The Sino-Soviet Rift* (1964); Mosely, "The Chinese-Soviet Rift: Origins and Portents," 42 *Foreign Affairs* 11 (1963); Lowenthal, *World Communism: The Disintegration of a Secular Faith* (1965); Zagoria, *The Sino-Soviet Conflict* (1962). For other sources see Griffith, *The Sino-Soviet Rift* 491-492 (1964).

¹⁶⁵ For a recent explanation of this policy, see People's Daily, "A Comment on the Statement of the Communist Party of the U.S.A.," March 8, 1963, in 10/11 *Peking Review* 58, 61 (March 15, 1963).

2. *The Consequences of Change in Communist China for United Nations Policies*

Communist China's newness explicitly promises ill for the United Nations.¹⁶⁶ At present the government's stated long-range foreign policy objectives are antithetical to the purposes of the U.N. Charter. It has challenged the right of the United Nations to exist as a world organization, demanded institutional changes in the Organization, and acted in so strident a fashion in other organizations as to belie the possibility that it would co-operate, even on procedural matters, with the Members of the United Nations. In public pronouncement and occasional action Communist China has challenged virtually every exercise of U.N. powers. It has either ignored or maligned United Nations efforts for decolonialization. It has opposed virtually all United Nations actions for the maintenance of international peace and security. It has refused to participate in disarmament conferences under the aegis of the United Nations, and its own disarmament proposals have been near facetious. It has, finally, deprecated United Nations attempts at economic and social co-operation.

The principal purposes of the United Nations are twofold: "to maintain international peace and security". . . (and) "to develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples. . ."¹⁶⁷ Contrast these objectives with the following statement, regarded by many as authoritative, of Communist Chinese global strategy—a statement demonstrating that Communist China has projected onto the world arena the strategy it used successfully in its civil war:

It must be emphasized that Comrade Mao Tse-tung's theory of the establishment of rural revolutionary base areas and the encirclement of the cities from the countryside is of outstanding and universal practical importance for the present revolutionary struggles of all the oppressed nations and peoples, and particularly for the revolutionary struggles of the oppressed nations and peoples in Asia, Africa and Latin America against imperialism and its lackeys.

Many countries and peoples in Asia, Africa and Latin America are now being subjected to aggression and enslavement on a serious scale by the imperialists headed by the United States and their lackeys. The basic political and economic conditions in many of these countries have many similarities to those that prevailed in old China. As in China, the peasant question is extremely important in these regions.

¹⁶⁶ For a comprehensive, authoritative analysis of Communist China's view of the United Nations, consult Adams, *Communist China and the United Nations* (1964) (Master's essay on file at the Burgess-Carpenter Library of Columbia University).

The Chinese Communists have been no less kind to the League of Nations:

" . . . the League of Nations is a League of Robbers by which the various imperialisms are dismembering China. The principal task of the Lytton Commission of Enquiry sent to China by the League was to prepare the dismemberment of China and the repression of all the revolutionary movements that have raised the flag of the Chinese Soviets." From a telegram, dated Oct. 6, 1932, and signed (*inter alia*) by Mao Tse-tung, in Schram, *The Political Thought of Mao Tse-tung* 266-267 (1963).

¹⁶⁷ U.N. Charter, Art. 1, pars. 1, 2.

The countryside, and the countryside alone, can provide the broad areas in which the revolutionaries can manoeuvre freely . . . [and] can provide the revolutionary bases from which the revolutionaries can go forward to final victory. Precisely for this reason, Comrade Mao Tse-tung's theory of establishing revolutionary base areas in the rural districts and encircling the cities from the countryside is attracting more and more attention among the people in these regions.

Taking the entire globe, if North America and Western Europe can be called "the cities of the world," then Asia, Africa and Latin America constitute "the rural areas of the world." Since World War II, the proletarian revolutionary movement has for various reasons been temporarily held back in North American and West European capitalist countries, while the people's revolutionary movement in Asia, Africa and Latin America has been growing vigorously. In a sense, the contemporary world revolution also presents a picture of the encirclement of the cities by the rural areas. In the final analysis, the whole cause of world revolution hinges on the revolutionary struggles of the Asian, African and Latin American peoples who make up the overwhelming majority of the world's population. The socialist countries should regard it as their internationalist duty to support the people's revolutionary struggles in Asia, Africa and Latin America.¹⁶⁸

It is this last issue—the Communist-bloc support of "national wars of liberation" and "revolutionary civil wars"¹⁶⁹—that jars most sharply against the United Nations' dedication to minimum order. For the past eight years the Chinese Communists have urged greater risk-taking on the Communist bloc.¹⁷⁰ Their position rests basically on five propositions: (1) ". . . the U. S. imperialists are the wildest militarists of modern times, the wildest plotters of a new world war, and the most ferocious

¹⁶⁸ Lin Piao, "Long Live the Victory of People's War," in 36 Peking Review 9, 14 (Sept. 3, 1965). See also Resolution of the Indonesian Communist Party, in 13 *ibid.* 17 (March 27, 1964), analyzed by Tsou, "Mao Tse-tung and Peaceful Coexistence," 8 *Orbis* 36, 42 (1964).

Lin Piao's statement seems a chimerical rendition of the more traditional "united front" tactic. Cf. Statements by Mao Tse-tung, 20 Peking Review 6 (May 14, 1965), and 5 *ibid.* 5 (Jan. 31, 1964).

¹⁶⁹ It is not unlikely that the Communist Chinese will adjust their strategy, at least temporarily, if they continue to suffer strategic defeats in the Afro-Asian world. For valuable and analogous insights, see Brzezinski and Huntington, *Political Power: USA/USSR* (1964). For a Communist Chinese response to the Hilsman thesis, which held out the promise of more salutary U.S.-Communist Chinese relations to the second generation of Peking leaders, see 30 Peking Review 19 (July 24, 1964); see also *People's Daily*, "Cultivating and Training Millions of Successors to Proletarian Revolution," Aug. 3, 1964, in 32 *ibid.* 12 (Aug. 7, 1964).

¹⁷⁰ This is the opinion of many specialists on Communist Chinese foreign policy. See, e.g., Barnett, *Communist China in Perspective* 80; Halperin, *China and the Bomb* 13-14 (1965); Halperin, "China in the Postwar World," note 162 above, at 36-38; Hinton, *op. cit.* note 162 above, at 155-156; Hsieh, "The Sino-Soviet Nuclear Dialogue: 1963," 8 *Journal of Conflict Resolution* 99, 105 (1964); Lowenthal, "China," in Brzezinski (ed.), *Africa and the Communist World* 142, 149 (1963); Mosely, note 164 above, at 16-17; Tsou, "Mao Tse-tung and Peaceful Coexistence," 8 *Orbis* 36, 44 (1964); Zagoria, note 164 above, at 245-246.

enemy of world peace";¹⁷¹ (2) since 1957 the Communist bloc has had moral and material superiority over the free world;¹⁷² (3) the Afro-Asian world—the “storm center” of “world revolution”—is a prime present target for the Communist bloc;¹⁷³ (4) it is unlikely that national wars of liberation will escalate into world wars;¹⁷⁴ and (5) the cost of possible escalation is more than offset by probable gains.¹⁷⁵

For the fifth proposition, we do well to recall Mikhail Suslov's recent analysis,¹⁷⁶ discounting, of course, its possible polemic content:

In their fight against the Leninist policy of peaceful coexistence, which they counter with the idea of giving revolution a “push” by means of war, the CPC leaders have gone as far as to assert that war is an acceptable and, in fact, the only means of settling the contradictions between capitalism and socialism. They ignore the experience of

¹⁷¹ Editorial Departments of the People's Daily and Red Flag, “Two Different Lines on the Question of War and Peace,” in Polemic, note 164 above, at 221, 235.

The U. S. nuclear threat was a principal stated justification for the first of Communist China's nuclear tests. Statement of the Government of the People's Republic of China, Oct. 16, 1964, in 42 Peking Review, Spec. Supp. ii (Oct. 16, 1964).

¹⁷² The United States, in the Communist Chinese view, is over-extended. Lo Jui-ching, “Commemorate the Victory Over German Fascism! Carry the Struggle Against U. S. Imperialism Through to the End!” (published in Red Flag), in 20 Peking Review 7, 13 (May 14, 1965); Peng Chen, speech of May 25, 1965, in 24 *ibid.* 10, 13 (June 11, 1965); People's Daily, “A Great People, A Glorious Banner,” Dec. 20, 1964, in 52 *ibid.* 11, 12 (Dec. 25, 1964).

¹⁷³ See, e.g., Shih Tsu-chih, “The Fundamental Path for the Liberation Movements in the Colonial and Semi-Colonial Areas,” in Studies in International Affairs, No. 5, May 3, 1960, 6024 JPRS 41-55; Chou En-lai, speech of Dec. 25, 1963, “African People's Example of Daring to Wage Armed Struggle and Seize Victory,” in 1 Peking Review 34 (Jan. 3, 1964); Zagoria, note 164 above, at 360; Chou En-lai, speech of Jan. 8, 1964, in 3 Peking Review 18, 21 (Jan. 17, 1964).

¹⁷⁴ “. . . (the Chinese Communists) seem to have been guided not by a desire to bring on a general war but by the *perhaps correct calculation* that more vigorous Soviet action would not lead to general nuclear war.” (Italics ours.) Halperin, note 162 above, at 14; see also *ibid.* at 39; Halperin and Perkins, note 162 above, at 58; Hinton, Communist China in the World Community 155 (1966); Zagoria, note 164 above, at 356-357.

¹⁷⁵ See particularly Zagoria, note 164 above, at 312-316. Armed struggle has been the “correct path” in Cuba (31 Peking Review 20 (July 31, 1964)); in the Congo (People's Daily, “No Change of Horses in the Congo Can Save the U.S. from Defeat,” in part in 29 Peking Review 33, 34 (July 17, 1964)); in Malaya (C.P.C.C. letter of April 15, 1965, to the Central Committee of the Malayan Communist Party, in 19 Peking Review 6 (May 7, 1966)); for “Africans Who Want to Win and Sustain Independence” (People's Daily, “Long Live the Free and Independent New Africa,” April 15, 1965, in 16 Peking Review 9, 11 (April 17, 1964)); in Algeria, Chou En-lai, speech of Dec. 25, 1964, in 1 Peking Review 29 (Jan. 3, 1964).

¹⁷⁶ Cf. XVI (13) CDSP 5, 9-10 (April 22, 1964). Recent Communist Chinese policy pronouncements still possess the ardor Suslov has described: “The peoples want revolution and liberation, and there is no weapon that can intimidate them. The atom bomb can scare only the cowards who have lost their revolutionary will, it cannot scare revolutionaries.” Lo Jui-ching, “The People Defeated Japanese Fascism and They Can Certainly Defeat U. S. Imperialism Too,” speech of Sept. 3, 1965, in 36 Peking Review 31, 33 (Sept. 3, 1965); see also Statement of the Government of the People's Republic of China, 11 *ibid.* 6, 7 (March 12, 1965); Liu Ning-i, speech of July 28, 1965, in 32 *ibid.* 23 (Aug. 6, 1965); 20 *ibid.* 13 (May 14, 1965).

the world Communist movement and exalt the road of the victorious revolution in China as something absolute, trying to make it an incontrovertible truth for all countries and peoples. On every occasion, whether suitable or not, Chinese propaganda quotes what Mao Tse-tung said about war and peace in the thirties, during the civil war in China.

Among the widely popularised statements of Mao Tse-tung are the following: "the war to be waged by the overwhelming majority of mankind will pass into a new era in history;" "the world can only be reorganised by means of the rifle;" "we stand for abolishing war, we have no use for it, but war can only be abolished through war. If you want rifles to go out of existence, take to the rifle."

Almost three decades have passed since those statements were made. Radical changes have occurred in the world—the world socialist system has formed and has become a mighty force. . . .

The Chinese leaders refuse to take all [this] into consideration. Plainly showing off their irresponsible attitude, they affirm that a nuclear bomb is a "paper tiger" and in no way affects the issue of war and peace. In keeping with this logic, which runs counter to elementary common sense, Mao Tse-tung, speaking at the Moscow meeting in 1957, argued that the struggle for socialism even stood to gain from a world thermonuclear war. "Can one foresee," he said, "the number of human lives that the future war may take? It may be one-third of the 2,700 million inhabitants of the world, that is, a mere 900 million people. . . . I had an argument over this matter with Nehru. He is more pessimistic in this respect than I. I told him that should half of mankind be destroyed, the other half would survive; in return, imperialism would be wiped out completely and there would be only socialism in the world. In half a century or a whole century the population would grow again—even by more than half."¹⁷⁷

When proposing strategies for the Communist bloc, the Communist Chinese have not stopped at urging increased risk-taking in national wars of liberation; they have urged that the bloc participate to a greater extent

¹⁷⁷ In detailed exposition of the Chinese Communist attitude toward nuclear war, Suslov continues to document the Chinese unconcern with the certain destruction of large numbers of individuals, Communist and non-Communist:

"This concept is even more lucidly expressed in the collection of articles *Long Live Leninism!* which the CC CPC has approved and is circulating. 'On the ruins of fallen imperialism,' it says, 'the victorious people will build a thousand times more wonderful future at an extremely rapid rate.' That is the kind of ultrarevolutionary verbiage, complete political irresponsibility that is particularly dangerous because it is being demonstrated by people standing at the helm of a large socialist country.

"Here it would be appropriate to recall certain facts. When in a conversation with Tao Chu, member of the CC CPC, a Czechoslovak journalist mentioned that in the event of a thermonuclear war the whole of Czechoslovakia, where 14 million people live, might be destroyed, the answer he received was: 'In the event of a war of annihilation, the small countries in the socialist camp will have to subordinate their interests to the common interests of the camp as a whole.' Another high-ranking CPR official told Soviet representatives that Comrade Togliatti, General Secretary of the Italian Communist Party, was wrong when expressing anxiety for the fate of his people he said that if a thermonuclear war broke out the whole of Italy would be destroyed. 'Other people will remain,' declared this official, 'and imperialism will be wiped out. . . .'" *Ibid.*

in "local wars."¹⁷⁸ For local Communist parties, they have virtually denied the possibility of peaceful change.¹⁷⁹ In this last context it may be well to recall portions of an official Communist Chinese statement:

. . . in no country should the proletariat and the Communist Party slacken their preparations for the revolution in any way. They must be prepared at all times to repulse counter-revolutionary attacks and, at the critical juncture of the revolution when the working class is seizing state power, to overthrow the bourgeoisie by armed force if it uses armed force to suppress the people's revolution (generally speaking, it is inevitable that the bourgeoisie will do so).

In the present situation of the international communist movement, *it is advantageous from the point of view of tactics to refer to the desire for peaceful transition.* But it would be inappropriate to over-emphasize the possibility of peaceful transition. The reasons are:

* * * * *

1. If too much stress is laid on the possibility of peaceful transition, and especially on the possibility of seizing state power by winning a majority in parliament, it is liable to weaken the revolutionary will of the proletariat, the working people and the Communist Party and disarm them ideologically.

2. To the best of our knowledge, there is still not a single country where this possibility is of any practical significance.¹⁸⁰ (Our italics.)

Events have, unfortunately, demonstrated that there is more than fire-eating rhetoric to these goal statements. Communist China has participated in "local wars" in Korea in 1950,¹⁸¹ in Quemoy and Matsu in 1955

¹⁷⁸ "Local" wars, in Communist terminology, are wars started by the "imperialist powers"; "wars of national liberation" are begun by indigenous Communist or nationalist forces. See Halperin and Perkins, note 162 above, at 57, and Zagoria, note 164 above, who describes at pp. 195-199 Sino-Soviet differences over the handling of the Middle East crisis of 1958.

¹⁷⁹ "At (the 1957 Moscow meeting of Communist parties), the chief subject of controversy between us and the delegation of the CPSU was the transition from capitalism to socialism. In their original draft of the Declaration (the product of the meeting) the leadership of the CPSU insisted on the inclusion of the erroneous views of the 20th Congress on peaceful transition. The original draft said not a word about non-peaceful transition; moreover, it described peaceful transition as 'securing a majority in parliament and transforming parliament from an instrument of the bourgeois dictatorship into a genuine people's state power.' . . . The Chinese Communist Party resolutely opposed the wrong views contained in the draft declaration submitted by the leadership of the CPSU." Editorial Departments of the People's Daily and Red Flag, "The Origin and Development of the Differences Between the Leadership of the CPSU and Ourselves," in Polemic, note 164 above, at 55, 73.

In the Congo, the "parliamentary path to power" was an "illusion." People's Daily, "People of the Congo (Leopoldville), Fight on!", May 6, 1964, in 20 Peking Review 14, 15 (May 15, 1964). See, generally, People's Daily, "The Differences Between Comrade Togliatti and Us," Dec. 31, 1962, in Dallin, *Diversity in International Communism* 706 (1963); People's Daily, "More on the Differences Between Comrade Togliatti and Us," in *ibid.* at 794.

¹⁸⁰ Editorial Departments of the People's Daily and Red Flag, "The Origin and Development of the Differences between the Leadership of the CPSU and Ourselves," Appendix I, in Polemic, note 164 above, at 105-106.

¹⁸¹ Cf. General Assembly Res. 498 (V) (Feb. 1, 1951); Whiting, *China Crosses the Yalu: The Decision to Enter the Korean War* (1960).

and 1958,¹⁸² in Tibet in 1959,¹⁸³ in India in 1962,¹⁸⁴ and in Sikkim in 1965.¹⁸⁵ In Africa it has actively supported "wars of national liberation" in Burundi,¹⁸⁶ the Federal Republic of Cameroon¹⁸⁷ and the Congo (Léopoldville).¹⁸⁸ In these conflicts, except with respect to Korea, Communist China displayed guerrilla-type caution, skillfully limited the scope of the conflict, and successfully avoided a direct confrontation with the United States.¹⁸⁹ Communist China's contemporary tactics thus parallel strikingly the tactics practiced in China's civil war, and suggest that Communist Chinese long-term goal statements have considerable empirical content—a content which would subvert the purposes and principles of the U.N. Charter.

In short-range tactics, Communist China has challenged the right of the United Nations to exist as a world organization.¹⁹⁰ It has threatened crea-

¹⁸² Hinton, note 174 above, at 258-272; Hsieh, note 162 above, at 17-18, 123-130; Tsou, "The Quemoy Imbroglia: Chiang Kai-shek and the United States," 12 Western Pol. Q. 1084 (1959); *idem*, "Mao's Limited War in the Taiwan Strait," 3 Orbis 332 (1959); Whiting, "The Logic of Communist China's Policy: The First Decade," in Pentony, note 162 above, at 70, 78-81; Zagoria, note 164 above, at 200-221.

¹⁸³ Cf. General Assembly Resolutions 1353 (XIV); 1723 (XVI); Barnett, Communist China and Asia 314-315 (1960); Hinton, note 174 above, at 285-289.

¹⁸⁴ Hinton, note 174 above, at 273-307; Patterson, Peking Versus Delhi (1964). See also Crankshaw, The New Cold War: Moscow v. Peking (1965), who believes the Indian invasion was undertaken "as an essay in forcing tactics vis-a-vis Moscow." (p. 144.)

¹⁸⁵ See, generally, Pringsheim, "China's Role in the Indo-Pakistani Conflict," 24 China Quarterly 170 (1965). Liu Shao-chi, in a speech of Sept. 28, 1965, had this to say of the U.N. and Kashmir:

"As everybody knows, the United Nations has completely betrayed its own charter and it is in a mess. Recently on the Kashmir issue it disregarded the explicit statement in the charter about national self-determination and discarded its past resolutions providing for a 'plebiscite'. This is another entry in the shameful record of the United Nations." 40 Peking Review 15, 16 (Oct. 1, 1965).

See also Statement of the Government of the People's Republic of China, Sept. 7, 1965, in 37 Peking Review 6 (Sept. 10, 1965), *ibid.* at 7; 38 *ibid.* 11 (Sept. 17, 1965), *ibid.* at 14; 39 *ibid.* 8 (Sept. 24, 1965), *ibid.* at 9 and 13-16.

¹⁸⁶ Cooley, note 162 above, at 109-112; Hinton, note 174 above, at 193.

¹⁸⁷ Cooley, note 162 above, at 99-103; Hinton, note 174 above, at 192.

¹⁸⁸ "Usurping the name of the United Nations, the United States has placed the Congo under military occupation . . ." "The Chinese people have always staunchly supported the Congolese people's just struggle against imperialism and for national independence." People's Daily, "People of the Congo, (Leopoldville), Fight on!", May 6, 1964, in 20 Peking Review 14, 16, 17 (May 15, 1964).

¹⁸⁹ Whiting, *loc. cit.* note 182 above, has skillfully demonstrated Chinese "caution." For recent Communist Chinese attempts to subvert stable regimes, cf. Topping, "Peking Pressing Overseas Chinese," New York Times, July 10, 1965, p. 3, col. 2; (Burma), *ibid.*, Nov. 1, 1964, p. 26, col. 4; (Congo), *ibid.*, Nov. 27, 1965, p. 1, col. 1.

¹⁹⁰ "(The people) have come to realize that the U. S. imperialist-manipulated United Nations is by no means something sacrosanct, that one can oppose the United Nations and withdraw from it and that one can do without entering it." Chou En-lai, speech of Jan. 24, 1965, in 5 Peking Review 5 (Jan. 29, 1965).

Compare the Communist Chinese stand with the "Final Communiqué of Second Afro-Asian Conference Preparatory Meeting," in 17 Peking Review 6 (April 24, 1964), which sought the strengthening of the United Nations.

tion of a "revolutionary world organization"¹⁹¹ if the United Nations "is not thoroughly reorganized."¹⁹² "Thorough reorganization" presumably means that "the U.N. Charter must be reviewed and revised jointly by all countries, big and small; all independent states should be included in the United Nations; and all imperialist's puppets should be expelled."¹⁹³ For Communist China neither the increase in Afro-Asian membership¹⁹⁴ nor the expansion of the Security Council and ECOSOC¹⁹⁵ meets the requirements of "thorough reorganization." Apparently the United Nations must admit East Germany, North Viet-Nam and North Korea, and exclude such "imperialist-dominated" countries as Malaysia.¹⁹⁶

Even beyond threatening to create a rival organization, Communist China has attempted to subvert the institutional base of the United Na-

¹⁹¹ The Communist Chinese have never clarified the constitutional basis of this organization. Presumably they thought that Communist China, Indonesia, and possibly Cambodia and Pakistan, would provide the initial membership. At a later date, the Communist Chinese seem to have assumed, the initial membership would be joined by the "emerging" "revolutionary" nations of Asia and Africa.

¹⁹² Predecessors of this threat include Statement by the Government of the People's Republic of China, Jan. 10, 1965, in 3 Peking Review 5 (Jan. 15, 1965) ("thoroughly remolded"); People's Daily, "Indonesia's Bold, Revolutionary Action," Jan. 10, 1965, in *ibid.* 7 (Jan. 15, 1965) ("thorough overhaul") at 9.

For the threat itself see Chou En-lai, speech of Jan. 24, 1965, in 5 Peking Review 5 (Jan. 29, 1965); Chen Yi, speech of Jan. 26, 1965, *ibid.* at 7; reaffirmed and modified by Chen Yi, Press Conference of Sept. 20, 1965, in 41 Peking Review 7, 12 (Oct. 8, 1965).

The threat parallels tactics the Communist Chinese have resorted to in the international Communist movement and elsewhere:

"The Chinese leaders do not limit themselves to proclaiming incorrect views. They are now striving wherever possible to isolate the democratic public organizations of (Asia, Africa and Latin America), to create separate, enclosed confederations and actually to oppose them to the international confederations of the working people." *Kommunist*, "Marxism-Leninism is the Basis for the Unity of the Communist Movement," Oct. 18, 1963, in Griffith, *The Sino-Soviet Rift* 466, 468 (1964).

¹⁹³ Presumably the Communist Chinese would eliminate from the United Nations all bodies of limited and specialized membership. "In international affairs, all countries should have equal rights. There should be absolutely no distinction between big and small ones. . . ." *Observer*, "The More He Tries to Cover Up, The More He Exposes—On Adlai Stevenson's U.N. Speech," *People's Daily*, Feb. 1, 1965, in 6 Peking Review 12 at 13 (Feb. 5, 1965).

¹⁹⁴ "The increase in the number of Asian and African members in the United Nations has by no means brought any fundamental change in the fact that the U.N. has become a U. S. imperialist instrument for aggression." *People's Daily*, Jan. 10, 1965, in 3 Peking Review 8 (Jan. 15, 1965).

¹⁹⁵ The Communist Chinese demanded "thorough" reorganization *after* they editorially approved the membership increase in ECOSOC and the Security Council. *Cf.* sources cited in note 197 below.

¹⁹⁶ Communist China has declared "illegal" the seating of Malaysia in the United Nations and the Security Council. Chou En-lai, speech of Jan. 24, 1965, in 5 Peking Review 5 (Jan. 29, 1965). It also sought to exclude Malaysia from the Second Afro-Asian Conference. *Cf.* 33 *ibid.* 18 (Aug. 13, 1965).

tions.¹⁹⁷ It has urged¹⁹⁸ and supported withdrawal from the United Nations itself and from U.N. Committees.¹⁹⁹ It has heaped invective on the three Secretaries General,²⁰⁰ and presumably believes that the Secretariat cannot be an important "neutral" organ for dispute settlement.²⁰¹ It has overlooked the Assembly's rôle as a "world forum,"²⁰² and it sees

¹⁹⁷This is not to say that Communist Chinese policy has not been specialized to particular situations. At times they have proclaimed adherence to the Charter and support for the United Nations. Cf. Chou En-lai's press conference in Somalia of Feb. 3, 1964, 7 Peking Review 14, 15 (Feb. 14, 1964). Compare this with his press conference in Cairo a year later, printed in 15 *ibid.* 8 (April 9, 1965).

Communist China has also reversed positions to support increased membership in the Security Council and ECOSOC. Chou En-lai's press conference, above. For the previous Communist Chinese position, which proclaimed the seating of Communist China a pre-condition to enlargement of the Security Council and ECOSOC, cf. 2637 SCMP 43 (1964).

¹⁹⁸Communist China's prime targets here have been Pakistan and Cambodia. A "China-Pakistan Joint Communiqué" of March 7, 1965, claimed that "the United Nations should reorganize itself in order to better reflect the balance of forces in the world and present international realities." 11 Peking Review 10 (March 12, 1965). This was not a reference to expansion of ECOSOC and the Security Council. For a similar statement in a Sino-Burmese communiqué, cf. 32 *ibid.* 30 (Aug. 6, 1965).

¹⁹⁹Liu Shao-chi, on Sept. 28, 1965, declaimed at a state banquet in honor of Prince Sihanouk:

"Recently, Cambodia withdrew from the U.N. special committee of decolonialization. This is another just and courageous action following Indonesia's withdrawal from the United Nations. It is a resounding slap in the face of the apologists for neo-colonialism as well as a protest of non co-operation against the U. S. control of the United Nations." 40 Peking Review 15, 16 (Oct. 1, 1965).

For Communist Chinese approval of Indonesia's withdrawal from the United Nations and the Specialized Agencies, see Statement of the Government of the People's Republic of China, Jan. 10, 1965, in 3 Peking Review 5 (Jan. 15, 1965); People's Daily, "Indonesia's Bold, Revolutionary Action," Jan. 10, 1965, *ibid.* 7 (Jan. 15, 1965); *ibid.* 10 (Jan. 15, 1965); 5 *ibid.* 9 (Jan. 29, 1965).

²⁰⁰Trygve Lie, the Communist Chinese claimed, was a "servile American stooge," "an instrument and accomplice of aggression for the United States," "an out-and-out American tool and jackal," and a "Wall Street majordomo from head to foot." NCNA, April 8, 1952, in 313 SCMP 2 (1952).

The Communist Chinese deemed it "necessary" to "remove Dag Hammarskjöld, executor of the imperialist and colonialist policies, from the office of U.N. Secretary General." People's Daily, Feb. 18, 1961, 2443 SCMP 32, 34.

U Thant has been thought to be "acting" as "Washington's political broker," People's Daily, "U.N.—Sanctuary for the Indian Aggressor," Sept. 14, 1965, in 38 Peking Review 14 at 15 (Sept. 17, 1965); an "agent of U. S. imperialism," People's Daily, "The Second African-Asian Conference Should be Postponed," Oct. 23, 1965, in 44 *ibid.* 8 (Oct. 29, 1965).

²⁰¹The Communist Chinese have paid little attention to the activities of the Secretariat. Adams, note 166 above, thus found no Chinese commentary on the Soviet Union's "troika" proposal. But cf. comments quoted in note 200 above.

²⁰²In Peking's view the 19th Assembly was a "farce," proving the United Nations "shamelessly" manipulated by the United States. 37 Peking Review 30 (Sept. 10, 1965). By the 20th Session the Assembly had become "a conference for opposing the revolutionary movements of the oppressed nations, and oppressed peoples . . . a conference which wilfully interfered in the internal affairs of sovereign states and a conference for pursuing the policy of American-Soviet cooperation for the domination

the Council rendered impotent by the United States veto.²⁰³ In its view the Specialized Agencies are a "trap" for the non-committed countries.²⁰⁴ Communist China, indeed, has virtually attempted to dictate terms for its own participation in the United Nations:

The United Nations must rectify its mistakes and undergo a thorough reorganization and reform. It must admit and correct all its past mistakes. Among other things, it should cancel its resolution condemning China and the Democratic People's Republic of Korea as aggressors and adopt a resolution condemning the United States as the aggressor; the U.N. Charter must be reviewed and revised jointly by all countries, big and small; all independent states should be included in the United Nations; and all imperialist puppets should be expelled.²⁰⁵

In public pronouncement Communist China has either ignored or challenged virtually every activity of the United Nations. On decolonization questions it has largely overlooked the accomplishments of the U.N.

of the world." People's Daily, "The U.N.—A Market Place for the U.S.-Soviet Political Deals," Dec. 27, 1965, in 1 Peking Review 13 (Jan. 1, 1966).

The Communist Chinese review of the 15th Assembly included these comments: "The U.N. General Assembly remains a tool of U. S. imperialism, a voting machine for it to pursue its policies of aggression and war. . . . The people of the world should in no way place their hopes for their liberation and for world peace on the United Nations which is dominated by U. S. imperialism." 2364 SCMP 40, 41 (1960).

²⁰³ *E.g.*: "As to Britain, France and the Soviet Union, although they are permanent members of the Security Council, they in fact cannot do much. Occasionally their proposals are adopted but only when they accord with or at least do not run counter to the interests of the United States." People's Daily, "Whither the United Nations," Feb. 15, 1965, in 8 Peking Review 13, 14 (Feb. 19, 1965).

²⁰⁴ Nan Han-chen, speaking at an Afro-Asian Economic Seminar on Feb. 23, 1965, declared that:

"At the same time, it must also be pointed out that so-called 'multilateral aid' through international organizations is a new trap set by the neo-colonialists to exploit the Afro-Asian countries. As is well known, the so-called International Monetary Fund, the International Bank for Reconstruction and Development (World Bank), the International Finance Corporation and the International Development Association are all 'political banks' with U. S. imperialism as their nerve centre for carrying out activities of aggression. . . . (The) debtor countries, in addition to submitting their national economic policy and planning to be 'reviewed' by the World Bank and accepting its 'supervision' over the use of such loans . . ." 10 Peking Review 16, 19 (March 5, 1965). See also Red Flag, Feb. 4, 1964, in 407 SCMM 42, 51.

Communist China has labeled the WHO "A U.S.-dominated agency conducting espionage activities under the name of health." NCNA, April 8, 1952, in 313 SCMP 2, 3 (1952).

For the Communist Chinese the League of Nations was a "League of Robbers": the "principal task of the Lytton Commission . . . was to prepare the dismemberment of China. . . ." Extract from an Oct. 6, 1932, telegram of the Chinese Soviet Government, in Schram, *The Political Thought of Mao Tse-Tung* 266-267 (1963). For contemporary corroboration of this view, *cf.* 6 Peking Review 14 (Feb. 5, 1965).

²⁰⁵ Press Conference of Chen Yi, Communist Chinese Vice Premier and Foreign Minister, on Sept. 29, 1965, in 41 Peking Review 7, 11-12 (Oct. 8, 1965). For a milder predecessor to this statement, *cf.* Chou En-lai's written responses to questions asked by Kamal Amer, 38 *ibid.* 8 (Sept. 17, 1965).

trusteeship system, the Committee of 16, and the Committee of 21.²⁰⁶ It would circumvent the world organization:

(T)he oppressed nations must not pin their hopes of liberation on the "benevolence" of the old or new colonialists or on "bestowal" from the United Nations which is manipulated by U.S. imperialism, and . . . they must rely on themselves to wage resolute revolutionary struggle. . . . "Without revolutionary violence it would be impossible to wipe out counter-revolutionary violence."

According to Khrushchov, the revolutionary people of Asia, Africa and Latin America should not and cannot themselves eliminate colonialism, but must look to the United Nations for help. . . . It is apparent that what he really means by looking to the United Nations for help is looking to the imperialists for help. The facts show that the United Nations, which is still under the control of the imperialists, can only defend and strengthen the rule of colonialism but can never abolish it.²⁰⁷

Communist China's position has been no less extreme on disarmament questions.²⁰⁸ In 1964 it refused participation in the Geneva talks and in

²⁰⁶ "Though (the Asian, African and Latin American countries) form a majority in (the United Nations), these countries cannot fully exercise their legitimate rights, and their proposals and demands are usually ignored or only perfunctorily discussed. Even when resolutions against imperialism, colonialism and neo-colonialism are adopted at their insistence, their drafts are invariably watered down or amended by the United States and its partners before they are approved. Anti-colonialist resolutions adopted after hard struggle are invariably pigeonholed." 42 Peking Review 10, Oct. 15, 1965.

See also People's Daily, Feb. 4, 1964, in 3156 SCMP 17-18 (1964); but *of.* 21 Peking Review 22 (May 22, 1964), one of the few occasions when the Communist Chinese press cited with approval actions in the U.N. Decolonization Committee.

²⁰⁷ "A Great Victory for Leninism," Red Flag, April, 1965, in 19 Peking Review 7, 9, 10; "Apologists of Neo-Colonialism," Polemic, note 164 above, 196, 197.

See also a Nov. 28, 1963, speech by Liao Cheng-chih, in 49 Peking Review 12 (Dec. 6, 1963): "To advocate the bestowing of independence by the U.N. . . . would simply mean liquidating the national-independence movement and helping U. S. imperialism in advancing its neo-colonialist policy." (p. 15); Red Flag, "What the Congolese Situation Shows," March 1, 1962, in 306 SCMM 7 (1962); People's Daily, "People of the Congo (Leopoldville), Fight on!," May 6, 1964, in 20 Peking Review 14 (May 15, 1964).

Communist China has shown itself admirably informed about the activities of the Committees of 16 and 21. *Cf.* 21 *ibid.* 22 (May 22, 1964).

²⁰⁸ ". . . universal and complete disarmament can be realized only after imperialism, capitalism and all systems of exploitation have been eliminated." "Statement by the Spokesman of the Chinese Government . . ." Sept. 1, 1963, in Griffith, note 164 above, at 371, 386. "It is wrong to consider general and complete disarmament the 'overriding task' of the world peace movement." 50 Peking Review 14 (Dec. 13, 1963).

See, generally, Adams, note 166 above; Chin, "Communist China's Attitude Towards Nuclear Tests," 21 China Quarterly 96 (1965); Halperin and Perkins, note 162 above.

However dramatic the statements of recent vintage, Peking's attitude has a long-standing base. Adams, note 166 above, writes thus of the period from 1957-1960:

"Peking evidenced little interest in this period in the Soviet concern about surprise attack, and was pointedly dubious about the possible accomplishments of an experts' meeting on the subject. Nor was Peking any more favorable to the convening of an experts' conference on the problem of detecting test ban violations." (p. 236.)

the Summit talks suggested by the Secretary General; ²⁰⁹ in 1965 it criticized a General Assembly proposal for participation in world-wide disarmament talks.²¹⁰ On more than one occasion it has called the United Nations "completely incapable of handling the disarmament question."²¹¹ It was not that Communist China was not a participant in the United Nations. The United Nations was manipulated by the United States, and the United States had no intention of disarming. Communist China's own disarmament proposals are absurd on their face,²¹² and, unlike the Soviet

²⁰⁹ "The Geneva 18-nation disarmament conference is in fact still under the manipulation and control of the United States and can in no way reflect the aspirations of the peoples. . . . We thank the U. S. Government for its generosity in not opposing China's participation in the Geneva disarmament conference but we must tell it frankly that it will not have the pleasure of our company." *People's Daily*, Nov. 22, 1964, in 48 *Peking Review* 14 (Nov. 27, 1964).

Of U Thant's proposal, the *People's Daily* wrote: "So-called talks among countries possessing nuclear weapons would in fact be a nuclear club in disguise. We will not join such a club even if an invitation is sent us together with a sedan chair." *Ibid.*

Contrast these statements with an earlier policy position: ". . . it must be pointed out that any international agreement concerning disarmament, without the formal participation of the Chinese People's Republic and the signature of her delegate, cannot, of course, have any binding force on China." Resolution of the National People's Congress Standing Committee, in 4 *Peking Review* 19 (Jan. 26, 1960).

²¹⁰ *New York Times*, Dec. 2, 1965, p. 1, col. 7.

²¹¹ *People's Daily*, "New Starting for Efforts to Ban Nuclear Weapons Completely," Nov. 22, 1964, in 48 *Peking Review* 12, 14 (Nov. 27, 1964); see also 4 *ibid.* 14 (Jan. 22, 1965).

²¹² The latest comprehensive Communist Chinese proposal reads thus:

(1) All countries in the world, both nuclear and non-nuclear, solemnly declare that they will prohibit and destroy nuclear weapons completely, thoroughly, totally and resolutely. Concretely speaking, they will not use nuclear weapons, nor export, nor import, nor manufacture, nor test, nor stockpile them; and they will destroy all the existing nuclear weapons and their means of delivery in the world, and disband all the existing establishments for the research, testing, and manufacture of nuclear weapons in the world.

(2) In order to fulfill the above undertakings step by step, the following measures shall be adopted first:

a. Dismantle all military bases, including nuclear bases on foreign soil, and withdraw from abroad all nuclear weapons and their means of delivery.

b. Establish a nuclear-weapon-free zone of the Asian and Pacific region, including the United States, the Soviet Union, China and Japan; a nuclear-weapon-free zone of Central Europe; a nuclear-weapon-free zone of Africa; and a nuclear-weapon-free zone of Latin America. The countries possessing nuclear weapons shall undertake due obligations with regard to each of the nuclear-weapon-free zones.

c. Refrain from exporting and importing in any form nuclear weapons and technical data for their manufacture.

d. Cease all nuclear tests, including underground nuclear tests.

(3) A conference of the Government heads of all the countries of the world shall be convened to discuss the question of complete prohibition and thorough destruction of nuclear weapons and the question of taking the above-mentioned four measures in order to realize step by step the complete prohibition and thorough destruction of nuclear weapons.

Halperin, note 3 above, believes "these proposals are not meant to be negotiable. . . ." (p. 67.)

After its first nuclear test, Communist China made an apparently "new" proposal:

Union's proposals,²¹³ they deny the United Nations any important rôle in the disarmament process.²¹⁴ Communist China vehemently attacked the 1963 Test Ban Treaty;²¹⁵ its actions here suggest that its participation in future disarmament conferences may significantly obstruct opportunities for limited Soviet-United States agreement on arms control.²¹⁶ In marked disregard of numerous U.N. resolutions, Communist China has proclaimed itself willing to transmit nuclear weapons information to other Socialist countries, and possibly to countries in the Afro-Asian bloc.²¹⁷

During the Korean conflict,²¹⁸ and with mounting intensity since 1956,²¹⁹ Communist China has also maligned major U.N. attempts to maintain minimum order.²²⁰ It has often opposed dispute settlement under inter-

"the nuclear powers (should) undertake *not to use* nuclear weapons. . . ." People's Daily, Nov. 22, 1964, in 48 Peking Review 12 (Nov. 27, 1964). This was to be a commitment unqualified by traditional doctrines of self-defense; from it, according to the People's Daily, would follow ineluctably the end of nuclear testing and the cessation of nuclear production. *Ibid.* at 13. Note that in early 1960 the Chinese opposed a proposed Soviet troop reduction. Zagoria, note 164 above, at 292.

²¹³ See World Law Fund, Current Disarmament Proposals 1 (1964).

²¹⁴ See, e.g., 291 SCMM 42 (Dec. 11, 1961). The McCloy-Zorin Agreement of 1961 called for an "international disarmament organization . . . within the framework of the United Nations." Its inspectors "should be assured unrestricted access without veto to all places, as necessary for the purposes of effective verification." Joint Statement of Agreed Principles for Disarmament Negotiations of the Soviet Union and the United States, Sept. 20, 1961, in World Law Fund, note 213 above, at 189, 191.

²¹⁵ Major Chinese and Soviet documents are collected in Griffith, *The Sino-Soviet Rift* at 326, 331, 340, 371 (1964); see also Griffith's text at 159-166; Chiu, note 208 above, at 102-106.

²¹⁶ At the China Arms Control Conference (July 9-19, 1964, Airlie House, Warrenton, Virginia), the participants, including both China specialists and disarmament experts, were in virtual agreement that Communist China would not conclude an arms control agreement "within the next five or ten years." Halperin and Perkins, note 162 above, at 155. See also Chiu, note 208 above, at 107.

²¹⁷ "Statement by the Spokesman of the Chinese Government," Aug. 15, 1963, in 33 Peking Review 7, 12 (Aug. 16, 1963). See also 32 *ibid.* 16, 17 (Aug. 7, 1964).

In his press conference of Sept. 29, 1965, Chen Yi had this to say of Peking's attitude toward nuclear proliferation:

"As for the peaceful use of atomic energy and the building of atomic reactors, China has already been approached by several countries, and China is ready to render them assistance. . . . China hopes that Afro-Asian countries will be able to make atom bombs themselves, and it would be better for a greater number of countries to come into possession of atom bombs." 41 *ibid.* 7, 8 (Oct. 8, 1965).

Communist China has chided the Soviet Union for its apparent interest in a "non-proliferation" agreement (*cf.* People's Daily, "The Soviet Government Once Again Exposes Itself," Jan. 30, 1966, in 6 Peking Review 14 (Feb. 4, 1966)), and has criticized Khrushchev for over-estimating the possibilities of accidental war (20 *ibid.* 18 (May 14, 1965)).

²¹⁸ *Cf.*, e.g., Whiting, note 181 above, at 80-87, 99-101, 139-143.

²¹⁹ See, generally, Adams, note 166 above.

²²⁰ Liao Cheng-chih, one of Peking's foreign policy planners, has recently stated:

"The flag of the United Nations is dripping with the blood of the peoples of Asia and Africa. Manipulated by the United States, the United Nations has become a tool of U. S. imperialism for undermining and suppressing the national-liberation movements in Asia, Africa and Latin-America. And now, through the instrumentality

national auspices, whether by discussion,²²¹ mediation,²²² observation,²²³ investigation,²²⁴ arbitration or judicial decision.²²⁵ Invariably Communist

of the so-called U.N. 'Special Committee for Peace-Keeping Operations,' the U. S. imperialists and their partners are plotting to set up a permanent U.N. force to suppress the national-liberation movements. We Afro-Asian peoples shall never tolerate the use of the United Nations by U. S. imperialism and its accomplices for their dirty deeds." 21 Peking Review 15 (May 21, 1965).

²²¹ "We favour negotiations with imperialist countries. But it is absolutely impermissible to pin hopes for world peace on negotiations, spread illusions about them and thereby paralyze the fighting will of the peoples, as Khrushchev has done." Editorial Departments of the People's Daily and Red Flag, "Two Different Lines on the Question of War and Peace," Polemic, note 164 above, at 221, 253.

In the following situations, the Communist Chinese protested proposals for or attempts at U.N. discussion of critical international issues:

Viet-Nam, July-August, 1965: 33 Peking Review 8-10 (Aug. 13, 1965).

Viet-Nam, January-February, 1965: 7 *ibid.* 19, 20 (Feb. 12, 1965).

Viet-Nam, Fall, 1964: Liu Ning-i, "The Militant Unity of China and Viet-nam," in 49 *ibid.* 26, 28 (Dec. 4, 1964).

Viet-Nam, Summer, 1964: C.P.C.C.C. Reply to the C.P.S.U.C.C. letter of July 30, 1964, in 36 Peking Review 6 (Sept. 4, 1964). (The C.P.S.U., wrote the Communist Chinese, had "aided and abetted the aggressor by actively supporting the U. S. attempt to intervene in Viet-Nam through the United Nations." *Ibid.* 7.)

Malaysia, Summer, 1964: 37 Peking Review 8 (Sept. 11, 1964).

Dominican Republic, Spring, 1964: Statement of the Government of the People's Republic of China, May 3, 1964, in 19 *ibid.* 12 (May 7, 1964).

²²² On the India-Pakistan conflict over Kashmir in September, 1965: "The so-called mediation by the United Nations is based on a report of the Secretary-General. The report itself is unfair. . . . On the Kashmir question, the United Nations has once again proved a tool of U. S. imperialists and their partners in their attempt to control the whole world." "Chinese Government Statement," Sept. 7, 1965, in 37 Peking Review 6 (Sept. 10, 1965). See also People's Daily, "U.N.—Sanctuary for the Indian Aggressor," Sept. 14, 1965, in 38 *ibid.* 14 (Sept. 17, 1965).

Of the Security Council action, the Communist Chinese wrote: ". . . (t)he U. S. Government instructed its representative to the United Nations Arthur J. Goldberg to get on the move and collaborate with the Soviet Union in manipulating the Security Council to pass two resolutions for the purpose of intervention. Both resolutions distorted the facts . . ." People's Daily, "Who Backs the Indian Aggressors?," Sept. 18, 1965, in 39 *ibid.* 13 (Sept. 24, 1965).

²²³ Cambodia-Viet-Nam border, May, 1964: opposed a U. S. proposal to send U.N. observers to investigate Cambodian charges that South Viet-Nam forces had entered Cambodian territory. People's Daily, "U. S. Imperialism Must Not Be Allowed to Lead the U.N. Into Indo-China," May 25, 1964, in 22 Peking Review 8 (May 29, 1964).

Cuba, Fall, 1962: opposed U.N. supervision of missile withdrawal from Cuba. Editorial Departments of the People's Daily and Red Flag, "Why Khrushchev Fell," Polemic, note 164 above, at 481, 485.

²²⁴ Communist China has opposed proposals for U.N. "fact-finding" missions in—the following least—the following situations:

1. Dominican Republic, Spring, 1965: 21 Peking Review 33 (May 21, 1965);

2. Viet-Nam, Fall, 1963: 42 *ibid.* 25 (Oct. 18, 1963);

3. Malaysia, 1963-1964: 3 *ibid.* 14 (Jan. 15, 1965); People's Daily "Oppose Malaysia—A Product of Neo-Colonialism, Support the Struggle of the North Kalimantan People," in 14 *ibid.* 28 (April 3, 1964);

4. Cuba, Fall, 1962: Editorial Departments of the People's Daily and Red Flag, "The Origin and Development of the Differences between the Leadership of the CPSU and Ourselves," in Polemic, note 164 above, 55, 96;

China has been sharply critical of all United Nations "police force" activities,²²⁶ whatever their composition.²²⁷ It has suspected the UNEF,²²⁸ denounced the ONUC,²²⁹ and attacked the Yugoslavs for contributing troops to the Congo operation.²³⁰ It has even chastized the Russians for their proposed "voluntary" "assessments" contributions,²³¹ and for their participation in the U.N. Special Committee on Peace-Keeping Operations:

Particularly grave is Soviet active support for the setting up of a permanent armed force of the United Nations. This means becoming a partner in organizing an international gendarmerie in the service of U.S. imperialism for the suppression of the revolutionary struggles of the peoples of the world. . . . It is absolutely clear that their so-called "support for the national-liberation movement" is false while

5. Lebanon, Summer, 1958: labeled UNOGIL an "instrument of U. S. British intervention," 1796 SCMP 42, June 20, 1958, quoted in Adams, note 166 above, at 68.

²²⁶ In 1963 the Indian Government proposed that the Sino-Indian border dispute be arbitrated by the International Court of Justice or another arbitral body. The Communist Chinese refused. See Note from the Foreign Ministry of the People's Republic of China, Oct. 9, 1963, in 42 Peking Review 9 (Oct. 18, 1963).

²²⁶ The Communist Chinese have opposed proposals for an international force in the following situations:

Viet-Nam: an Indian proposal called for an Afro-Asian force to be sent to Viet-Nam. 20 Peking Review 25 (May 14, 1965);

Laos: the Vice President of the Laotian National Assembly recommended that an international force be stationed in Laos for 10 or 15 years. 23 *ibid.* 14 (June 5, 1964);

Viet-Nam: Britain's Prime Minister Wilson proposed an "international peace force" for Viet-Nam. 28 *ibid.* 8 (July 9, 1965);

Cyprus: People's Daily, "Indonesia's Bold, Revolutionary Action," Jan. 18, 1965, in 3 *ibid.* 7, 8 (Jan. 15, 1965); see also 8 *ibid.* 16 (Feb. 21, 1964).

Cf. the Albanian Zerri Popullit article summarized in 17 *ibid.* 27 (April 23, 1965) and entitled "Soviet-U. S. Plot to Establish an International Gendarmerie."

²²⁷ It made little difference to the Chinese Communists that ONUC was composed in part of Asians and Africans. *Cf.* People's Daily, Feb. 18, 1961, 2443 SCMP 32, 34. And the Communist Chinese have virulently attacked the Soviet Union for its rôle in the Congo conflict. See Editorial Departments of the People's Daily and Red Flag, "Apologists of Neo-Colonialism," Polemic, note 164 above, 185, 199-200; People's Daily, "People of the Congo (Leopoldville), Fight On!," May 6, 1964, in 20 Peking Review 14, 15 (May 15, 1964); Red Flag, "A Great Victory for Leninism," April, 1965, in 19 *ibid.* 7, 10 (May 7, 1965).

²²⁸ "The purpose of United States in supporting the Canadian proposal is obviously to take over with the so-called emergency international force the areas in Egypt which have been occupied by Britain, France and Israel unlawfully so as to realize the vile scheme of depriving Egypt of its sacred sovereignty over Suez." Statement of the Government of the People's Republic of China, Nov. 7, 1956, quoted in Adams, note 166 above, at 59.

²²⁹ For Communist Chinese appraisal of U.N. activities during 1964, see People's Daily, "Hail the Triumphant Revolutionary Developments in the Congo (L)," June 24, 1965, in 27 Peking Review 15 (July 3, 1964); statement by Chairman Mao Tse-tung, Nov. 28, 1964, in 49 *ibid.* 5 (Dec. 4, 1965).

²³⁰ Editorial Departments of the People's Daily and Red Flag, "Is Yugoslavia a Socialist Country?," in Polemic, note 164 above, at 139. See especially pp. 162, 167-170.

²³¹ Editorial Departments of the People's Daily and Red Flag, "A Comment on the March Moscow Meeting," in 13 Peking Review 7, 9 (March 26, 1965).

their collusion with U.S. imperialism to strangle the national-liberation movement is genuine.²³²

Communist China's behavior in past multinational conferences, finally, belies the possibility that it will act constructively at the United Nations.²³³ It has caviled against having U.N. "observers" at several such conferences,²³⁴ and, in the preparatory meetings for the Second Afro-Asian Conference,²³⁵ it opposed attempts to introduce the U.N. Rules of Procedure.²³⁶ In numerous multinational conferences, including inter-Communist Party-congresses, Communist China has proclaimed its adherence to nineteenth-century notions of sovereignty,²³⁷ and has resisted majority rule—even on procedural issues.²³⁸ Six years ago the Central Committee of the Communist Party of China announced:

. . . where the fundamental principles of Marxism-Leninism are concerned, the problem of exactly who is right and who is wrong cannot

²³² 19 *ibid.* 10 (May 7, 1965). To the same effect, 20 *ibid.* 18 (May 14, 1965); 24 *ibid.* 16 (June 11, 1965); 25 *ibid.* 8 (June 18, 1965).

²³³ Communist China has sought to manipulate the membership and timing of international conferences to insure that the conferences produced preferred results. It has, for example, attempted to exclude the Soviet Union from the Second Afro-Asian Conference, principally on grounds that the Soviet Union was not an Asian state. *E.g.*, Statement of the Government of the People's Republic of China, May 30, 1964, in 23 Peking Review 6 (June 5, 1964). It also was a prime mover for postponement of the Second Afro-Asian Conference. Statement of the Government of the People's Republic of China, "China Will Not Attend African-Asian Conference Which Leads to a Split," Oct. 26, 1965, in 44 *ibid.* 5 (Oct. 29, 1965).

²³⁴ Communist China has formally protested against a UNECA representative attending an Afro-Asian Economic Seminar held in Algeria Feb. 22-27, 1965 (11 Peking Review 18 (March 12, 1965)), and against U Thant attending the Second Afro-Asian Conference (Chen Yi, Press Conference of Sept. 29, 1965, in 41 *ibid.* 7, 10 (Oct. 8, 1965)).

²³⁵ *Cf.* Chen Yi, speech at the Second Asian-African Conference Preparatory Meeting, April 11, 1964, in 16 *ibid.* 6, 8 (April 17, 1964).

²³⁶ Cheng, "Anti-Imperialism: Keynote of the Second African-Asian Conference," in 26 *ibid.* 5, 6 (June 25, 1965).

²³⁷ "The Chinese formula is 'unanimity through consultation'. . . The Communist Party of China did not accept Khrushchev's demand for majority rule at international conferences. The CPC's insistence on unanimity, which so far has neither been officially endorsed nor officially rejected by the (Communist) movement as a whole, obviously represents a claim to a veto for itself . . . and for the right to form and lead 'fractions' (combinations) within the international Communist movement." Hinton, note 174 above, at 98-99.

²³⁸ *E.g.*, World Council of Peace, Nov. 28, 1963, described by Liao Cheng-chih in 49 Peking Review 12, 15 (Dec. 6, 1963). The Chinese Communists, often finding themselves in a minority position, have sought "unanimity through consultation" at transnational conferences. *E.g.*:

(1) Various Communist Party Conferences; *cf.* Editorial Departments of the People's Daily and Red Flag, "Why Khrushchev Fell," Polemic, note 164 above, at 481, 488.

(2) Sixth World Trade Union Congress (Warsaw, Oct. 9-22, 1965); *cf.* 44 Peking Review 15 (Oct. 29, 1965).

(3) The Second African-Asian Conference; *cf.* People's Daily, "Keep Up Efforts for Success of Second African-Asian Conference," June 29, 1965, in 27 Peking Review 6 (July 2, 1965); Chen Yi, speech of April 17, 1964, quoted in 25 *ibid.* 18 (June 18, 1965).

in every case be judged by who has the majority. After all truth is truth. Error cannot be turned into truth because of a temporary majority, nor will truth be turned into error because of a temporary minority.²³⁹

3. Nationalist China as a "New" Entity

Though exhibiting many elements of continuity in authority, both internal and external, with the "Republic of China" which became an original Member of the United Nations, Nationalist China has of course undergone many changes in effective control. It is enough for present purposes selectively to compare the approximate resources and production of pre-1949 and post-1949 Nationalist China:²⁴⁰

| <i>Resource</i> | <i>Pre-1949</i> | <i>Post-1949</i> |
|-----------------------------|-----------------|-------------------|
| Land (sq. mil.) | 9,761,012 | 13,884 |
| Population | 582,603,417 | 11,883,523 |
| Coal (million metric tons) | 440,000 | 737 |
| Iron Ore (million tons) | 1,200 | almost negligible |
| Arable Land (million acres) | 240 | 7 |
| <hr/> | | |
| <i>Yearly Production</i> | <i>Pre-1949</i> | <i>Post-1949</i> |
| Coal (thousand tons) | 61,875 | 2,700 |
| Power (m.kwh.) | 5,955 | 6,000 |
| Pig Iron (thousand tons) | 1,801 | negligible |
| Cement (thousand tons) | 2,293 | negligible |

C. THE CONSEQUENCES OF CHANGE FOR PARTICIPATION PROBLEMS

To distill the critical elements from this extraordinarily complex factual situation, and to trace their legal consequences as we apply past trends in the articulation of fundamental community policies, it is essential to distinguish sharply between the Nationalist and Communist Chinese claims to participate in (1) the General Assembly and (2) the Security Council. It is equally important to determine (a) the decision-maker (the Security Council, the General Assembly, or both) which will pass on both sets of claims, (b) the criteria that will guide decision, (c) the procedures for arriving at decision, and (d) the timing of decisions on the four claims.

At the outset we should make clear that there are no past trends whose policies would govern either the Communist Chinese or the Nationalist Chinese claim to participate *in the Security Council*. Decision here must look to the basic constitutional framework of the United Nations and the major purposes of the United Nations Charter. Past initial participation

²³⁹ Quoted in Editorial Departments of the People's Daily and Red Flag, "The Leaders of the CPSU Are the Greatest Splitters of Our Times," Polemic, note 164 above, at 303, 337. A principal issue in the Sino-Soviet rift has been Chinese unwillingness to accept either Soviet leadership or majority decision. See Dallin, *Diversity in International Communism* xxix (1963).

²⁴⁰ This chart is principally derived from the following sources: Hsieh, *Taiwan-Ilha Formosa: A Geography in Perspective* (1964); Rostow *et al.*, *The Prospects for Communist China* (1954); Mancall, *Formosa Today* (1964); U. S. Bureau of Foreign Commerce, Far Eastern Division, *Investment in Taiwan (Formosa): Basic Information for United States Businessmen* (1959).

decisions for the *General Assembly*, conversely, are numerous and range along a broad continuum. At the one extreme the Assembly has solved initial participation questions by the methods of informal consensus. At the other, it has turned to the explicit criteria and rigorous procedures of the Charter's Article 4. One of our present tasks is to locate along this continuum the Nationalist and Communist Chinese claims to participate in the *Assembly*.

1. *The Communist Chinese Claim to Participate in the General Assembly*

The Communist Chinese claim to participate in the General Assembly is not likely to be accepted by informal consensus, and is scarcely governed by the policies of the Cuban, Polish or Czechoslovakian cases.²⁴¹ Myopic application of these cases, which, indeed, were not articulated decisions at all, would mean that the Communist Chinese would sit in the General Assembly without formal vote on their claim to participation. Even the most ardent supporters of the Communist Chinese claims have expected that at least a simple majority would be required to seat the Communist Chinese.

United Nations history aside, there are more important distinctions between the Communist Chinese claim and the past Cuban, Polish and Czech decisions. Change in mainland China has been more drastic. In political orientation, it has swung from the far right of the free world to the extreme left of the Communist bloc; the Poles and Czechs started from a different base, and they, together with the Cubans,²⁴² have adopted generally a pro-Soviet attitude in the Sino-Soviet controversy.²⁴³ Communist China clearly has the capacity, and has demonstrated its willingness, to subvert the principles of the Charter. Neither element was so apparent in the three other decisions. The earlier decisions, finally, did not promise the extraordinary impacts that a decision on the Communist Chinese claims is almost certain to have. They could not have ousted from the General Assembly a territorial community which has demonstrated its willingness to assume the obligations of the Charter.

By this point it should be clear that the Chinese participation question is not exclusively an initial participation question. It is something more—a question of infinitely greater consequence than the vast majority of so-called “membership” decisions. In the Chinese participation question, two territorial communities each seek a single “Member’s” General Assembly and Security Council seats. Past initial participation questions posit neither choice between such claimants nor allocation of a Security Council seat; instead they assume that one claimant seeks a single seat in the General Assembly. A General Assembly decision on Chinese participation claims may affect the distribution of “China’s” seat in both the Security Council and the Specialized Agencies. Assembly resolutions

²⁴¹ Delegates' credentials went unchallenged after the pertinent post-World-War-II revolutions. See text above, at notes 103–105.

²⁴² Indeed, it was not until the spring of 1963 that Cuba was thought to be a “socialist country” by members of the Communist bloc.

²⁴³ See Griffith, *op. cit.* note 215 above.

on "membership" questions, on the other hand, have a past notable for their inability to determine Council action.²⁴⁴ The Chinese participation question threatens lack of uniformity in seating the "Chinese" delegation in both the United Nations and the Specialized Agencies. No past initial participation question has so entangled the United Nations. As commonly formulated, the Chinese participation question promises, finally, either that one territorial community will yearly be kept outside the United Nations, or that the other will be perpetually excluded from the Organization. How unlike the genuine "membership" decisions, which invariably seek to increase responsible participation in the United Nations.

(a) The Decision-Maker.—Although the Security Council was the first to pass on the Chinese participation question, for the past fourteen years it has been virtually assumed that the General Assembly would be principally responsible for deciding on the Nationalist and Communist claims to sit both *in the General Assembly and in the Security Council*. In corollary fashion, it has also been assumed that the Security Council would have no rôle in a decision to seat either claimant *in the General Assembly*. Both assumptions rest on two propositions: (1) it has been politically expedient for both the Soviet Union and the United States to keep debate on the Chinese participation question confined to the General Assembly; and (2) "in virtue of (the Assembly's) composition . . . consideration can best be given to views of all Member States in matters affecting the functioning of the Organization as a whole. . . ." ²⁴⁵

The Soviet and U. S. tactical maneuvers have little basis in either law or community policy. Presumably the Soviet Union has chosen not to confer "Great Power" (*i.e.*, Security Council) status on initially a potential, and then an actual, competitor within the Communist bloc. Certainly it might not have been wise tactics for the Soviets to risk a Council ruling that decision on the Chinese participation question is vetoable. The United States simply has never viewed the question comprehensively, and has proceeded along lines of least effort.

It is, moreover, at the very least questionable to assert primary Assembly competence on grounds of Assembly "universality." The legal consequences of General Assembly Resolution 396 (V), the prime authoritative source of Assembly competence, are far from clear. It is relevant that each United Nations organ subscribes to the principle of auto-interpretation, that Assembly Resolution 396 (V) is only "recommendatory," and that an Assembly decision on the Chinese participation question is only to be "taken into account in other organs of the United Nations and in the Specialized Agencies." The Security Council itself has passed on the Chinese participation question. It, further, undercut the rationale of primary Assembly competence when that body rejected an amendment to its Rules of Procedure which would have required the President of the

²⁴⁴ *E.g.*, U. N. General Assembly Resolutions 35 (I); 113 (II); 197 (III); 296 (IV); 450 (VI); 620 (VII).

²⁴⁵ U.N. General Assembly Res. 396 (V).

Council to ascertain the views of all U.N. Members before the Council decided a "representation" question.²⁴⁶

Indeed, it borders on the unconstitutional for the General Assembly to be principally responsible for decision on the Chinese participation question. Articles 4, 5 and 6 of the Charter require prior Security Council approval for the admission of a "new" Member or the suspension or expulsion of a current Member. Prior Security Council approval was a principle accepted at Dumbarton Oaks, and only weakly challenged at San Francisco.²⁴⁷ Its major purpose was to insure that the Council, which was to be primarily responsible for the maintenance of international peace and security, would have a controlling voice in determining whether potential or actual Members would fulfill, or were fulfilling, their Charter obligations. Since (absent a comprehensive settlement) seating Communist China in the General Assembly will have all the important operational effects of "admission" and "expulsion," prior Security Council approval would appear a constitutional prerequisite to decision on Communist China's claim to Assembly participation. Entrusting the General Assembly with principal responsibility would thwart one of the major purposes of Articles 4, 5 and 6.

Thus it would appear sound constitutional policy for a Security Council decision to precede Assembly action on Communist China's claim to participate in the Assembly. In this way, both the "responsible" and the "universal" United Nations organs could bring their special competences to solution of the question. Most importantly, this procedure would minimize a potential lack of uniformity in the seating of "China's" delegations within the United Nations. To give the General Assembly principal responsibility for settling the Chinese participation question would be almost to guarantee that different "Chinese" delegations will sit in different organs of the United Nations.

(b) Criteria for decision

(1) *In the Security Council.*—The Chinese participation question is so much more consequential in impact than past initial participation questions that, at the very least, the modest "membership" criteria of Article 4 should govern decision on the Communist Chinese claim to participate in the General Assembly. Absent a comprehensive settlement,

²⁴⁶ Security Council, 5th Year, Official Records, Jan.-May Supp. 16-18 (U.N. Doc. S/1457 and Corr. 1) (1950).

²⁴⁷ Admission is, under Art. 4 (2) of the Charter, "effected by a decision of the General Assembly upon the recommendation of the Security Council." Goodrich and Hambro, after a survey of both the Dumbarton Oaks and the San Francisco *travaux*, conclude that "(t)here is nothing to indicate that the delegates did not intend to make a favorable recommendation by the Security Council a necessary condition to admission by vote of the General Assembly." Charter of the United Nations: Commentary and Documents 135 (rev. ed., 1949). Their conclusion is borne out by the subsequent practice of the relevant organs. In the first session of the General Assembly, Australia proposed that the Assembly "has primary and final responsibility in the process of admission." (U.N. Docs. A/C.1/23/Rev. 1 and A/C.1/23/Corr. 1.) Neither this nor a similar Argentinian proposal was accepted. Goodrich and Hambro, *op. cit.* at 136. A similar proposal, made by the United States in the Security Council in 1947, was also not accepted. U.N. Doc. S/P.V. 190.

past trends in decision would suggest that the Council should decide *not* to seat the Communist Chinese delegation. For guidance in decision, it could make no difference whether the Council looked to the stated requirements of Article 4, or instead focused on the content which Article 4 has acquired in practice. If the former is considered, the Council could reject the Communist Chinese on grounds that they are neither "peace-loving" nor "willing . . . to fulfill the obligations of the Charter." If the latter, it could refrain from seating the Communist Chinese because they are demonstrably unwilling to fulfill their international obligations to all the camps in the bi- or tri-polar world.

(2) *In the General Assembly*.—Article 4 criteria, interpreted in accordance with the recommendations above, should similarly guide General Assembly decision on the Communist Chinese claim for Assembly participation.

(c) Procedures for decision

(1) *In the Security Council*.—Past trends, when coupled with the history of the Chinese participation question, demonstrate also that a Council decision on the Communist Chinese claims for Assembly participation is not a decision on a "procedural matter," and is subject to the veto. The purposes and practice of Article 4 reinforce this conclusion: Communist China is a "new" entity for purposes of participation in the General Assembly, its perspectives and operations promise violation of Charter principles, and its claim is thus vetoable. Absent a comprehensive settlement, Article 6 dictates a similar result.

(2) *In the General Assembly*.—Past trends in decision would appear to also require that the General Assembly vote on the Communist Chinese claim to participation be by a two-thirds special majority. For the past four years the Chinese participation question has been regarded as "important" for voting purposes and thus subject to special majority approval in the Assembly. It would be irrational for the next Assembly to label the issue "not important" when the consequences of decision remain unchanged, the factual situation is unaltered, and the Communist Chinese have made more explicit their challenge to the Organization. Article 18 of the Charter, further, requires the Assembly to vote by a two-thirds majority when it admits new Members to the Organization, elects non-permanent members of the Council, suspends the rights and privileges of membership, and expels Members from the Organization. The Chinese participation question, as usually conceived, could have all four of these consequences. Seating Communist China in the Assembly would have all the significant operational effects of admitting a new Member. Upholding the Communist Chinese claim in the Assembly might importantly affect the seating rights of a permanent member of the Security Council—a matter of perhaps more consequence than the election of a non-permanent member of the Council. Seating Communist China in the General Assembly, finally, might end in the suspension or expulsion of Nationalist China. If each of the Article 18 decisions alone requires a special majority, it follows *a fortiori* that the Chinese participation question, which

combines all four in a single decision, is "important" under Article 18 for voting purposes.

2. *The Nationalist Chinese Claim to Participate in the General Assembly*

Nationalist China's claim to participate in the General Assembly falls, at the very least, within the 1961 Assembly decision to seat Syria after dissolution of the U.A.R.²⁴⁸ Just as in the Syria case, there is no question of Nationalist China's dedication to Charter principles. The procedures and criteria of informal consensus, therefore, should govern Nationalist China's claim to Assembly participation, whether it sits as "China" or under some other label.

3. *Communist China's Claim to Participate in the Security Council*

(a) Criteria for decision.—The criteria for participation as a permanent member in the Security Council are found, not in specific Charter articles or in United Nations practice, but in deliberations prior to and at the San Francisco Conference, and in the policies sought to be achieved by the United Nations Charter. At San Francisco, the Security Council was delegated "primary responsibility" for maintaining international peace and security.²⁴⁹ Its permanent members had co-operated successfully in restoring minimum order after World War II, and it was hoped that they would jointly halt aggression in the postwar world. It was not enough, in the words of Article 4, that the permanent members were "able and willing to carry out (their general Charter) obligations." They were to be capable of co-operating, and willing to co-operate, in fulfilling the Council's primary purpose, namely, the maintenance of international peace and security.

To effectuate the purposes of the Charter-framers, similar criteria should guide decision on the Communist Chinese claim for Security Council participation. Communist China is certainly a "new" entity for purposes of participating as a permanent member on the Council. Since its past behavior belies a *willingness* to co-operate in safeguarding minimum order, and, indeed, promises severe disruption of Council activities, the Council should reject the Communist Chinese claim.

(b) Procedures for decision.—Past trends would require that the Chinese participation question be regarded as "substantive" for voting purposes in the Security Council. In Article 4 practice, permanent members have had a veto over applications for membership *in the General Assembly*. How much more substantive is a claim by a "new" entity for participation *in the Security Council*, particularly when that "new" entity has virtually proven its willingness to obstruct Council actions to maintain minimum order.

Article 6 of the Charter, further, reads as follows:

A Member of the United Nations which has persistently violated the Principles contained in the present Charter may be expelled from the

²⁴⁸ See text above at p. 691.

²⁴⁹ U. N. Charter, Art. 24(1).

Organization by the General Assembly upon the recommendation of the Security Council.

It would be extreme irrationality to expel from the Organization a territorial community which, as a permanent member of the Council, has consistently *upheld* Charter principles, and to seat in its place an entity, "new" for United Nations membership purposes, whose past actions promise behavior that will persistently *violate* the Principles of the Charter. A Council decision on the Chinese participation question thus is of considerably more consequence than Council decisions on past initial participation questions, and is, *a fortiori*, a decision requiring the concurring votes of all the permanent members of the Council.

4. *Nationalist China's Claim to Participate in the Security Council*

Capacity and willingness to promote maximum order are the two important criteria for guiding decision on Nationalist China's claim to participate in the Security Council. We would note that the Nationalist Chinese have capability, as indicated in one of the larger and better equipped military establishments in Asia, and willingness, as demonstrated by past support for United Nations action. In the absence of a new comprehensive solution, a presumption might be indulged—as it has been—in favor of continuity of authority.

5. *The Timing of Decision*

Of all the issues in the Chinese participation question, there is none more complex than the timing of decision. Within the United Nations itself, the General Assembly and the Security Council must decide on four separate claims. Yet there are no established procedures which would require simultaneous presentation of these claims, and there is absolutely no assurance that the responsible organs will reach congruent decision at the same time. Disparity in seating "China's" delegations may be the inevitable result.

Given these procedural ambiguities, the power alignments of both claimants, and the possibility that Nationalist China could be permanently excluded from the United Nations, past experience might suggest that the Chinese participation question be settled by a variation of the "package deal." If both claimants were to apply to become "new" Members in the Assembly, it is certain that their applications would be traded one against the other. How much more important are prior negotiations when two claimants, each aligning with opposing poles in the bi- or tri-polar world, seek seats both in the Assembly and in the Security Council.

VI. RECOMMENDATIONS

Past trends in practice, the values at stake, and the disasters certain to ensue from unthinking resort to current procedures, all demand that the Chinese participation question be settled by advance negotiations. We

would recommend that a fifteen to twenty-member group,²⁵⁰ with delegates from the two Chinese claimants sitting without vote in advisory capacity,²⁵¹ frame solutions to the problem, which should be submitted both to the General Assembly, the Security Council, and the Specialized Agencies. The General Assembly vote "approving" a particular solution should be by two-thirds majority. The Security Council vote should be "substantive," and the permanent members of the Council, except perhaps for Nationalist China as a party in interest, should retain their veto. The Specialized Agencies should approve the plan by special majority. If the solution should call for Charter amendment, Members should deposit their ratifications with all possible speed.

Any particular solution might simply reallocate "China's" present seats, or create "new" participation rights in the United Nations,²⁵² or tie a decision on the participation question in with a general political settlement.²⁵³ One "reallocation" plan might place Communist China in

²⁵⁰The group should consist of the permanent members of the Security Council other than China, and Members representative of the major voting blocs in the United Nations. All Members of the United Nations should be entitled to submit solutions to the Chinese participation question, and to comment in writing on solutions being considered by the group. We recommend that the group generally hold public meetings; yet we note that it may be advisable for the group to iron out the intricacies of particular plans in private sessions.

²⁵¹The two Chinese claimants should be entitled to submit proposals themselves for solving the Chinese participation question, and should have rights to comment on and criticize proposals submitted to the committee.

It is not inconceivable that either or both of the Chinese claimants would refuse to participate in the 15-to-20 group which we recommend. Given the novelty of the Chinese participation question, we would suggest, in these circumstances, that a refusal to participate in the discussions be regarded as an unwillingness to fulfill one's international obligations.

²⁵²This is a proposal not unknown in the history of international organization. Prior to Germany's admission to the League as a permanent member of the Council in 1926, Poland, Brazil, Spain, China and Belgium all claimed permanent membership in the Council. Eventually, the Assembly's First Committee proposed a plan which created a new form of "semi-permanent" membership. In principle non-permanent members of the League Council could not be re-elected after their term expired. The First Committee's proposal relaxed this rule, and permitted the Assembly, by a two-thirds majority vote, to declare not more than three states "re-eligible" for Council membership. No limit was placed on the number of times a state might be re-elected. Presumably Poland, Spain and Brazil would qualify for "re-eligibility," and thus would assume a position in the League intermediate between the Great Powers and the rank and file of League Members. See, generally, League of Nations Official Journal, 7th (Ordinary) Assembly, Spec. Supp. 45 (1926); and Walters, *A History of the League of Nations* 316-327 (1952).

When Georgia and Armenia submitted applications for League membership, they were permitted to take part in the social and economic activities of the League, even though their applications were not approved.

²⁵³This proposal, too, is not without precedent in the history of international organization. When Abyssinia, and later Estonia, Latvia and Lithuania, applied for League membership, they were seated only after appropriate declarations—in the former case to eliminate slavery and traffic in arms, and in the latter three, to adhere to the provisions of the Minorities Treaties. See, generally, Hudson, "The Members

the Security Council and General Assembly and seat Nationalist China (as "Taiwan") in the General Assembly.²⁵⁴ Another plan might leave vacant the "Chinese" seat on the Security Council,²⁵⁵ or grant that seat to a responsible representative of the African, Asian, and Latin American nations.²⁵⁶ "New" participation rights for the Security Council might include permanent participation *without* the veto, participation terminable on special majority vote by the General Assembly, or participation only on issues affecting peace and security in Asia. "New" forms of General Assembly membership could permit participation in Assembly debate *without* the right to vote, participation only on selected issues, or participation with special rights to election to the Security Council as a non-permanent member.²⁵⁷ Terms of a related political settlement²⁵⁸ might include, in illustration of the kinds of relevant commitment, such items as the following:

- (1) Mutual renunciation of force in the Taiwan Straits;
- (2) Communist Chinese guarantee of the independence of Taiwan indefinitely or for a specified number of years;
- (3) Settlement of the Sino-Indian border controversy by an international arbitral body, and/or creation of an international force, financed by Communist China and India, which would patrol the Sino-Indian border (or other borders thought necessary) which adjoin China;
- (4) Communist Chinese guarantee that it will not support revolutionary parties in the less-developed countries;
- (5) Sanctions—diplomatic, cultural, economic and military—which the international community would apply on violation of a related political settlement.

of the League of Nations," 16 *Brit. Yr. Bk. Int. Law* 130 (1935), and Graham, *The League of Nations and the Recognition of States* (1933).

²⁵⁴ Cf. the Dec. 8th, 1964, speech by Ireland's Foreign Minister Aiken to the General Assembly. *New York Times*, Dec. 9, 1964, p. 6, col. 3.

²⁵⁵ The vacancy might be only temporary, and Communist China might be seated as a permanent member once it gave evidence that its perspectives and operations were consonant with the principles and purposes of the Charter.

²⁵⁶ India has been suggested. *E.g.* Wilcox and Marcy, *Proposals for Changes in the United Nations* 307 (1955).

²⁵⁷ *E.g.*, prior to 1955, Italy participated in deliberations of the Trusteeship Council without being a Member of the U.N. Although it was without the vote when either Somalia or general trusteeship problems were discussed, Italy could (1) include items in the agenda, (2) request special sessions of the Trusteeship Council, (3) submit draft resolutions and propose other motions or amendments without a second, and (4) append its views to the reports or recommendations of the Trusteeship Council. Italy, moreover, had access to the private meetings of the Council, and it was to be notified of the first meeting of each session of the Trusteeship Council and of the provisional agenda. Italy, however, was not permitted to participate in the work of the subsidiary organs of the Council. Trusteeship Council Res. 310 (VII) entitled "Question of the Full Participation of Italy in the Work of the Trusteeship Council."

²⁵⁸ For an earlier and still relevant projection and evaluation of alternatives, see Dean, "United States Foreign Policy and Formosa," 33 *Foreign Affairs* 360 (1955).

We would recommend that the fifteen-to-twenty-nation "drafting" committee devise solutions to the Chinese participation question *only after* it has comprehensively analyzed all the characteristics of the two claimants, and *only after* it has related these characteristics to proposed rights of participation in specific United Nations organs. The principles of universality and responsibility should be at the base of every proposed solution.²⁵⁹ In particular, every plan should grant a seat on the Security Council—in the United Nations system the organ of primary responsibility for safeguarding international peace and security—only to a claimant demonstrating both willingness and capability of promoting maximum order.²⁶⁰

²⁵⁹ See text above at p. 682.

²⁶⁰ It is obvious that Communist China could not, without substantial modification of its foreign policy objectives, adhere to a "compromise" settlement designed by the drafting committee, if the compromise permits separate representation for Taiwan in the United Nations. This, however, should not preclude the drafting committee from reaching such a compromise. It is for the world community to spell out the terms of participation in the United Nations, and not for Communist China to dictate terms to the United Nations. Rejection of the world community-approved settlement plan would be a virtual demonstration that Communist China is unwilling to fulfill the terms of the Charter.

We note that both France and the United Kingdom have employed variants of a "two China" policy. Both countries have consulates in Taiwan; France has an ambassador, and the United Kingdom a chargé d'affaires in Communist China. Communist China has, however, unceasingly rejected proposals for "compromise," particularly those in the form of a "two-Chinas" solution. Cf. Chen Yi, June 20, 1964, Press Conference: People's Daily, "The Chinese People are Determined to Liberate Taiwan," June 27, 1965, in 27 Peking Review 9 (July 2, 1965); Commentator, "Don't Fall into the Imperialist Trap," People's Daily, July 9, 1964, in 29 *ibid.* 35 (July 17, 1964) (Malawi had invited representatives of both "Chinas" to its independence celebrations); "India Aids U. S. 'Two Chinas' Plot," 27 *ibid.* 23 (July 3, 1964); "What is the Sato Government up to in the U.N.?", 51 *ibid.* 6 (Dec. 18, 1964); "Eisaku Sato's Daydream," 49 *ibid.* 30 (Dec. 4, 1964); "New Delhi's Attempt to Create 'Two Chinas' Denounced," 47 *ibid.* 18 (Nov. 20, 1964) (India had invited delegations from both "Chinas" to the 22nd International Geological Conference).

At a June 20, 1964, press conference, Foreign Minister Chen Yi declared:

"We are convinced that U. S. imperialism's manipulation of the United Nations will sooner or later break down and the Chiang Kai-shek gang will sooner or later be ousted from it. The lawful seat of the People's Republic of China in the United Nations will sooner or later be restored. This, of course, takes time. We are not in a hurry, we can wait. Under no circumstances will we barter away principles and sovereignty; any attempt to make the restoration of China's seat in the United Nations a bait for our acceptance of the 'two Chinas' scheme is doomed to failure." 26 *ibid.* 6, 7 (June 26, 1964); People's Daily, "China's Sovereignty Over Taiwan Brooks No Intervention," May 12, 1964, 20 *ibid.* 6 (May 15, 1964); People's Daily, "On Establishment of Diplomatic Relations Between China and France," Jan. 29, 1964, 5 *ibid.* 10 (Jan. 31, 1964); Chou En-lai, Press Conference, Pakistan, Feb. 25, 1964, 10 *ibid.* 18 (March 6, 1964); Chou En-lai, interview with Bernard Tesselin, Feb. 3, 1964, 7 *ibid.* 14 (Feb. 14, 1964).