

THE ECONOMICS OF NATIONAL PRIORITIES

HEARINGS
BEFORE THE
SUBCOMMITTEE ON
PRIORITIES AND ECONOMY IN GOVERNMENT
OF THE
JOINT ECONOMIC COMMITTEE
CONGRESS OF THE UNITED STATES
NINETY-SECOND CONGRESS
FIRST SESSION

PART 2

AUGUST 9, 10, AND 11, 1971

Printed for the use of the Joint Economic Committee



U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1971

65-504

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402 - Price 65 cents

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THE ECONOMICS OF NATIONAL PRIORITIES

WEDNESDAY, AUGUST 11, 1971

CONGRESS OF THE UNITED STATES,
SUBCOMMITTEE ON PRIORITIES AND
ECONOMY IN GOVERNMENT OF THE
JOINT ECONOMIC COMMITTEE,
Washington, D.C.

The subcommittee met, pursuant to recess, at 10:05 a.m., in room 1202, New Senate Office Building, Hon. William Proxmire (chairman of the subcommittee) presiding.

Also present: John R. Stark, executive director; Loughlin F. McHugh, senior economist; Richard F. Kaufman, economist; Lucy A. Falcone, research economist; Walter B. Laessig and Leslie J. Bander, economists for the minority.

OPENING STATEMENT OF CHAIRMAN PROXMIRE

Chairman PROXMIRE. The subcommittee will come to order.

In fiscal year 1971 over \$16.3 billion of the conventional forces portion of our defense budget was allocated for Asian contingencies. The conventional forces portion of the budget amounted to \$44 billion in that year. This figure, of course, does not include the amounts spent on strategic forces. Neither does it include the costs of the war in Vietnam.

The \$16 billion conventional forces figure for Asia was second only to the \$19 billion spent in Europe. Obviously, if Vietnam costs were added to the other military expenditures in Asia, those outlays would represent the largest portion by far in the conventional forces portion of the defense budget.

Recently serious questions have been raised about our official views of the People's Republic of China. It is clear that much of our foreign and military policies in East Asia and the budgetary expenditures associated with them are a response to the threat we perceive from the People's Republic of China.

What is the nature of that threat? Are we spending too much or too little to meet it?

These issues stand out vividly in light of President Nixon's recent announcement that he intends to make an official visit to Peking next year.

These matters and others are the subject of today's discussion with three of the country's foremost experts on China and Asian affairs.

Jerome Cohen is professor of law at Harvard University, a graduate of Yale Law School and Yale College. He is a specialist in East Asian legal studies, particularly China. He has published a number of books

in this field and is about to complete a study of China and international law.

John Fairbank received his Ph. D. from Oxford. He has been on the faculty of the Department of History at Harvard since 1936 where he is presently Higginson professor of history. He has been history director of the East Asian Research Center since 1959.

Mr. Fairbank was with the Coordinator of Information and the OSS in Washington in 1941 and 1942. He was Special Assistant to the American Ambassador in Chungking, China, in 1942 and 1943; with the Office of War Information, Far Eastern Operations, Washington, D.C., in 1944 and 1945; Director of the U.S. Information Service in China in 1945 and 1946, and he has been a member of the National Commission, United States-China Relations since 1966.

Mr. Fairbank is the author of several books, including: "The United States and China," "Modern China," "A Bibliographical Guide to Chinese Works, 1898-1937," "A Documentary History of Chinese Communism," "Trade and Diplomacy on the China Coast," "China's Response to the West," "East Asia: The Great Tradition," and "East Asia: The Modern Transformation."

Allen S. Whiting received his Ph. D. from Columbia. He was former Director of Research and Analysis, Far East, Department of State, from 1962 to 1966. He was Deputy Counsel General, Hong Kong, from 1966 to 1968. He has taught at Northwestern University, Michigan State, and Columbia. He was with Rand Corp. from 1957 to 1961. He is the author of "China Crosses the Yalu," "Soviet Policies in China, 1917 to 1924," coauthor of "Dynamics of International Relations," and other works.

Mr. Whiting is currently a professor of political science and an associate with the Center for Chinese Studies at the University of Michigan.

Gentlemen, we are honored to have you present.

Mr. Cohen, will you proceed.

I might say I would appreciate it if you would hold your remarks down to 10 or 15 minutes and then your statement will be printed in full in the record.

STATEMENT OF JEROME A. COHEN, PROFESSOR OF LAW, HARVARD UNIVERSITY

Mr. COHEN. Thank you, Mr. Chairman, I am very pleased to have this opportunity.

I do have a prepared statement that I would like to submit for the record, but I will be relatively brief in my informal presentation.

My presentation addresses itself to the two principal questions that your committee is seeking to investigate. One is, How do we assess the threat of China? And the second is, How do we respond to that threat?

I would say with respect to the first question that for over 20 years our assessment of China has reflected misperceptions, myth and mistakes. Briefly, one can tick off what almost constitutes a litany of mistakes and misrepresentations. At the very outset, as a number of people have pointed out, the U.S. leaders sought to depict what was going on in the Chinese revolution and the Communist takeover in

1949 as the installation of a Soviet satellite in China. At one point Dean Rusk called China a "Slavic Manchukuo."

Secondly, when North Korea invaded South Korea in June 1950, the United States perceived this as being largely a Chinese-sponsored invasion and used this as the pretext for intervening our fleet and eventually posting our military forces between Taiwan, which had been recognized by us as part of China until then, and mainland China. We didn't realize, or apparently we didn't care, that this would be seen not only by people elsewhere in Asia, but in China specifically, as intervention and aggression against China's territorial integrity, even though we previously had rejected that course of action for precisely this reason.

We eventually made an even more profound mistake, or perhaps one of equal magnitude, when we decided to send troops across the 38th parallel toward China's border with North Korea on the Yalu River, despite the most repeated Chinese warnings that China would deem itself threatened if we sought to bring down the North Korean regime. Again, what we underestimated was China's determination to defend the Chinese revolution, which was then only a year old, having been established in 1949. We didn't apparently take into account that the Chinese remembered western intervention against the Bolshevik Revolution in 1918, that the Chinese remembered that Japan's invasion of China started with annexation of Taiwan in 1895 and proceeded in 1910 with annexation of Korea, and then proceeded north into Manchuria. To the Chinese, as Professor Whiting's able study of 1960 shows, the United States seemed to be repeating the Japanese pattern of infringing on China's security and territorial integrity.

Well, we ended the Korean war, and China adopted a policy of peaceful existence from 1954 to mid-1957. And at that time we continued to justify our rebuff of China's repeated initiatives to have peaceful coexistence, not merely with the United States but with the world, by involving the myth of aggressive China. After all, the United Nations, which had been a party to the Korean conflict, had condemned China as the aggressor. To the Chinese, however, this looked rather odd since China's troops had not taken part in North Korea's attack on South Korea and since they only entered the war, as I indicated earlier, after the United States advanced toward the Chinese border.

Well, the period of peaceful coexistence didn't really win any great gains for Peking. And in 1957 she shifted to a more militant policy. In part, as I think Professor Whiting's prepared statement today will also support, that policy reflected Peking's awareness of covert U.S. sponsorship of many hostile acts toward China. Peking's new emphasis on liberating Taiwan by force in 1958 during the offshore islands crisis, which should have been perceived as renewal of the civil war, was transformed by us into an international problem because we said Taiwan was no longer part of China. We ignored the fact that it was U.S. sponsorship of Nationalist China's initiatives in the offshore island area that brought out Peking's renewed hostility.

We also saw that when Peking suppressed the Khamba tribesmen's rebellion in Tibet in 1958-1959 we sought to portray that as an international problem, even though in 1950 there had been international acceptance of China's reincorporation of Tibet, which had earlier

been part of China; moreover, we were covertly sponsoring and supporting that revolt against Chinese rule.

Overt hostilities in the Sino-Indian border in 1962 also have been part of the "aggressive China" indictment that we heard so much about in the late 1950's and early 1960's, as Professor Whiting's prepared statement again, I think, supports. The Sino-Indian problem derived in part from China's concern about covert and hostile activities against China in the area of Tibet and elsewhere along its Indian border.

So, by the early 1960's this country was haunted by a specter—and it was a specter—of an aggressive, militant China. And it was this specter that made possible the mobilization of public support in this country for our tragic Vietnam intervention.

Today, in self-justification, some of the former high officials of the Kennedy and Johnson administrations argue that although in 1971 we all recognized that China is no longer expansionist in the conventional border-crossing sense, it was reasonable in 1965 to see China as being aggressive, and therefore it was reasonable to challenge China's so-called indirect aggression in Vietnam by sending American combat troops there.

In other words, in 1965 they saw the existence of an Asian Communist conspiracy whose capital was Peking, China, but today, of course, they say it has disappeared.

This reminds me in a curious way of the story about the lad, who at 18 thought his parents were quite ignorant about the affairs of the world and was amazed by the time he reached 21 at how much his parents had learned in 3 years. I think the original image of China was inaccurate; but it would be equally inaccurate, however, if we were to see China as wholly benign today. Yet, in neither case can we justify the indictment that China is uniquely aggressive and therefore justify the tremendous expenditure of resources by the United States, not merely in money and other resources, but also in people, in order to combat and contain this "aggression."

I think "the establishment" is now coming to realize that the image of "aggressive China" has been grossly exaggerated, a caricature of the Chinese image, and that it has been a tremendously expensive misperception—one that has cost us very dearly. Even if one turns to so-called indirect aggression and Chinese subversion, one finds that the Chinese have allocated relatively insignificant amounts to helping wars of national liberation abroad, and that their propaganda, weapons, training, and other forms of support for these wars of national liberation have not been very successful. We shouldn't exaggerate the danger that any healthy society in Asia that is led by genuinely nationalistic leaders with some popularity would have from this kind of a threat from China.

Finally, with respect to nuclear weapons, I think it is fair to say that Chou En-lai was not grossly exaggerating the other day in his interview with Mr. Reston when he described China's nuclear attainments as merely in the stage of experimentation. Not in our lifetimes will we find the Chinese nuclear threat comparable to the Soviet or the American nuclear threat to other powers. Even with China's predominantly rural nature, its urban shelter program, and its perhaps greater ability than other powers to absorb nuclear attacks,

it would be the height of irrationality for Peking to resort to nuclear weapons. Indeed Peking has repeated its request that other powers join it in a no-first-use pledge regarding nuclear weapons. I would urge that we very seriously consider a response of a favorable nature with respect to talking about under what conditions could we indeed make a no-first-use pledge.

I think we have to understand that Peking wants nuclear weapons because, although it talks about itself as a middle power that wants to group itself with the junior powers in the world against the super-power conspiracy of the United States and the Soviet Union, Peking really has aspirations for equality with the United States and the Soviet Union. One has to understand a great deal about the Chinese past—and I am sure Professor Fairbank will mention this emphasis upon equality, upon reciprocity, upon being treated not as some junior member of the world community, but as a leading power—to understand why Chinese leaders want to have equality and therefore want nuclear weapons, which represent the ticket to equality with the superpowers.

Before leaving the subject of our assessment of China and our mistakes in the past, I think it is important to question whether we are now currently laboring under another misapprehension about the nature of China's policies and China's determination to achieve equality in the world. President Nixon has repeatedly announced the belief that we can normalize relations with the People's Republic of China while still maintaining our friendly relations with and our defense commitment to, the Republic of China on Taiwan.

Now, perhaps this is simply something that has to be said at the moment in order to quiet the obviously unquiet rightwing elements in both political parties. Perhaps it is, of course, possible that the President's proposed trip to China is simply a domestic political maneuver to distract us from our international domestic problems. Yet my hope is that the President is profoundly serious about believing that he may succeed in normalizing relations with China. But if he is, I think we have to realize that the Chinese are not kidding when they say we can't have our cake and eat it too, that we cannot recognize two governments as being the legitimate Government of China and that we will have to break diplomatic relations eventually with the Nationalist Government on Taiwan if we hope to normalize relations, as I think we have to do for our security position, with the People's Republic on the mainland. Otherwise the President's journey for peace, I fear, will in Shakespeare's famous phrase, "keep the word of promise to our ear and break it to our hope."

Finally, Mr. Chairman, I want to talk briefly about responding to this threat.

I think the threat is exaggerated. I say the threat is based on misperception and perhaps deception of the American public to a certain extent, and exaggerated fear. Now, how should we respond? Obviously if we are really going to write a new chapter in Sino-American relations we are going to have to normalize relations. We are also going to have to recognize that there is a legitimate basis for Peking's claim that Taiwan is Chinese territory and to go back to our pre-June 27, 1950, position that it is part of China's territory. And we are going to have to implement the vague prescriptions of the Nixon doctrine in

a way that will respond to both Peking's and Washington's perceptions of their legitimate security interests.

I am not a specialist on military affairs, and I won't burden the committee with my remarks on this subject. But I am a specialist on international law and I would like to conclude my testimony with a few remarks on its relation to our political-military problems with China.

By adopting a new attitude toward international law, the United States could help significantly to reduce Sino-American tensions.

I believe our present attitude can be summarized as one scholar, Earl Ravenal, did recently, by saying that this Nation behaves according to the principle that we have a privileged purpose that we must impress upon the rest of the world. I think that has been obvious in our relations with China. Let me simply illustrate it by two recent examples.

Last week in the New York Times it was reported that the United States, in order to facilitate the President's trip to China, would discontinue flights over China by our manned SR-71 spy planes and our unmanned reconnaissance drones. We would continue our satellite reconnaissance because that did not take place in China's airspace but above it, and therefore it was not provocative. Now, certain administration sources have denied that we have ever flown SR-71's over China, saying that we have overflown North Korea with them. But they concede, of course, that we have flown our unmanned drones into China on reconnaissance missions.

Now, on the face of things this looks like a very enlightened thing to have done. We suspended these overflights in order to eliminate the possibility of another U-2 fiasco such as the one that in 1960 canceled the Eisenhower-Khrushchev conference. But what virtually no one seems to recognize is that this very announcement implicitly concedes that in former years the United States has been violating China's territorial air space. This is contrary to the accepted rules of international law.

This is no news to Peking, of course. It has issued almost 500 protests against this sort of behavior and it has shot down a number of our drones. One can imagine the outrage that American leaders and American public opinion would feel if Chinese military aircraft were repeatedly violating our airspace. But somehow it seems right to Americans that the United States should systematically be violating the airspace of China, and not merely China, but also North Vietnam, North Korea, Cuba, and other Communist states. We want them to abide by the rules of the international game that say invading airspace is out of line. And yet we expect them to tolerate our failure to observe the same rules.

Similarly, we castigate China for refusing to observe the principles of nonintervention in the affairs of other states, and we have sought to rationalize our intervention in Vietnam on the ground that we were combating this kind of Chinese subversion, this "indirect aggression" I mentioned earlier. And yet we tend to ignore the evidence that enterprising journalists and scholars uncover from time to time of the extent to which our own Government has engaged in hostile activities of a covert nature—not merely propaganda—against the People's

Republic, as in Tibet, and in sponsoring Nationalist raids against the Chinese.

Last week the Washington Post reported that the United States has just ordered the CIA to stop sending into China Lao tribesmen whom we have been using to infiltrate into China for a variety of purposes. Previously, high administration officials not only in public but in private have denied that these raids have been continuing since the Nixon administration took office. They conceded they were going on earlier. It has become very clear now that it is not only Peking and Moscow that have been fostering subversion in behalf of a universalistic ideology.

Our ideology is different from theirs. I prefer it. But the question is, does that really justify us and not them in covert departure from the rules? Even if, as it appears, the Chinese Communists regard international law as an instrument of policy to be adopted and used when desirable, but to be ignored when necessary, we shouldn't overlook the extent to which this attitude of theirs reflects their perception of how we and others play the game.

I could go on at length, but I will simply tick off other instances in which they see us as having manipulated international law to our interests.

I have mentioned our overnight change on the legal status of Taiwan. One can also go back to the U.N. uniting for peace resolution in 1950, where we changed the role of the General Assembly far beyond what was contemplated at the time the United Nations Charter was adopted. Of course, the Chinese regard the label of aggression placed on them during the Korean War as being inappropriate. We held up a truce in Korea for well over a year because of a new interpretation we grafted upon the 1949 Geneva Convention with respect to prisoners of war. We announced in 1954 that we were wrong in 1950 in saying that there was no veto in the Security Council on the question of China's representation.

I was glad, by the way, to see that Secretary Rogers appears to be retreating from that position and saying that at least the United States will not assert a veto on China's representation in the Security Council.

In addition to this manipulation of the rules, we seem to be continuing, as I have indicated, covert violations. My own college classmate, who has been in a Chinese prison for almost 20 years, was engaged in CIA air drop operations against China, which we have denied.

We have also used meteorological balloons over China as an excuse for getting reconnaissance information. And we have used foreign fishermen and other means of getting data inside Chinese territorial waters.

The Chinese also haven't ignored how we play the game in international law elsewhere in the world, not only in Vietnam but also, for example, in the Bay of Pigs and with respect to the overthrow of the Arbenz regime in Guatemala.

The Dominican Republic in 1965 is a beautiful case. The State Department legal adviser, Mr. Meeker, then said that, while it is true that one could argue from a mechanical, legalistic point of view that we may not have complied with all the rules of international law,

when properly viewed one could see our action in the Dominican Republic as another chapter in the creative development of international law. Well, that is fine for domestic public opinion, but if you are looking at it from the point of view of Peking and other capitals, it doesn't look very persuasive.

So I am hoping, Mr. Chairman, that our recent cessation of hostile ground penetration of China and our recent cessation of the overflights into China's airspace, represent not merely some tactical decision to facilitate and assure the President's trip to China, but represent more than that—a new policy of dealing with the Chinese, one that is based upon respect for China's territorial integrity, respect for the other forms of international law, and respect for the principle of reciprocity. I think if we adopt such a policy and combine it with a more realistic and less fearsome assessment of China's capabilities and intentions, we will be making a substantial contribution to the relaxation of tensions in China, to our own security, and to the conservation of our own human and material resources.

Thank you, Mr. Chairman.

Chairman PROXMIRE. Thank you very much, Mr. Cohen.

(The prepared statement of Mr. Cohen follows:)

PREPARED STATEMENT OF JEROME A. COHEN

HIGHLIGHTS OF THE PREPARED STATEMENT

1. President Nixon's professed belief that the United States will be able to establish diplomatic relations with the People's Republic of China while retaining diplomatic relations with the Republic of China on Taiwan, may well represent the most recent example of persistent American failure to understand the outlook, experience, and determination of China's Communist leaders. For 22 years, Peking has consistently insisted that it will never establish diplomatic relations with any government that maintains diplomatic relations with the Chiang Kai-shek regime.

2. American policymakers should adopt a more realistic and less fearful assessment of China's capabilities and intentions. Mao's China has not been expansionist in the conventional border-crossing sense, its success in subverting other countries has been limited, and its nuclear weapons are unlikely to pose a serious threat.

3. The United States has frequently violated international law in its relations with China. It will be important to determine whether the recent cancellation of illegal overflights and ground penetrations of China represents merely a temporary gesture to facilitate President Nixon's trip to Peking or a new American policy of dealing with China on the basis of reciprocity and respect for territorial integrity and other rules of international law.

TEXT OF THE PREPARED STATEMENT

Mr. Chairman and members of the subcommittee, I am happy to have this opportunity to appear before you to discuss the importance of China to the allocation of our national resources, especially those relating to defense.

The topic is vast, and our time is short. I understand that the subcommittee will hear from other witnesses and will include in the record the statements of specialists who cannot personally appear here. I will therefore concentrate my initial presentation upon certain aspects of the two principal questions that confront our China policy: How should we assess the People's Republic of China? How should we respond to it?

I. Assessing China

For more than 20 years our assessment of the new Chinese Government has been characterized by misperceptions or self-deception. American policymakers have persistently misunderstood, or at least misinterpreted to the American public, the nature of events in China. In 1949-50 they sought to deny that the

Chinese Communist revolution was an authentic Chinese phenomenon. Following the line of Chiang Kai-shek's repudiated Kuomintang, our leaders portrayed the People's Republic of China (PRC) as a Soviet satellite—a "Slavic Manchukuo," as Assistant Secretary of State Dean Rusk put it at the time.

Shortly afterward, they held the Chinese responsible for North Korea's invasion of South Korea, despite the fact that Peking's forces were not initially involved, and invoked the Korean conflict as a justification for American intervention in the Taiwan Straits. For the 5 previous years, the Truman administration had recognized that Taiwan was Chinese territory, and only months before the Korean conflict began, it had publicly rejected sending the 7th Fleet and our military to defend Taiwan, on the ground that this would be intervention in a civil war. Immediately following the outbreak of hostilities in Korea, however, President Truman announced that Taiwan was not Chinese territory after all, and our spokesmen began to belabor Peking for refusing to agree to abandon the use of force in what had overnight, according to our reinterpretation of the facts, become an international conflict.

The administration soon compounded this profound blunder with another of equal magnitude. It ignored repeated and formal Chinese warnings that if American troops crossed the 38th parallel in an effort to bring down the North Korean regime, China would be forced to intervene. Our leaders believed that the People's Republic was bluffing and would not dare to risk the slaughter that General MacArthur predicted would await its army.

They badly misjudged new China's military and political strength, as well as its distrust and hostility toward the United States. They failed to understand that, to the Chinese Communists, who had yet to consolidate their power at home, who were cognizant of Western intervention in Soviet Russia in 1918, and who had just experienced American intervention in Taiwan, the United States, by advancing toward the Chinese border, appeared to be repeating Japan's design to conquer China via Taiwan, Korea, and then Manchuria. Thus, the American advance constituted a grave threat to China's security and created a sense of immediate danger that impelled China to send "volunteers" to meet what was perceived to be aggression by the United States.¹

After an armistice was concluded in Korea, Peking, despite its continuing and substantial grievances against the United States, made persistent efforts to apply to Sino-American relations the Bandung spirit of "peaceful coexistence" that generally marked its foreign policy in the mid-1950's. President Eisenhower and Secretary Dulles were equally persistent in rebuffing virtually all of these initiatives, and rationalized these rebuffs to the American people by continuing to depict the PRC as evil incarnate, an aggressive devil that had been so declared by the United Nations General Assembly for its intervention against U.N. forces in Korea.

Peking's policy of "peaceful coexistence" failed to achieve either a detente with the United States or a weakening of the American military position in Asia, which, if anything, seemed to be expanding. When in the late 1950's Peking began to pursue a more militant anti-imperialist policy, it became correspondingly easier for Washington to foster the aggressor image. In 1958 Peking launched a campaign calling for the completion of the Chinese civil war through "liberation" not only of the Nationalist-occupied offshore islands of Quemoy and Matsu but also of Taiwan. Although both the Communists and the Nationalists understandably regard Taiwan as Chinese territory, Peking's threat to take the island by force was labeled "aggression." In 1959 Peking suppressed a revolt by Khamba tribesmen in Tibet, which had been reincorporated into China in 1950 with the acquiescence of the world community. Although Tibet is generally regarded as Chinese territory and although the United States appears to have played a covert role in stimulating revolt there, Peking's suppression of that revolt was included in the indictment against it.

When in 1962 serious fighting broke out on the Sino-Indian border, another count was added to the indictment, for Washington promptly adopted the view that Peking had been the aggressor. It has taken almost a decade for scholarship to provide a more accurate evaluation of the complex origins of the brief Sino-Indian conflict now admirably analyzed in Neville Maxwell's recent book,²

¹ See Tang Tsou, "America's Failure in China, 1941-1950" (1963), ch. 13; and Allen S. Whiting, "China Crosses the Yalu" (1960), ch. 8.

² Neville Maxwell, "India's China War" (1970).

just as it took a decade before Professor Whiting's excellent study gave us a balanced understanding of China's decision to enter the Korean conflict.³

In the early 1960's, however, the spectre of aggressive China haunted our land. It was this spectre that made possible the mobilization of public support for our tragic Vietnam intervention, and the highest officials of the Kennedy and Johnson administrations frequently invoked it. Today, in self-justification, some of these former officials argue that, although in 1971 China is not expansionist in the conventional border-crossing sense, in 1965 it was, and that it was therefore reasonable to commit U.S. combat troops to Vietnam in 1965 in order to contain the "Asian Communist conspiracy whose capital is Peking, China."

This reminds me in a curious way of the story—attributed to Mark Twain—about the lad who at 18 thought his parents were ignorant, but who at 21 was amazed at how much they had learned in 3 years. Other former officials are now beginning to concede that they exaggerated the danger of Chinese expansionism in the mid-1960's, just as they underestimated the tenacity with which the Vietnamese Communists were prepared to fight for national independence.

The myth of aggressive China has cost us dearly, but at last "the establishment" is coming to realize what some observers have long maintained—that China is very unlikely to engage in conventional military expansionism for the foreseeable future. Moreover, even Peking's resort to indirect aggression through encouragement of wars of national liberation is now increasingly perceived to be far more limited than its rhetoric and not very successful. China is a vast, poor, underdeveloped country; it has enormous internal problems that will absorb the bulk of its energies for generations.

Of course, China's Communist leaders will continue to preach their own version of the Marxist-Leninist challenge to the bourgeois state system, and, within the limits of China's capabilities, seek to translate this revolutionary ideology into action. But the record of more than two decades indicates that they are unlikely to allocate a significant proportion of their scarce resources to subversion abroad and that the propaganda, training, supplies, weapons, funds, and other means of support with which they provide foreign insurgents are unlikely to undermine governments whose leaders earn the confidence of their peoples as reasonably effective exponents of national regeneration.

If our leaders have acquired a more sophisticated appreciation of China's capabilities and intentions regarding conventional and subversive warfare, their assessment of China's achievements in developing nuclear weapons is less clear. Dean Rusk's nightmare of "a billion Chinese armed with nuclear weapon's may linger on in Washington as we move into a period when the People's Republic begins to deploy ICBM's. Yet we would be foolish to retain exaggerated fears of China's nuclear prowess. In our lifetimes China cannot hope to approach the nuclear strength of either the United States or the Soviet Union, and even when one takes into account China's predominantly rural character, its dispersed industries and its urban air raid shelter program, it would be the height of irrationality for Peking to use nuclear weapons. There is little evidence that it plans to, and a good deal of evidence that it does not.

Although it purportedly is content to be just a middle power that is rallying other middle and smaller powers against the nuclear giants, Maoist China has aspirations for great power status and, like Gaullist France, has regarded nuclear weapons as the price of admission to the club. Because of China's traditional greatness, its "century of humiliation" at the hands of imperialism prior to World War II; and its present rivalry with both the United States and the Soviet Union, the proud, nationalistic leaders of the People's Republic have felt a need to attain political and psychological equality with the superpowers. Nuclear weapons are expected to speed them toward that goal.

Before leaving the subject of our assessment of China, I think it important to call attention to what may be the current administration's most important illusion about China—its professed belief that the United States will be able to establish diplomatic relations with the People's Republic while retaining its diplomatic relations with the Republic of China on Taiwan. Early this year, in his second state of the world message, President Nixon reaffirmed our defense commitment to the Chiang Kai-shek regime, foreshadowed our decision to pursue a two-China policy at the United Nations and stated that our "honorable and peaceful association" with Taipei need not constitute an obstacle to normalization of relations with Peking. Subsequent to the dramatic announcement of his

³ See footnote 1.

plan to visit China in order to seek normalization, the President, according to the Nationalist Chinese Ambassador in Washington, reassured Generalissimo Chiang that the United States intended "to honor its defense treaty commitments to the Republic of China and to maintain the continuing friendship with her."

If the President persists in this position, his "journey for peace" will, in Shakespeare's famous phrase, "keep the world of promise to our ear, and break it to our hope." As I have explained in my testimony before that Senate Committee on Foreign Relations on June 25, and in a forthcoming article in "Foreign Affairs," it is very unlikely that Peking will agree to establish diplomatic relations unless, at a minimum, the U.S. severs diplomatic relations with Taipei and withdraws recognition from the government there. Perhaps the President understands this and is engaging in either a diplomatic maneuver that will eventually lead to normalization on terms Peking will accept or a domestic political maneuver that will temporarily distract us from his difficulties in coping with our other international and internal problems. But his optimism may well represent the most recent example of American failure to understand contemporary China's outlook, experience, and determination to attain the national unification and sovereign equality that have so long eluded modern Chinese governments.

II. Responding to China

If, in the 1970's, we are really going to write a new chapter in Sino-American relations, we must succeed in establishing diplomatic relations with Peking. This may require us not only to recognize it as the only legitimate Government of China but also to acknowledge, implicitly if not explicitly, that Taiwan is Chinese territory and that the United States, at some point if not immediately, will cease its intervention in the Chinese civil war. According to Premier Chou En-lai's recent interview with American graduate students, China may also insist, as a prerequisite to normalization, that all American military forces and installations be withdrawn from both Indochina and South Korea and that it receive reassurances against the revival of Japanese militarism that it sees taking place with Washington's encouragement.

Indeed, Peking appears to desire the eventual withdrawal of the entire American military presence in Asia. Although the Nixon doctrine contemplates the reduction of American forces in Asia, obviously Washington and Peking can be expected to differ about the extent and timing of the reduction, the extent to which our commitments in Asia should commensurately be scaled down, and the extent to which our continuing commitments can be made credible through enhanced support for the military forces of Asian allies, greater strategic mobility of American forces stationed outside of Asia, and the threat of nuclear weapons. Plainly enough, how to implement the vague prescriptions of the Nixon doctrine in a way that will respond to both Peking's and Washington's perceptions of their legitimate security interests will be one of the major challenges of the decade.

I am not a specialist in military affairs and will not burden the subcommittee with my views on our security posture in Asia. I do, however, have some familiarity with international law and would like to conclude my testimony with a few remarks on its relation to our politico-military problems with China, for by adopting a new attitude toward international law the United States could help to reduce Sino-American tensions.

Our present attitude toward international law and China reflects our overall foreign policy, which, as Earl C. Ravenal put it, is based on "the principle that this Nation has a privileged purpose that it must impress on the rest of the world."⁴

Let me illustrate what I mean by reference to a recent New York Times report that, in order to avoid any incident that might interfere with President Nixon's forthcoming visit to Peking, the administration has suspended flights over China by manned SR-71 spy planes and unmanned reconnaissance drones. American reconnaissance satellites will continue their missions over China, it was reported, because such missions are considered relatively unprovocative in view of the fact that they take place well above China's airspace.⁵ Certain administration sources, while admitting that the SR-71 has been used to overfly North Korea, have

⁴ Earl C. Ravenal, "The Political-Military Gap," *Foreign Policy*, No. 3 (summer 1971), p. 40.

⁵ William Beecher, "U.S. Spy Flights Over China Ended To Avoid Incident," *New York Times*, July 29, 1971, p. 1.

denied its use over China, but even they concede that the drones have until recently been entering China's airspace.⁶

On the face of things, the suspension of whatever reconnaissance flights have been taking place in China's airspace seems like a statesmanlike act that will eliminate possibility of repeating the 1960 U-2 fiasco that canceled the Eisenhower-Khrushchev summit conference. What virtually no one seems to recognize is that announcement of the suspension of flights implicitly confirms that the United States has for years been systematically violating Chinese airspace contrary to accepted rules of international law. This is no news to Peking, of course. Indeed, it has issued almost 500 protests against such infractions, and it has shot down a number of drones.

One can imagine the outrage of American officials and public opinion if Chinese military aircraft were repeatedly violating our airspace. Yet somehow it seems right to Americans that China—and North Vietnam, North Korea, Cuba, and other Communist states—should abide by the rules of the world community while tolerating our failure to do so, unless, of course, for reasons of expediency we choose to honor the rules on occasion.

Similarly, we have castigated China for refusing to observe the principle of nonintervention in the affairs of other states, and we have sought to rationalize our massive application of violence in Indo-China as a response to Peking's "indirect aggression." Yet we tend to ignore the evidence that enterprising journalists and scholars uncover from time to time of the extent to which our own Government has engaged in covert hostilities—not merely propaganda—against the People's Republic, as in Tibet and in sponsoring Nationalist raids against the China coast. Last week the Washington Post reported that the United States has just ordered an end to CIA-sponsored penetrations of China by Lao tribesmen, again in order to sweeten the negotiating environment.⁷ Previously, high administration officials—not only in public but also in private—had repeatedly denied that these operations were taking place. It is clear that Peking and Moscow are not alone in fostering subversion in behalf of a universalistic ideology, but our ideology is different from theirs and, to us, seems to justify our covert departures from the rules.

It, as it appears, the Chinese Communists regard international law as an instrument of policy to be used when useful, to be adapted when desirable, and to be ignored when necessary, we should not overlook the extent to which this attitude reflects their perception of how others play the game. The topic deserves detailed treatment; brief reference to a few more of the PRC's legal experiences with the so-called leader of the imperialist camp should leave no doubt about its importance.

I have already mentioned the Truman administration's legal legerdemain in reversing its earlier position that Taiwan is Chinese territory. In the fall of 1950, in an effort to frustrate the consequences of Soviet vetoes in the Security Council, the United States persuaded the General Assembly to adopt the uniting for peace resolution, a significant departure from the original understanding of the United Nations Charter and one which could not square with the PRC's fundamentalist principles of constitutional interpretation.

After the U.N. General Assembly declared the PRC an aggressor in 1951, negotiation of the Korean armistice further confirmed the Chinese in their belief that their opponents regarded international law merely as a tool of foreign policy. Although neither the United States nor the People's Republic had yet adhered to the 1949 Geneva Convention relative to the treatment of prisoners of war, by mid-1952 each had stated that for purposes of the conflict it would, with certain reservations, be bound by provisions of the convention. One of those provisions, article 118, stated that "Prisoners of war shall be released and repatriated without delay after the cessation of active hostilities." This language was in contrast to that used in article 109, which provided for the obligatory return of seriously sick or injured prisoners prior to cessation of hostilities but which went on to state that no such prisoner "may be repatriated against his will during hostilities."

The Chinese argued for what they claimed to be a literal construction of article 118, taking the position that after cessation of hostilities all prisoners were to be returned without exception. Again the Americans adopted a "policy-oriented" interpretation, claiming that humanitarian considerations required

⁶ Michael Getler, "CIA Patrols Into China Said Halted," Washington Post, Aug. 6, 1971, p. 1.

⁷ *Ibid.*

an interpretation of the article that would authorize states to refuse to repatriate a prisoner against his will.

Secretary Dulles proved even more willing than Secretary Acheson to suit international law to American convenience. For example, in 1950, when the United States was confident of its voting strength in the Security Council, it had maintained that the question of Chinese representation was procedural; by 1954, however, the United States' view was that this had become a substantive matter subject to veto.

What must have been especially infuriating to the Chinese was Dulles' sanctimonious posturing about international law. In 1954 for example, the PRC announced that two Americans, John Downey and Richard Fecteau, had been convicted of espionage and sentenced to life imprisonment and 20 years, respectively. According to the opinion of the Supreme People's Court and the evidence subsequently displayed, the Americans had been CIA agents whose plane had been shot down in northeastern China in late 1952 while they had been making contact with Chinese anti-Communists whom they had previously organized and dropped into China. The United States responded to the Chinese announcement with a strong note of protest, and, in the Dulles tradition, an even harsher press release that branded the convictions "a most flagrant violation of justice" based upon "trumped-up charges." These men, it was claimed, were civilian personnel, employed by the Department of the Army in Japan, who had been lost on a flight from Korea to Japan. Their "continued wrongful detention," the release said, "furnishes further proof of the Chinese Communist regime's disregard for accepted practices of international conduct."⁸

The Peking press had a field day attacking factual allegations made in behalf of the two Americans. The Chinese asked some embarrassing questions. If they were employees of the Army, was it not unusual that no records to this effect could be found in Tokyo, where they were supposed to have been based? Why did the Defense Department claim that the men had been "authorized passengers on a routine flight from Seoul to Japan in a plane which was under military contract to the Far East Air Force," while a Far East Air Force spokesman claimed that the men had hitched a ride on a civil air transport and "for some still unexplained reason" it was not disclosed that the men were on board when the plane vanished? And why had the Christian Science Monitor reported that the family of one of the men understood that he was engaged in intelligence work? The United States has never admitted the truth of the PRC's assertions, even though it has been an open secret that Downey and Fecteau were actually CIA agents, and even though such an admission, coupled with an expression of regret, would give them what would seem to be their best chance of immediate release.

China has also rebutted other efforts to deny American penetration of Chinese airspace for intelligence-gathering. In 1956 China joined other Communist states in challenging the United States for having sent military reconnaissance balloons over their territory on the pretext of conducting meteorological research. Chinese scholars pointed out that on the same day that the U.S. Navy declared that the balloons had carried no cameras, the State Department admitted that the balloons had carried cameras but claimed that they had been installed merely to photograph cloud conditions. Although Secretary Dulles stated that it would be "quite accidental" if the cameras picked up anything significant on the ground, Peking maintained that they photographed China's rivers, cities, railroads, harbors, and airfields. Similarly, in 1962 Peking ridiculed arguments that U-2 overflights of mainland China were solely the responsibility of the Chinese Nationalist regime on Taiwan, pointing out that our Government supervised the maintenance and use of these planes and admitted that it obtained intelligence from their activities.

China has been equally sensitive to covert intelligence operations conducted in its coastal waters and on the ground. In 1958, for example, it meted out prison sentences to Japanese fishing boat officials for collecting military data in behalf of American intelligence organizations. And in the early 1950's a number of Fulbright students, businessmen, priests, and other Americans residing in China were convicted of espionage, and, after their return to this country, some of these people admitted their unlawful activity.

⁸ For references to these and other illustrations, see Jerome Alan Cohen, "Chinese Attitudes Toward International Law—And Our Own," in J. A. Cohen (ed.), *Contemporary Chinese Law* (1970), pp. 282, 287-291; and "Comments," *Proceedings of the American Society of International Law*, 1969, pp. 19-23.

Time precludes discussion of the legal disputes to which the 1955 Sino-American agreement on the repatriation of civilians gave rise; suffice it to say that the Chinese were careful to link their own incomplete performance under the agreement to antecedent acts of bad faith by the Americans. Nor can I do more here than to emphasize that the dexterity with which the United States has applied international law elsewhere in the world—as in rationalizing and prosecuting the war in Vietnam, overthrowing the Arbenz regime in Guatemala, organizing the Bay of Pigs invasion, and intervening in the Dominican Republic in 1965—has done little to moderate the PRC's jaundiced view of international law.

According to the Chinese classics, when the superior man is treated in what he thinks is an unreasonable manner, he is supposed to attribute the difficulty to his own personal failings and to examine his own behavior to find the source of the problem. Although hardly a panacea, were we to adopt such an attitude toward the Chinese, we might take a truly important step in the "journey for peace" of which the President has spoken.

Perhaps the recent cancellation of illegal overflights and ground penetrations of China will amount to more than a temporary gesture designed to facilitate the President's trip. I hope that it signifies the beginning of a new policy of dealing with China on the basis of reciprocity and respect for territorial integrity and other norms of international law. If we adopt such a policy and if we combine with it a more realistic and less fearful assessment of China's capabilities and intentions, we will be making a substantial contribution to the relaxation of tensions in Asia, to our own security and to the conservation of our human and material resources.

Chairman PROXMIRE. Mr. Fairbank, pleased proceed.

**STATEMENT OF JOHN K. FAIRBANK, PROFESSOR AND DIRECTOR,
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Mr. FAIRBANK. Mr. Chairman, I agree with practically everything Mr. Cohen said.

I would like to look back a little bit and begin with the point that President Nixon's visit to Peking is part of a general trend toward greater contact with China. And this kind of contact cannot be handled by purely economic and military means. It will require academic, cultural, educational and informational means on a much larger scale than heretofore. Since these latter means are a great deal cheaper than the usual military and economic means, this trend can benefit the American taxpayer.

Historians look back at past cases to get a longer view of our experience. In Chinese historical studies we try to take account of the psychology of the Chinese people. In the new and as yet neglected field of American-East Asian relations, we study the values and attitudes of the peoples on both sides of the Pacific and how they interact.

The first point revealed by such studies is that the Chinese attitudes and values are very different from those of the Americans. Their war aims and peace aims are both different. We have recently found that the Vietnamese psychology, values, and attitudes are different than we thought, and for this reason our firepower has not had the effect we expected it to have in Vietnam. We have been fighting people who used to be Confucians and Buddhists and are now claiming to be Communists, whereas we ourselves have not been any of those things. How could we expect to understand their psychology?

I suggest that just as man is a creature of habit, so nations are creatures of history. One way to foresee their future conduct is to look at how they have behaved in the past. As we prepare to deal with China, what has been the Chinese record, first of all, as a military power?