

## 第一題 (50 分)

On February 21, 2000, the Government of the People's Republic of China (PRC) issued a White Paper entitled "The One-China Principle and the Taiwan Issue." In this Paper, the Chinese government summarized its position on the legal status of Taiwan as follows:

"I. The basis for one China, *de facto* and *de jure*

The one-China principle has been evolved in the course of the Chinese people's just struggle to safeguard China's sovereignty and territorial integrity, and its basis, both *de facto* and *de jure*, is unshakable.

Taiwan is an inalienable part of China. All the facts and laws about Taiwan prove that Taiwan is an inalienable part of Chinese territory. In April 1895, through a war of aggression against China, Japan forced the Qing government to sign the unequal Treaty of Shimonoseki, and forcibly occupied Taiwan. In July 1937, Japan launched an all-out war of aggression against China. In December 1941, the Chinese government issued the Proclamation of China's Declaration of War Against Japan, announcing to the world that all treaties, agreements and contracts concerning Sino-Japanese relations, including the Treaty of Shimonoseki, had been abrogated, and that China would recover Taiwan. In December 1943, the Cairo Declaration was issued by the Chinese, US and British governments, stipulating that Japan should return to China all the territories it had stolen from the Chinese, including northeast China, Taiwan and the Penghu Archipelago. The Potsdam Proclamation signed by China, the United States and Britain in 1945 (later adhered to by the Soviet Union) stipulated that "The terms of the Cairo Declaration shall be carried out." In August of that year, Japan declared surrender and promised in its instrument of surrender that it would faithfully fulfill the obligations laid down in the Potsdam Proclamation. On 25th October, 1945, the Chinese government recovered Taiwan and the Penghu Archipelago, resuming the exercise of sovereignty over Taiwan.

On 1st October, 1949, the central people's government of the PRC was proclaimed, replacing the government of the Republic of China to become the only legal government of the whole of China and its sole legal representative in the international arena, thereby bringing the historical status of the Republic of China to an end. This is a replacement of the old regime by a new one in a situation where the main bodies of the same international laws have not changed and China's sovereignty

and inherent territory have not changed therefrom, and so the government of the PRC naturally should fully enjoy and exercise China's sovereignty, including its sovereignty over Taiwan.

Since the KMT ruling clique retreated to Taiwan, ... it ... has always remained only a local authority in Chinese territory. .... ”

Please write a legal opinion, from the perspective of international law, commenting on the position taken by the Chinese government as stated above. Your opinion could be written in either Mandarin Chinese or English.

第二題(50 分)

T 國為島嶼所組成國家，其西則面臨 C 國，兩國間有海峽相隔，該海峽通為福氣海峽，其南北寬度不一，最寬部分 80 哩，最窄部分僅 50 哩。在兩國間有 T 國島嶼 P 島，P 島離 T 國最近距離為 15 哩，離 C 國則有 60 哩，島嶼四周海域生物資源豐富，是重要漁業產地，但因海流與歷史因素，除 P 島人民外，C 國人民在 1980 年之前，亦經常在離 P 島四周水域五哩外海域捕魚，T 國於 1980 年宣布設立 200 哩專屬經濟區，但並未嚴格執法，C 國人民持續在該十哩外海域捕魚。然因漁業資源持續惡化，1983 年時 T 國表示將嚴格執法，並於離岸 15 哩處逮捕 C 國漁民。為因應此一新局勢，C 國政府乃於 1984 年宣布設立 200 哩專屬經濟區，表示 C 國人民在本國專屬經濟區內有捕魚權利，在與 T 國完成海域劃界前，將保護本國人民在國際法下合法權利，C 國並立即派遣軍艦前往 C 國人民經常遭逮捕海域保護漁民。相同地，T 國為因應此一發展，除積極籌備海域劃界談判工作外，並思考宣布：(1) 所有 C 國船舶通過福氣海峽必須事先通知 T 國，且所有潛水艇通過福氣海峽除需事先通知外，亦必須浮出水面並展示旗幟；(2) 禁止所有 C 國軍艦通過 T 國與 P 島間之海峽，並規定所有 C 國船舶通過該海峽必須獲得 T 國事先同意。(3) 在 P 島向西 24 哩內宣布基於國家安全 (national security) 理由禁止所有 C 國船舶進入；(4) 禁止所有 C 國潛艇進入 T 國領海。

假設 T 國與 C 國均為聯合國會員國，亦均為《海洋法公約》締約國。且 T 國政府諮詢你對上述措施合法性問題，請根據國際海洋法為 T 國政府提出法律意見。