

**The Dynamic Presidency and the Evolution of
Constitutional Law in China**

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Abstract of thesis entitled:

The Dynamic Presidency and the Evolution of Constitutional Law in China

Submitted by Zhang Runhua

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It is widely-accepted that the constitutional office of Chinese president has undergone dramatic changes since its establishment in 1954, to its abolition in 1975, and its revival in 1982. This has been commonly attributed either to the importation of the Russian model, or the personal influences of the CPC's leaders Mao Zedong and Deng Xiaoping, or political considerations, such as the need for a head of state. This thesis questions these general, yet sometimes contradictory, account and quests for more coherent explanations for those twists and turns in the evolution of the office of president.

By pioneering an all-around examination on legal and political development of the Chinese presidency since its origin through different historical stages from both normative and positive aspects within the framework of the party-state, it is concluded that the Chinese presidency has evolved from a traditional Chinese title into a governmental position, and then a state institution that has a constitutional appearance of a Western semi-presidency. However, it has functioned politically in a Stalinist

party-state with Chinese characteristics, whose candidate has by far been produced according to the CPC's step-by-step succession rules designated by the paramount leaders and real political decision-making power has mainly not only been limited by these succession rules, but also decided by his role and status within the CPC's supreme collective decision-making body. Underlined such decades of constitutional evolution and political dynamics have been the changing foreign influences and local demands on China. As China becomes more globalized and its traditions of "rule of man" gradually die out, law and politics surrounding this office has been more compatible, thus giving rise to a nascent rule of law.

Adopting historical, legal and comparative methods and incorporating knowledge and findings from multiple disciplines, this thesis not only explores political implications of those constitutional provisions and amendment regarding the Chinese presidency, constitutional significance of the CPC's political practices of decision-making such as Mao Zedong's "power of last say", his idea of "two fronts", his controversial abolition of the chairmanship, Deng Xiaoping's idea of "the core of leadership", and "diplomacy of the head of state" by Chinese presidents, thus negating the mainstream constitutional and political idea that the Chinese president is (or should be) the head of state of China, but also sheds new lights from the institutional perspective on the on-going academic discussions about the situation of rule of law in China. Since China is a great Eastern and

developing country “building socialism with Chinese characteristics”, this thesis also contributes to research in areas such as cold war history, the socialist government system and legal development in developing countries.

摘要

普遍认为，中国国家主席自1954年设立以来，经历了被废除和重新设立的曲折发展过程。这通常被归因于移植的苏联模式，或者中共领袖的影响，包括毛泽东和邓小平，或者出于政治考虑，例如国家需要一个元首等。但是，本文质疑这些论述过于宽泛，而且有时相互冲突，寻求更连贯的解释，并探讨“法治”在中国的作用和前景。

通过全面分析在现行的党国体制框架内，中国国家主席从起源到各阶段在法制规范和政治实践两个层面的历史演变过程，本文认为：因应不同的国内外形势和自身需要，在宪法制度的层面，国家主席从一个中国的传统称谓，移植入前苏联的苏维埃模式，经过制宪者的“中国式改造”，并借鉴西方国家的某些宪政措施，逐渐演变成一个类似西方半总统制的独立的个人制的行使特定宪法职能的国家机构；在政治实践中，国家主席运作于具有“中国特色”的斯大林式的党国体制内，其候选人选受制于执政党内部的继承规则，包括由党主席和“领导核心”提名，“二线制”和逐步接班的做法等，国家主席本人的实际政治决策权主要的既受制于这些继承规则，更取决于他在执政党内最高集体决策层的地位和角色，即“核心”或者“非核心”；数十年的发展历史表明，国家主席的法律职能与其政治实践在背离中不断磨合、接近，并随着中国不断融入全球化，以及人治传统的逐渐淡出，孕育出初步的“法治”。

本文采用历史研究、比较研究、法律解释等方法，利用法学、政治学、历史学、外交学等多个领域的知识和研究成果，既分析了有关国家主席的

宪法条文和修正案的政治影响，也探讨了诸如毛泽东的“最后决定权”、“二线制”、“主席存废之争”、邓小平的“领导核心”、“元首外交”等政治做法的宪政意义，从而否定了国家主席即“国家元首”的主流宪政观点；并从国家机构的研究视角为分析中国法治状况提供了新的内容。此外，由于中国本身兼具东方文化、社会主义以及发展中大国的特质，本文也有用于其他诸如冷战史、社会主义国家体制、发展中国家的法制发展等相关领域的研究。

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Abbreviations

CEC	Central Executive Committee
CMC	Central Military Commission
CND	Council of National Defense
Comintern	Communist International
CPC	Communist Party of China
CPCCC	Central Committee of the Communist Party of China
CPGC	Central People's Government Council
CPPCC	Chinese People's Political Consultative Conference
CSR	China Soviet Republic
CWIPB	Cold War International Project Bulletin
GS	General Secretary
KMT	Chinese Nationalist Party
NPC	National People's Congress of the People's Republic of China
NPCSC	Standing Committee of the NPC
PCC	Political Consultative Conference
PRC	People's Republic of China
PSC	Political Bureau Standing Committee of the CPC
ROC	Republic of China
SSC	Supreme State Conference
USA	United States of America
U.S.S.R.	Union of Soviet Socialist Republics

Introduction, Existing Researches and Writing Arrangement

Chairmanship and presidency of the PRC

Despite that it is presumed by the author that readers of this essay have acquired a fair knowledge about Chinese history and history of the Communist Party of China (CPC), it would be better to make a brief account about the historical development of chairman, chairmanship and presidency of the People's Republic of China (PRC) before relevant discussion is made.

In 1949, the People's Republic of China was founded within the mainland China. According to the Organic Law of the Central People's Government of the PRC, the Central People's Government Council consisted of a chairman (hereafter refer to Chinese "Zhuxi") and six vice-chairmen. The CPC chairman Mao Zedong was elected by the first Plenary Session of the Chinese People's Political Consultative Conference (CPPCC) as that chairman.

Five years later, the PRC convened its first National People's Congress (NPC) and adopted its first constitution (hereafter referred to as "the 1954 constitution") which provided an office of the chairman of the PRC in the section II of chapter two. Again Mao Zedong was elected to take such an office. However, after officially assuming that office in 1954, Mao Zedong could not wait for the end of his term to declare that he did not want to take that office any more. In the end, he did not take a second term and Liu Shaoqi

was elected in 1959 as the second chairman of the PRC.

In 1965, Liu Shaoqi was elected again by the third NPC to take a second term in this office, but was purged out of office in 1966 soon after the Cultural Revolution started. He was declared to be removed from the chairmanship by the CPC in 1968. Ever since then the office of PRC chairman had been vacant and it was not until 1972 that the vice-chairman Dong Biwu started to exercise its power and function in the capacity of “Deputy Chairman”. When the 1954 constitution was replaced by a new one in 1975 (hereafter referred to as “the 1975 constitution”), the office of chairman of PRC was abolished. After that, another short-lived constitution made in 1978 (hereafter referred to as “the 1978 constitution”) followed the suit.

It was not until 1982 when a fourth constitution was made that the chairmanship was revived. Noticeably, in this new constitution (hereafter referred to as “the 1982 constitution”), the Chinese title “Zhuxi” was officially translated into “president”, not its English equivalent “chairman” as had done in those previous four constitutional documents. Ever since then, this change of English translation has been followed and the presidency of the People’s Republic of China has been taken successively by Li Xiannian from 1982 to 1988, Yang Shangkun to 1993, Jiang Zemin to 2003 and Hu Jintao since 2003 to date.

In 2004, a piece of constitutional amendment was adopted by the tenth NPC, providing the president with a new function to “engage in activities involving

state affairs”¹. This is the first time that the functions and powers of the presidency have ever been revised since the promulgation of the 1982 constitution.

Existing researches and questions

As indicated in the brief history of PRC chairmanship and presidency outlined in the above, they have been consistently named in Chinese as “Zhuxi” (“chairman”, in English), not “Zongtong” (“president”, in English), which may imply that they can be different from the Western presidency in spite of the recent change of its English translation. If so, a question would easily arise: what makes the PRC “presidency” different from the Western one? As various researches have been made by constitutional lawyers and political scientists both at home and from abroad, and provided us brilliant findings and excellent insights into the constitutional-making history, legal status, powers and functions, constitutional accountability and political aspects regarding PRC chairmanship and presidency, as well as controversies around them, they deserve close examinations before we attempt to answer that question.

Constitutional making of PRC chairmanship and presidency

Constitutional lawyers have studied the historical development of PRC

¹ See *Zhonghua Renmin Gongheguo Xianfa Xiuzheng An* [Amendment to the Constitution of the People's Republic of China] (adopted at the second session of the Tenth National People's Congress on March 14, 2004, and published for enforcement by the announcement of the National People's Congress of the People's Republic of China on March 14, 2004), art 28.

chairmanship and presidency and it has been accepted generally that such decades of evolution can be divided into several periods according to the time when relevant constitutional documents providing such an office have been effective, which are the 1949 Common Program period as the first one, the 1954 constitution period as the second one and the 1982 constitution period as the third one.² Besides, the history of PRC chairmanship and presidency can be traced far back into the 1930s, because the Chinese title “Zhuxi” for the chairmanship provided by the 1954 constitution was inherited from that of the China Soviet Republic established by the CPC in 1931³. Therefore, the historical development of PRC chairmanship and presidency includes four periods all together.

Based on this classification, scholars have further explored the constitutional making history of PRC chairmanship and presidency in these four periods, mostly focusing on the last two, i.e., the 1954 constitution period⁴ and the 1982 constitution period⁵ respectively.

(1) The CPC and constitutional making of PRC chairmanship and presidency.

² See, respectively, Xu Chongde (Ed.), *Xianfa Xue* [Study on Constitutional Law] (Beijing: Gaodeng Jiaoyu Chubanshe, 2005), at 455; Wei Dingren, Gao Chaoying and Fu Siming, *Xianfa Xue* [Study on Constitutional Law] (Beijing: Beijing Daxue Chubanshe, 2004), at 531-534; Dong Heping, *Xianfa Xue* [Study on Constitutional Law] (Beijing: Falv Chubanshe, 2007), at 336; Hu Jinguan and Han Dayuan, *Zhongguo Xianfa* [Chinese Constitutional Law] (Beijing: Falv Chubanshe, 2007), at 392.

³ For example, the title “Zhuxi” (chairman, in English) is inherited from the China Soviet Republic. See Cai Dingjian, *Xianfa Jingjie* [Explanation on the Constitution] (Beijing: Falv Chubanshe, 2004), at 36.

⁴ See Xu Chongde, *Zhonghua Renmin Gongheguo Xianfa shi* [Constitutional History of the People's Republic of China] (Fujian: Fujian Renmin Chubanshe, 2003); Han Dayuan, *1954 Nian Xianfa Yu Xin Zhongguo Xianzheng* [The 1954 Constitution and New China's Constitutionalism] (Hunan: Hunan Renmin Chubanshe, 2004).

⁵ Xu Chongde, *ibid.*

As observed, all these four constitutional making process have been initiated by the CPC who always offered the first constitutional draft, including those constitutional revisions⁶; the CPC's proposals, especially its leaders' ideas, have been very crucial to this office. For example, during the making process in 1954, it was under the leadership of the CPC's chairman Mao Zedong that the CPC first suggested a constitutional draft with an office of chairman in 1954⁷; he also insisted that the chairmanship not be the head of state⁸. Again in the constitutional making in 1982, it was Deng Xiaoping who supported to revive the chairmanship; similar to Mao Zedong, Deng Xiaoping also directed the new presidency be more nominal and personally drafted relevant constitutional provisions on the power and function of the new presidency.⁹

Whereas these historical discoveries help us to better understand how the CPC and its leaders envisioned the chairmanship and presidency in those critical moments, and how their proposals had been transformed in relevant constitutional-making processes and ultimately put down in those constitutional documents, there still remain questions unanswered. For example, why had Mao Zedong given up the office of the chairman of the Central People's Government adopted in the 1949 Common Program period and suggested an independent office of the chairman of PRC in the 1954 constitution? Although the CPC was dominant in the constitutional making

⁶ Xu Chongde, *ibid*, at 876-877.

⁷ Han Dayuan, *supra* note 4.

⁸ Xu Chongde, *supra* note 4.

⁹ Wang Hanbin, "Deng Xiaoping Qinzi Zhidao Qicao Yijiu Baer Nian Xianfa" [Deng Xiaoping Personally Instructed the Drafting of the Constitution in 1982], *Fazhi Ribao*, August 19, 2004.

process, there were other participants to those constitutional-making processes, and the constitutional drafts were published for national discussion in 1954 and 1982 respectively. Then what kind of role has those participants and public discussions played in the formation of PRC chairmanship and presidency? Besides, the constitutional making of the chairmanship in 1949 remains unknown at large and needs to be investigated.

(2) The U.S.S.R. and constitutional making of PRC chairmanship and presidency

Apart from the CPC, the former Soviet Union has also been discovered as another important factor in the making of PRC chairmanship and presidency. It has been disclosed that before the making of the constitution in 1954, Stalin had suggested three times to the CPC leaders to make a constitution¹⁰; in particular, he was concerned with the office of chairmanship that the CPC intended to install in the drafting Common Program when receiving Liu Shaoqi in 1949, who was in a secrete visit to Moscow to seek support from the former Soviet Union¹¹; even the governmental system of the China Soviet Republic has been regarded as a transplantation of that of the former Soviet Union¹², and Mao Zedong could not have been chosen to chair that

¹⁰ See Mu Zhaoyong, *Diyijie Quanguo Renmin Daibiao Dahui Shilu* [The First National People's Congress Session] (Guangdong: Guangdong Renmin Chubanshe, 2006), at 32-37; Han Dayuan, *supra* note 4, at 53-56.

¹¹ Chen Chunhua and Liu Cunkuan (trans.), *Sidalin Yu Mo Zedong* [Stalin and Mao Zedong] (Beijing: Xinhua chubanshe 2001), at 105; Chen Dunde, *Kaiguo Waijiao Shiji* [Diplomacy in the Founding Year] (Beijing: Jiefangjun Wenyi Chubanshe 2007), at 160.

¹² Xie Yibiao, *Zhonghua Suweiai Gongheguo Xianzheng Yanjiu* [Study on the Constitutionalism of the China Soviet Republic] (Beijing: Zhongyang Wenxian Chubanshe,

government if without the support of Moscow¹³.

However, except for those findings, the relationship between the former Soviet Union and PRC chairmanship and presidency has primarily been a secret, with questions unsolved, such as: had the former Soviet Union had influence on the office of PRC chairmanship and presidency by any other ways? To what extent and in what aspects have PRC chairmanship and presidency been similar to, and different from its Russian counterparts? With the end of the cold war, many previously confidential official files have been disclosed in Russia, thus enabling us to re-assess and further investigate into this issue.

Legal status of PRC chairmanship and presidency

(1) The representative of a collective head of state

In spite of these discoveries, controversies start to arise among constitutional lawyers when they come to the issue of the legal status of PRC chairmanship and presidency, i.e., whether the chairman or president is the head of the state of PRC. As no clear stipulation has been provided by all those constitutional documents, i.e., the 1949 Common Program, the 1954 and 1982 constitutions, two opposing theories have been suggested in this regard over the years.

Traditionally, it was held that the head of state of PRC was a collective one and the chairman or president was no more than a representative of this

2002), at 288.

¹³ Yang Kuisong, *Mao Zedong Yu Mosike De En En Yuan Yuan* [The Scores between Mao Zedong and Moscow] (Jiangxi: Jiangxi Renmin Chubanshe 2003), at 19-20.

collective head of state.¹⁴ Such a “collective theory” was first suggested by Dong Biwu, a CPC senior member who led the drafting work of the Organic Law of the Central People’s Government of the People’s Republic of China in 1949. In his report on the drafting process to the first Plenary Session of the Chinese People’s Political Consultative Conference, he remarked that the power and function of the Central People’s Government Council belonged to that of the head of state according to other countries’ constitutions¹⁵, implying that the Central People’s Government Council was the head of state, whereas the chairman of the Central People’s Government within the Council was not.

Then when the 1954 constitution was made, whether the chairman should be accorded the constitutional status as the head of state was one of the major concerns of constitutional makers and had been raised and discussed repeatedly in the making process. Among various suggestions, Mao Zedong insisted that the chairman was not the head of state because the chairman was subject to the NPC and performed his duty based on the decision of the NPC and its Standing Committee; the chairman was just a representative of the NPC. His position was supported by the CPC and accepted by the

¹⁴ Yang Haikun (ed.), *Kuaru Xin Shijie De Zhongguo Xianfa Xue-Zhongguo Xianfaxue Yanjiu Xianzhuang Yu Pingjia* [Study on Chinese Constitutional Law in the New Century: Current Situation and Evaluation of Study on Chinese Constitutional Law] (Beijing: Zhongguo Renshi Chubanshe, 2001), at 452-453; Hu Jinguang and Han Dayuan (ed.), *Zhongguo Xianfa Fazhan Yanjiu Baogao (1982-2002)* [Research Report on Chinese Constitutional Development (1982-2002)] (Beijing: Falv Chubanshe, 2004), at 248-249.

¹⁵ Dong Biwu, “Guanyu Caoni Zhonghua Renmin Gongheguo Zhongyang Renmin Zhengfu Zuzhifa De Jingguo Jiqi Jiben Neirong De Baogao” [Report on the Making of the Organic Law of the Central People’s Government of the People’s Republic of China and Its Basic Content], in *Wuxing Hongqi Cong Zheli Shengqi-Zhonghua Renmin Zhengzhi Xieshanghuiyi Dansheng Jishi Ji Ziliao Xuanbian* [Five-Star Red Flag Rises From Here: the Birth of the Chinese People’s Political Consultative Conference and Selection of Relevant Documents], eds. Yang Jiangxin, Shi Guangshu and Yuan Tinghua (Wenshi Ziliao Chubanshe, 1984), at 521.

constitutional draft. When reporting to the first NPC on the drafting of the constitution, Liu Shaoqi illustrated that: “the head of state of PRC is a collective one whose power and function is jointly exercised by the chairman and NPCSC”. This constitutional draft was finally adopted by the NPC.

When the constitution was revised in 1982, this issue was raised again amide the deliberation on the presidency to be installed in the new constitution. When it was suggested that the constitution make clear stipulation on the president’s status as the head of state, Peng Zhen, who was also a CPC senior cadre and in charge of the constitutional-revising work, quoted Mao Zedong’s words and insisted on not so providing in the constitution.¹⁶ As no constitutional interpretation has been made to give a clear answer to this question, these legislative records were undoubtedly the most authoritative support to the “collective theory”.

(2) An individual head of state

But recently, this collective theory has been growingly challenged by some constitutional lawyers.¹⁷ It has been argued that theoretically, a country should not go along without a head of state¹⁸; the power and function of the presidency falls into scope of those heads of state in other countries; the president acts on the decision of the NPC and NPCSC is just a way that the

¹⁶ Xu Chongde, *supra* note 4, at 825.

¹⁷ Hu Jinguang and Han Dayuan, *supra* note 2, 392; Cai Dingjian, *supra* note 3, at 330-331; Yang Haikun, *supra* note 14, at 454-456.

¹⁸ Xu Chongde, *supra* note 4, at 323, 825-826.

president carries out his constitutional duty. Practically, it is the president, not the NPC and NPCSC that has been titled as the head of state and treated alike by Chinese and foreign governments in various occasions, especially during international visits, which has become a political and constitutional convention¹⁹. Besides, while a collective head of state is not necessarily democratic, an individual head of state does not equal to personal tyranny. Whether the head of state is individual or collective has nothing to do with the prevention of personal tyranny, which relies on a democratic system, rule of law and strengthened supervision.²⁰ Therefore, the presidency is and should be the head of state of PRC.

While both sides acknowledge that the power and function of the chairmanship and presidency generally conforms to the theoretical category of the head of state²¹, and in practice the president has been treated as the head of state, they disagree on the relationship of the chairman and president with the NPC. The traditional views emphasized the theoretical underpinning of this office that the chairman or president was considered as the representative and subordinate to the NPC. On the other hand, the new opinions stress the practical role of the chairmen and presidents and claim their independence

¹⁹ Xu Chongde, *ibid.*

²⁰ Zou Pingxue and Fei Chun (eds.), *Xianfa Xue* [Study on Constitutional Law] (Beijing: Zhongguo Minzhu Fazhi Chubanshe, 2006), 2d ed, at 388.

²¹ About PRC's theory of the head of state, see Xu Chongde, *Guojia Yuanshou* [The Head of State] (Beijing: Renmin Chubanshe, 1982); Yan Jiaqi, *Yuanshou Lun* [Study on the Head of State] (Hong Kong: Zhonghua Shuju Xianggang Fenju, 1987); Zhu Weiping, *Guojia Yuanshou Zhidu Yanjiu* [Study on the Head of State] (unpublished PHD thesis); Zhong Yan, *Gongneng Shijiao Xia De Guojia Yuanshou Zhiquan* [Power and Function of the Head of State From The Functional Perspective] (unpublished Master dissertation).

from the NPC based on their performance of constitutional power and function.

Can the NPC system accommodate an individual head of state? It seems that the new opinions are hard to prevail. Supported by original documents, the traditional side has legislative authority and theoretical coherence; those performances by the chairmen and presidents are no more than examples of their representative role on behalf of the collective head of state, and do not necessarily require that the chairman and president should be titled as the head of state. After all, in some foreign countries, the president performs as the head of state without being recognized as the head of state by his constitution, like the president of the United States.

However, the argument concerning personal tyranny does have substance. According to the traditional views, the NPC is the supreme organ that combines deliberation with execution; and other governmental organs, including the president are no more than enforcement arms of the NPC. By putting the president under the NPC and its Standing Committee, the president surely has no excuse to act independently, thus leaving no chance for personal tyranny by the president. Therefore, in such a theory, the NPC and NPCSC are designed to control the president and check him from abusing his power. But to what extent such a theory has been effective in practice needs further investigation.

On the other hand, if the president is accorded as the head of state, his

power and function will enjoy the guarantee of the constitution, which makes the NPC and NPCSC less easily to exert influence on the president. As the sole representative of PRC, the president would be more independent from the NPC and NPCSC when performing his constitutional power and function. In other words, the president has to be more accountable to the constitution than to the NPC and NPCSC. However, if taking political reality of PRC into consideration, it could be skeptical that the constitution could play such a role. Without much more precautions, the constitutional head of state could be no more than another imperial crown to a personal tyranny. Then ultimately, the NPC and NPCSC could be first one to strengthen the responsibility as a constitutional guardian against personal tyranny of the head of state.

Therefore, a more fundamental question concerns this dispute: has the NPC effectively achieved this goal? It would not be easy to answer if without a close examination on how the chairmen and presidents have performed their constitutional duty.

Power and function of PRC chairmanship and presidency

(1) Uncertain constitutional provisions and political practices

According to the 1954 constitution, the chairman:

“In pursuance of decisions of the National People’s Congress or the Standing Committee of the National People’s Congress, promulgates

laws and orders; appoints or removes the premier, vice-premier, ministers, heads of commissions and the secretary-general of the State Council; appoints or removes the vice-chairman and other members of the Council of National Defense; confers state orders, medals and titles of honor; proclaims general amnesties and grants pardons; proclaim martial law; proclaims a state of war; and orders mobilization.”²²

“Represents the People’s Republic of China in its relations with foreign states, receives foreign diplomatic representatives and, in pursuance of decision of the Standing Committee of the National People’s Congress, appoints or recalls plenipotentiary representatives to foreign states and ratifies treaties concluded with foreign states.”²³

“Commands the armed forces of the country, and is chairman of the Council of National Defense.”²⁴

“Whenever necessary, convenes a Supreme State Conference and acts as its chairman; submit the views of the Supreme State Conference on important affairs of state to the National People’s Congress, its Standing Committee, the State Council, or other bodies concerned for

²² Xianfa [constitution] (1954) (P.R.C.), art. 40

²³ Xianfa [constitution] (1954) (P.R.C.), art. 41

²⁴ Xianfa [constitution] (1954) (P.R.C.), art. 42

their consideration and decision.”²⁵

During the constitutional making, the CPC’s chairman Mao Zedong had made it clear that those powers and functions were intended to be more nominal than substantive, and the chairman enjoy little administrative responsibility²⁶.

However, after examining how Mao Zedong performed his duty as the first chairman, it has been concluded that the chairman’s seemingly nominal powers to convene the Supreme State Conference, to nominate the premier, in military and in foreign affairs had turned out to be substantive in practice in China’s domestic politics; on the whole, powers and functions of the chairmanship provided by the 1954 constitution were characterized by a combination of nominal and real powers (“Xu Zhong You Shi”, “Xu Xu Shi Shi”, in Chinese).²⁷

But this conclusion seemingly can not be applied to the second chairman Liu Shaoqi. When he succeeded Mao Zedong as the chairman, he should also become the chairman of the Council of National Defence and command the armed force. But in fact, Mao Zedong had remained as the real commander of the armed force because he had never given up his position as the Chairman of the Central Military Commission of the CPC. Hence Liu Shaoqi had been unable to perform his constitutional duty to command the army throughout his

²⁵ Xianfa [constitution] (1954) (P.R.C.), art. 43

²⁶ Xu Chongde, *supra* note 4, at 191, 325.

²⁷ Xu Chongde, *supra* note 4, 324-330; Han Dayuan, *supra* note 4, at 423-424.

term of office.²⁸ Furthermore, just after he started his second term, he had been displaced from the office and unable to exercise whatever constitutional power and function ever since then. Therefore during the 1954 constitution period, the written constitutional provisions did not reflect the true power of the chairman in practice.

Similarly, about three decades later, the CPC new leader Deng Xiaoping took Mao Zedong's approach and also proposed a nominal office of presidency when the constitution was revised in 1982²⁹. As a result, the president can not convene the Supreme State Conference any more as it was abolished; he also can no longer command the army because the Council of National Defence was abolished and the military power was given to another new office, i.e., the chairman of the Central Military Commission (CMC). What have been reserved for the presidency are those powers and functions that seem to be procedural and ceremonial, performed based on the decisions of the NPC and NPCSC, except to nominate the premier.

Such a presidency is generally considered by scholars as a figure head of state. But scholars also suggest that the president could turn into someone with substantive power when he holds other offices concurrently, which include the CMC chairman of the PRC, the General Secretary (GS) of the CPC, and the CMC chairman of the CPC.³⁰

Their observation may be true if studying the performance of the four

²⁸ Xu Chongde, *supra* note 4, at 326-327.

²⁹ Wang Hanbin, *supra* note 9.

³⁰ Yang Haikun, *supra* note 14, at 460.

presidents since 1982, i.e., Li Xiannian, Yang Shangkun, Jiang Zemin and Hu Jintao. When the first two presidents were in office, neither of them had taken any other offices. But President Jiang Zemin had become the chairman of both CMC and the GS of the CPC before he succeeded Yang Shangkun in 1993. Hu Jintao succeeded Jiang Zemin almost by the same way. Compared with their predecessors, the last two presidents have been more powerful by leading the army and the CPC.

However, while whether President Li Xiannian and Yang Shangkun had actually been a figure head of state remains to be investigated, the disagreement between constitutional provisions and political reality has been proved to exist in 1990s when President Jiang Zemin was in office. In 2004 a piece of constitutional amendment was ratified by the NPC, adding a new item to the power and function of the president by authorizing him to engage in "activities involving state affairs". It was explained by the legislators that "in today's world, diplomacy by the head of state is an important form of international exchange and the constitution needs provide room for it"³¹. It is true that since the 1990s, PRC presidents have become growingly active "on behalf of the People's Republic of China" in foreign affairs so as to develop some political conventions by their practices, such as signing treaty with other countries with the delegation from the NPC³², attending important

³¹ Wang Zhaoguo, "Guanyu Zhonghua Renmin Gongheguo Xianfa Xiuzheng An (Caoan) De Shuoming" [Explanation to the Amendment to the Constitution of the People's Republic of China (Draft)], Standing Comm. Nat'l People's Cong. Gaz, No. 8 (2004).

³² Yang Haikun, *supra* note 14, at 458.

international meetings, interviewing and reaching major international agreements with the head of states of other countries, announcing the reduction of customs, promising assistance to other countries³³. The 2004 amendment can be seen as a remedy to those political practices. In other words, those diplomatic practices created by the president suggest that the presidents had exercised their powers and functions outside the constitutional provisions before the 2004 constitutional amendment.

As a matter of fact, the diplomacy by the president is not an invention of 1990s when Jing Zemin had been in office. Instead, it has been always practiced since the first president Li Xiannian took his office in 1982. For example, while the constitution does not provide the president to conduct state visits to other countries, all these four presidents have always paid such overseas visits. Since from the 1980s, the presidents have sent the special envoys on their behalf to some countries in certain cases. Therefore, even when the president was separated from other political positions, he could still act outside the scope of constitutional provisions.

Out of such an ever-existing constitutional uncertainty, question would understandably arise: what ultimately determines the true power and function of the chairmanship and presidency? Some answer has been implied in their observation. Whereas the chairmanship of the Central Military Committee of PRC is provided by the 1982 constitution, the CPC's chairman of the CMC

³³ Wei Dingren, Gan Chaoying and Fu Siming, *Xianfa Xue* [Study on Constitutional Law], 2nd ed. (Beijing: Beijing Daxue Chubanshe, 2004), at 540.

and GS have not been accommodated in the constitution. Hence, that observation also suggests that the capacity of the presidency is decided by both constitutional provisions and political practice. Then how has the political practice evolved from separating the president from other titles to adding other titles to the president?

(2) Is the presidency in decline or revival?

In retrospect, taking the chairmanship provided by the 1949 Common Program into comparison, scholar has suggested that over the years, the power and function of this office has been in continuous decline and it has become more and more nominal³⁴.

However, such a declining trend seemed to be reversed by the 2004 constitutional amendment. By this amendment, the president's power has extended into areas concerning "diplomacy by the head of state", thus strengthening the president's role in foreign affairs³⁵. As such a power was written in constitution in line with the power "to receive foreign diplomatic representatives", which has always been regarded as a ceremonial duty, it could be understood that the new power concerning state affairs was no more than alike.

But it can be more substantial than a mere numeric increase of power, not only because the diplomacy by the president can have great impact on China's

³⁴ Xu Chongde (ed.), *Xianfa Xue* [Study on Constitutional Law] (Beijing: Gaodeng Jiaoyu Chubanshe, 2005), at 455-456.

³⁵ Wei Dingren, Gan Chaoying and Fu Siming, *supra* note 33, at 540.

domestic affairs, as suggested by those above mentioned practical conventions, but also if the “state affairs” is not limited within the diplomacy and construed to include the domestic affairs³⁶. At all, in practice, PRC chairmen and presidents have been always intimately associated with home affairs. If so doing, this constitutional provision can become a way for the president to engage his activities at home. More significantly, this constitutional amendment does not stipulate the president to engage in activities involving state affairs “in pursuance of the decisions of the NPC and its Standing Committee”, as required for most other powers of the president, the president does not have to seek prior permission from the state’s supreme organ. Therefore, this amendment may implicitly have much broader effects in due course of time.

Nevertheless, even if things would not go that far, this constitutional amendment has gone against the above mentioned long-time declining trend concerning the president’s power. Could it be a signal of revival of the presidency’s constitutional power and function? If so, will the presidency return to the historical chairmanship provided by the 1954 constitution or the 1949 Common Program?

Besides, as evidenced by the 2004 constitutional amendment, the words used in the constitution is simple and general, but with great potentiality. Such an approach had always been preferred by those constitutional makers such as

³⁶ For example, in the author’s interview with Professor Cai Dingjian, a PRC constitutional lawyer who had long time working experience in the NPCSC, he expressed such an idea that the “state affairs” include domestic affairs.

Mao Zedong and Deng Xiaoping. In other words, ambiguity of constitutional provisions has been a repeated practice. Then one could not help wondering, in what circumstances those powers and functions, claimed to be nominal and seemingly procedural or ceremonial, could turn out to be substantial in practice? How have the ambiguous constitutional provisions been intertwined with the evolving political practice to produce such a presidency as now?

Some scholars have tried to tackle these questions from a broader framework of the party-state. For example, whereas Yang Fengchun asserts that the Central People's Government Council in the Common Program, the chairman in 1954 constitution, the NPCSC in 1975 constitution, the chairman of the NPCSC in 1978 constitution and the president in 1982 constitution, are the heads of state of China; development of this institution is subject to its harmony with the Party's leadership in that if they maintain a harmonious relationship, the head of state would exist and develop; otherwise, it would be weakened, even cancelled; in China's political system, there is a certain limit on development of this institution, exceeding which would lead to the opposite; the progress of market economy and reform policy will result in the strengthening of the power and position of the head of the state, in which case some issues needs consideration, such as its harmony with the Party's leadership, proper limit on its power, whether it should be delegated with the military power, the effect of its term of office, etc.³⁷

³⁷ Yang Fengchun, "Lun woguo guojia yuanshou zhidi de yanbian jiqi weilai fazhan" [Study on the Evolution and Future Development of China's System of the Head of State], *Dangdai*

This is a provoking finding concerning the power and function of the presidency as it not only illustrates the relationship between the presidency and the party-state in which it operates, but also try to define a certain bottom and up limits on the power of the presidency. However, this article did not go further to distinguish the constitution from the politics and was too brief to elaborate on the constitution's role in their relationship.

Accountability of PRC chairmanship and presidency

As introduced in the above, both Mao Zedong and Deng Xiaoping had preferred the chairman and president being a nominal figure and intended it to bear no responsibility in administration. Their intentions could be interpreted as that the chairman or president not be held accountable for their acts because their acts would be no more than procedure and ceremonial.

This may not be the case. During the making of the 1954 constitution, Mao Zedong also suggested that the president be recalled³⁸, which later became article 28 stipulating that the NPC has power to remove the chairman from office. This idea was inherited by the 1982 constitution in its sixty-third article. If the president bears no responsibility, then why have both constitutions made such provisions? In other words, the chairman and president have been implied to account in certain situations.³⁹

Then why had both Mao Zedong and Deng Xiaoping preferred a nominal

zhongguo yanjiu [Study on History of Contemporary China], no. 6 (1997): 13-21.

³⁸ Xu Chongde, *supra* note 4, at 176-177.

³⁹ Xu Chongde, *supra* note 4, at 826.

chairmanship and presidency with littler responsibility? In practice, by now, among all six chairmen and presidents, only Liu Shaoqi had been removed from his second term in this office. But his removal was decided by the CPC, not the NPC. Therefore, this questions still needs further exploration.

Based on the above findings and arguments, a number of suggestions have been further proposed to strengthen the presidential system of PRC. For instance, after studying the nature, power, election and recall, term of the office of the presidency, Zhu Yingping holds that Chinese president is the head of state; China's constitution should made more detailed stipulation on his functions and powers; procedures should be made more strict concerning his election and recall, etc⁴⁰. Besides, the swearing system has also been repeatedly suggested to adopt for the president when he takes this office.⁴¹ Even several constitutional amendments were drafted by scholars to improve relevant constitutional provisions regarding the election, qualification, power and function, responsibility of the presidency and vice- presidency.⁴²

In conclusion, constitutional scholars have studied generally the historical development of PRC chairmanship and presidency, exposed those key factors in relevant constitutional making processes, examined major controversies

⁴⁰ Zhu Yingping, "Xianxing Guojia Zhuxi Zhidu Chouyi" [Discussion on Current System of Chinese President], *Faxue*, no. 11 (2000).

⁴¹ Jiang Wei, "Lun Jianli Zhongyu Xianfa De Xuanshi Zhidu" [Establishing the Constitutional Swearing System], *Fashang Yanjiu*, No. 5 (2000); Dai Jitao, "Dui Woguo Jianli Guojia Yuanshou Xuanshi Zhidu De Sikao" [On the Establishment of Swearing System for Our Country's Head of State], *Shidai Faxue*, no. 2 (2003); Lin Tai, "Woguo Guojia Zhuxi Zhidu Tanxi" [Study on the Presidency in Our Country], *Zhonggong Zhengzhou Shiwei Dangxiao Xuebao*, no. 3 (2006).

⁴² Yang Haikun, *supra* note 14, at 461-463.

over the practice of chairmen and presidents, and made novel suggestions to improve this institution. On the other hand, it is also revealed by these findings that the constitution could not be better understood if without deeper and boarder explorations into those changing historical contexts and backgrounds that have been given life to those written constitutional provisions.

Other related findings

Apart from them, the political scientist and historians have also made more research on those subjects relevant to PRC chairman, chairmanship and presidency and produced numerous results on leaders, succession, decision-making of the CPC, relations of the CPC and PRC with foreign countries and organizations, such as the U.S.S.R., Comintern, USA, etc. Through their brilliant works, we have known more about the thoughts and lives of important PRC leaders, including six holders of the chairmanship and presidency; we are better informed of those power struggles taking place around succession within the CPC among the CPC elites, especially the conflict of Mao Zedong with his chosen successors which ultimately resulted in the abolishment of the chairmanship from the constitution in 1975; we also have been more knowledgeable about how the CPC made its decisions; and more inside stories have been disclosed on the Sino-U.S.S.R., CPC-Comintern, and Sino-USA relations.

Therefore, by all these political findings, the picture drawn on PRC chairmanship and presidency has become much more visible to us, in which not only a stage of the party-state has been established amid a broader background of the cold war, major participants are more apprehensible with respect to their decisions in those critical moments. However, the distinction between constitutional rules and political practices has been largely ignored in these researches.

Writing arrangement

In view of those findings and questions, it is the primary goal of this research to bring all together, put the Chinese chairman, chairmanship and presidency back into the broader structure of the party-state, analyze how the constitutions and political practices have been intertwined with each other to determine the historical dynamics of this office, reveal the difference between PRC presidency and its western counterparts, thus evaluate how constitutionalism has been evolved in this regard in the PRC over the years.

Based on historical development of the subject matter, this research will be carried out in eleven chapters. This introduction will be followed as by the second chapter, which will study the chairman of the China Soviet Republic, including its constitutional making history, comparison with chairman of the USSR, difficulties when performing his power and function, and its significance to the CPC and PRC.

The third chapter will examine the chairman of the Central People's Government as provided by the 1949 Common Program of PRC. It will first discuss how Mao Zedong had become the chairman of the CPC and what decision-making power he had enjoyed as the chairman within the CPC. Then it will investigate how the chairman of PRC was designed in the Common Program and analyze similarities and differences between this office and its predecessor as well as the Russian models. In the end, it will evaluate the true situation of this office by examining how Mao Zedong had been elected into office and performed his constitutional duties at home and abroad.

The chairmanship of the 1954 constitution is the focus of the next three chapters. Based on the constitutional-making of this office in 1954, it will compare this office with its previous and foreign counterparts and analyze the influence on it by the former Soviet Union and Mao Zedong's ideas about it during the making process. Then it will study the election of Mao Zedong and Liu Shaoqi into this office and their performances, ended with discussion on the constitutional implication of Liu Shaoqi's removal from the office and its later abolishment.

Chapters between seven and eleven, which is the concluding one, will concentrate on the presidency provided by the 1982 constitution. Political situation in 1982 will be introduced first, followed by a brief account of the constitutional-making history of this office. Deng Xiaoping's ideas and influence on it will also be explored. After summarizing performance of the

first two presidents, it will continue to discuss why Jiang Zemin had been able to take all offices as the “core of leadership”, analyze his diplomacy during his terms of office. Hu jintao’s succession to the presidency and the 2004 constitutional amendment will be further studied.

Chairman Mao Zedong of the China Soviet Republic from 1931 to 1934

Chinese presidency and chairmanship before 1931

Introduction of American presidency to China after Qing dynasty

When China approached 1800s, it had been almost completely isolated from the outside world by its Qing emperors, except a small place outside the Southern city Canton (now Guangzhou) that was designated especially by the emperor for foreign trade with Westerners. As a result, a limited number of Chinese started to know western countries from their business transactions. In an official report written by a local Chinese official to the Qing emperor in 1817, the President of the United States was described as the “head” (“Tou Ren” in Chinese) elected to serve a term of four years. The Opium War with the Great Britain from 1840 to 1842 first severely shook the decayed empire. With the opening of five Chinese port cities, more and more knowledge about Western countries was introduced into China and Chinese became familiar with Western presidency. By 1890s, the English word “president” had been generally translated into Chinese as “Zong Tong”.⁴³

It was not until 1912 when some Southern provinces started to rebel against

⁴³ For Chinese evolving ideas about the president of the United States and various Chinese translation of the English word “president”, see Xiong Yuezhi, “Wanqing Jige Zhengzhi Cihui De Fanyi He Shiyong” [Translations and Usages of Several Political Vocabularies in Late Qing Dynasty], *Shilin*, no.1 (1999); *Zhongguo Jindai Minzhu Sixiang Shi* [The History of Democratic Thoughts in Modern China] (Shanghai: Shehui Kexue Chubanshe, 2002), at 138-149; “Wanqing Zhongguo Dui Meiguo Zongtongzhi De Jiedu” [Chinese Interpretation of American Presidency in Later Qing Dynasty], *Shilin*, no. 1 (2007).

the old dynasty that Chinese had the opportunity to put their knowledge of Western presidency into practice. In model after the United States, these rebelling provinces announced to establish the Republic of China (ROC) headed by a provisional president⁴⁴, which was firstly hold by the famous revolutionary Sun Zhongshan (Sun Yat-sen) and then agreed to be taken by the conservative Northern General Yuan Shikai in exchange for the peaceful abdication of the Qing emperor and the unification of China.

Thus the ancient dynastic governance terminated and the thousands-years emperorship was replaced by the presidency, which was understood as the head of state exercising his power and function based on the constitution, such as the power to call the congress, to appoint and remove governmental officials, to submit or veto the legislative bill, to promulgate the law, to declare war, to enter treaties, to lead the army, to pardon, etc⁴⁵.

Since then, this newly introduced institution had begun its tortuous localization in China, with powers and functions fluctuating from the American model to a figure head of state in the cabinet system⁴⁶, then to emperorship⁴⁷, and to an office in between⁴⁸, subject to political deceit,

⁴⁴ Organic Law of the Provisional Government of the Republic of China (October 13th, 1911).

⁴⁵ In a book written in 1903, the head of state was defined as to include the emperor, constitutional monarch or the president; for a constitutional head of state, it had power and function such as the power to call the congress, to appoint and remove governmental officials, to submit and veto the legislative bill and promulgate the law, to declare war, to enter treaties, to lead the army, to pardon, etc. see Wang Rongbao and Ye Lan (ed.), *Xin Er'ya* (Taiwan: Wenhai Chuban Youxian Gongsì, 1977), at 18-19. The author had studied in Japan and they wrote this book to promote modern political and social ideas to Chinese, to whom these ideas were new at that time.

⁴⁶ Provisional Law of the Republic of China (March 8th, 1912).

⁴⁷ Constitution of the Republic of China (May 1st, 1914).

⁴⁸ Constitution of the Republic of China (October 10th, 1924).

bribery, and ultimately military muscles at the time. In the end, the constitutional presidency of ROC was even reduced to either “Provisional Governor” (“Linshi Zhizheng” in Chinese)⁴⁹ or “Grand Marshal”⁵⁰.

From presidency to chairmanship

(1) Chairman: old Chinese title with new meaning

While the presidency suffered in Beijing, another type of head of government had been gradually taking its shape in the Southern city Canton. It was the chairmanship. Originated in China, the Chinese phrase “Zhuxi” had been used by ancient people to refer to the seat of a table at which the host sat when holding banquet or receiving guests⁵¹. Especially in a banquet, “Zhuxi” also referred to the person in charge of that banquet⁵². Traditionally, such a seat should be taken by the host, normally the head of the family, or some one senior in those occasions. By 1868, such a traditional meaning had still in usage and known to Western priests visiting China.⁵³

When it came to the 1890s, “Zhuxi” had somehow gradually developed a third meaning, referring to the person who chaired a board or a committee. In

⁴⁹ Regulation on the Provisional Government of the Republic of China (November 24th, 1924). It was revised on December 24th, 1925.

⁵⁰ Order on the Organization of the Military Government (June 17th, 1927).

⁵¹ See Zhongwen Dacidian Bianzuan Weiyuanhui (ed.), *Zhongwen Da Cidian* [The Chinese Dictionary], vol 1. (Taiwan: Zhonghua Wenhua Yanjiusuo, 1962), at 460; Zhongguo Dacidian Bianzuanchu (ed.), *Guoyu Cidian* [Chinese Dictionary] (Taiwan: Shangwu Yinshuguan, 1971), at 2710; Luo Zufeng (ed.), *Hanyu Da Cidian* [Chinese Dictionary] (Hong Kong: Sanlian Shudian, 1987), at 701.

⁵² Luo Zufeng (ed.), *ibid*, at 701; Feng Jinrong et al. (ed.), *Jinxiandai Hanyu Xinci Ciyuan Cidian* [Dictionary of the Origins of New Vocabularies in Modern China] (Beijing: Hanyu Da Cidian Chubanshe, 2004), at 351.

⁵³ Yong John Allen, *The Church News* (Taiwan: Huawen Shuju), no. 1 (1868): 6.

1890, this new meaning was recorded in an English and Chinese dictionary edited by Herbert A. Giles, who defined in his dictionary the Chinese “Zhuxi” as either “the host at dinner” or “chairman of a board”⁵⁴. Later on, “Zhuxi” had been frequently used by Chinese in this sense in their writings and activities. For example, in 1913, the drafting committee established to make a constitution for the Republic of China elected a “zhuxi” in its preparatory meeting held on July 10th.⁵⁵ In 1922, the Communist Party of China (CPC) installed “Zhuxi” in its party constitution adopted by its second party congress, providing that “when this special committee convenes, one member of this executive committee should be the chairman”.⁵⁶ In these occasions, “Zhuxi” had been responsible for presiding meetings and maintaining good order of meetings⁵⁷ when the committee convened.

However, in spite of such a popular usage, “Zhuxi”, the chairman, had mainly been a temporary body of the meeting he presided, with a term depending on the life of that meeting. When the meeting started, a chairman would be produced out of the participants either by election or by mutual agreements; when the meeting completed, the chairman would then be absolved. During the meeting, other than those procedural powers such as

⁵⁴ Herbert A. Giles, *A Chinese-English Dictionary* (Taipei: Cheng-Won Publishing House, 1912), at 315.

⁵⁵ Li Guilian (ed.), *Minguo Beijing Zhengfu Zhixian Shiliao* [Constitutional-Making Materials of Beijing Government of the Republic of China], vol 1. (Beijing: Xianzhuang Shuju, 2007), at 5.

⁵⁶ Article 10 of the CPC’s constitution adopted by its second national congress.

⁵⁷ *Zhongwen Dacidian Bianzuan Weiyuanhui* (ed.), *supra* note 51, at 460; Luo Zufeng (ed.), *supra* note 51, at 701; *Zhongguo Dacidian bianzhuchu* (ed.), *supra* note 51; Feng Jinrong et al (ed.), *supra* note 52.

presiding the meeting, managing good order, etc, the chairman enjoyed no more privileges than other members of the meeting who held the decision-making power jointly. At that time, “Zhuxi” was by no means a stable position with decision-making power.

(2) Chairman of the Nationalist government

Witnessing the misfortune suffered by the presidency of ROC in Beijing, Sun Zhongshan, the first, yet provisional, president of ROC, had stood up against those Beijing warlords time and again, but had born little fruit. While Chinese was striving to gain independence and unity, Moscow was also trying to find some Chinese partners and have a friendly far-Eastern neighbor to protect its interest after 1917 revolution, a socialist China being the best outcome. On one hand, Sun Zhongshan developed his interest and friendship to the newly established communist state. With the assistance from Mikhail Markovich Borodin, the “Stalin’s man in China”, he allied the CPC, reorganize his Chinese Nationalist Party (KMT), establish his own army and decided to form his own government. On the other hand, Sun Zhongshan had also refused to model after Moscow. In his joint declaration made with the Russian representative, they agreed that the soviet style government did not fit China.⁵⁸

It was not until Sun Zhongshan’s death that his incomplete government

⁵⁸ Joint Declaration by Su Zhongshan and Adolf Abramovich Joffe, in Huang Yang (ed.), Sun Wen Xuanji [Collection of Sun Wen] (Guangzhou: Guangdong Renmin Chubanshe, 2006), vol.2, at 211-213.

leaned more towards Moscow. With gone of its founder, the KMT had no individual within its leadership who could take place. As such, the collegiate system was decided to adopt for its government set up on July 1st, 1925.⁵⁹ A member of this collegiate committee specified to preside its meetings was titled as the “Zhuxi”.⁶⁰ However, at that time, it seemed that such a position was thought as a counterpart of Western presidency, because the Chinese title “Zhuxi” was translated into English as “president”⁶¹ rather than its English equivalent “chairman”.⁶²

(3) Chairman of the CPC

This new chairman was also adopted by another Chinese political party, the CPC. As mentioned previously, “Zhuxi” had appeared in the second party constitution of the CPC in 1922. Before the sixth party congress, the head of the CPC had been titled either as “Shuji” (secretary, in English), “Weiyuanzhang” (the head of a commission, in English) or “Zong Shuji” (General Secretary, in English)⁶³. In 1928, the CPC held its sixth party

⁵⁹ Li Yunhan, *Cong Ronggong Dao Qingdang* (Taiwan: Zhongguo Xueshu Zhuzuo Jiangzhu Weiyuanhui, 1966), at 372-375.

⁶⁰ *Zhonghua Minguo Guomi Zhengfu Zuzhi Fa* [Organic Law of the National Government of the Republic of China].

⁶¹ For example, “Economic Commission of the President’s Field Headquarter”, “President’s Headquarters at Chungking”. See Sun Xiufu, *Jindai Zhongguo Huayang Jigou Yiming Shouce* [A Handbook for the Translation of the Chinese and Foreign Institutions in Modern China] (Beijing: Tuanjie Chubanshe, 1992), at 117, 261.

⁶² In 1946 when the Nationalist government came close to its end in mainland China, it promulgated a constitution, in which the head of state was not titled as the chairman any more. Instead, it was directly called in Chinese as “Zongtong” (“president” in English). See *Zhonghua Minguo Xianfa* [Constitution of the Republic of China] (1946).

⁶³ In the first party congress, the CPC elected “shuji” (secretary) as its head; during the second and third party congress, its head was renamed as “Weiyuanzhang” (head of the committee). Since the fourth party congress, its head was titled as “Zong shuji” (General Secretary). See Wang Jianying, *Zhonggong Zhongyi Jiguan Lishi Yanbian Kaoshi* [An

congress in Moscow. In this congress, “Zhuxi” was adopted for the first time by the CPC as a title for its head. Although it remained unknown why such a change had been made and what role the former Soviet Union had played in such a change, it has been clear that the candidate for this new party chairman was proposed by the former Soviet Union and accepted by the CPC accordingly.⁶⁴

Chairman of the China Soviet Republic

“Chairman Mao” rise undefined in the First Soviet Congress

(1) The establishment of the China Soviet Republic

Since its establishment and throughout the alliance with the KMT, the CPC had not set the soviet government an immediate goal to pursue in China.⁶⁵ However, as their alliance broke and facing the bloody killing by the KMT troops, the CPC gradually changed its policy and strived to establish the soviet government in China.⁶⁶ Meanwhile, in view of the new situation, Moscow

Examination on the Evlution of the Central Institutions of the CPC] (Beijing: Zhonggong Dangshi Chubanshe, 2005), at 1-7; Zhang Yue, “Zhonggong Zuigao Lingdaoren Weihe Cheng Zongshuji” [Why Has the CPC’s Supreme Leader Been Called as the General Secretary], *Nanfang Zhoumo*, November 2, 2008.

⁶⁴ ZHANG Guotao, *Wo De Huiyi* [My Memories] (Hongkong: Mingbao Yuekan Chubanshe, 1973), vol. 2, at 792.

⁶⁵ Wang Yongxiang, *Zhongguo Xiandai Xianzheng Yundong Shi* [History of Constitutional Movement in Modern China] (Beijing: Renmin Chubanshe, 1996), at 187; Jiang Boying and Guo Ruoping, *Zhongsu Suqu Zhengquan Jianshe Shi* [The History of Government Construction of the Central Soviet Region] (Fujian: Xiamen Daxue Chubanshe, 1999), at 16; Zeng Weidong and Zeng Wencai (ed.), *Zhonghua Suweiai Gongheguo Shenpan Shi* [History of Adjudication of the China Soviet Republic] (Beijing: Renmin Fayuan Chubanshe, 2004), at 2-3; Xie Yibiao, *supra* Note 12, at 5, 9;

⁶⁶ See Han Damei, *Xin Minzhu Zhuyi Xianzheng Yanjiu* [Study on Constitutionalism of New Decmocracy] (Beijing: Renmin Chubanshe, 2005), at 29-44; Wang Yongxiang, *ibid*, at 187-190; Jiang Boying and Guo Ruoping, *ibid*, at 15-22; Xie Yibiao, *supra* note 12, at 26.

also changed its opposition and supported the CPC's new policy.⁶⁷ Under the direction of Moscow⁶⁸ and taking the chances that the KMT was tied in wars with other Chinese warlords, the CPC managed to set up a dozen soviet areas by arms.⁶⁹

Then in May of 1930, the CPC initiated a Conference of Delegates from the Various Soviet Areas of All China in Shanghai, announcing to convene the First Soviet Congress and establish the Provisional Central Government of the China Soviet Republic.⁷⁰ As the CPC's attempts to establish this national government in some major cities, like Wuhan, Changsha or Nanchang, failed⁷¹, the soviet area set up by Mao Zedong and Zhu De in Jiangxi province was finally chosen by the CPC as the place where the congress held⁷² and designated as the Central Soviet Area in which a central beauro of the CPC was also established to take charge⁷³.

On December 7th 1931, the long-delayed First Soviet Congress was convened⁷⁴ in Ruijin, a small county in Jiangxi province where Deng Xiaoping was the secretary of the CPC's local organization. This congress not

⁶⁷ For the change of Moscow's policy in this regard, see Jiang Boying and Guo Ruoping, *supra* note 65, at 11-15.

⁶⁸ For Moscow's support to the CPC's effort to establish the soviet government, see Zeng Weidong and Zeng Weicai, *supra* note 65, at 10-12.

⁶⁹ For the establishment of various soviet areas by the CPC, see Shu Long and Ling Buji (ed.), *Zhonghua Suweiai Gongheguo Shi [History of the China Soviet Republic]* (Jiangsu: Jiangsu Renmin Chubanshe, 1999), at 17-47.

⁷⁰ For the CPC's effort to establishment this national soviet government, See Jiang Boying And Guo Ruoping, *supra* note 65, at 170-177; Zeng Weidong and Zeng Weicai, *supra* note 65, at 12-16; Shu Long and Ling Buji (ed.), *ibid*, at 48-76.

⁷¹ See Shu Long and Ling Buji, *supra* note 69, at 56-63.

⁷² See Shu Long and Ling Buji, *ibid*, at 65.

⁷³ See Shu Long and Ling Buji, *ibid*, at 66.

⁷⁴ For a brief account of the progress of the First Soviet Congress, see Jiang Boying and Guo Ruoping, *supra* note 65, at 177-180; Shu Long and Ling Buji, *ibid*, at 83-88; Zeng Weidong and Zeng Weicai, *supra* note 65, at 12-16.

only declared the founding of the Provisional Government of the China Soviet Republic⁷⁵, but also adopted a Basic Constitutional Program for this new Republic⁷⁶.

(2) The soviet style Provisional Central Government

Constitutional and other relevant law drafts had been one of the major preparations made by the CPC for the new government. Before the commencement of the First Soviet Congress, two different pieces of constitutional drafts had been successively prepared by the CPC, which were “the Fundamental Law (Constitution) Draft of the China Soviet Republic” (Zhonghua Suweiai Gongheguo Guojia Genbenfa (Xianfa) Caoan) and “the Constitutional Draft of the China Soviet Republic” (Zhonghua Suweiai Gongheguo Xianfa Caoan).⁷⁷ However, all these drafts had not been adopted by the First Soviet Congress.⁷⁸ Instead, a Basic Constitutional Program was

⁷⁵ Zhonghua Suweiai Gongheguo Linshi Zhengfu Duiwai Xuanyan [Declaration of the Provisional Government of the China Soviet Republic (November 7, 1931)], in *Zhonggong Zhongyang Wenjian Xuan* [Selection of the CPC Documents], vol. 7. ed. Zhongyang Dang'an Guan (Beijing: Zhonggong Zhongyang Dangxiao Chubanshe, 1991), at 802-803.

⁷⁶ For the Chinese Version of the Basic Constitutional Program of the China Soviet Republic, see Han Yanlong and Chang Zhaoru (ed.), *Zhongguo Xin Minzhu Zhuyi Geming Shiqi Genjudi Fazhi Wenxian Xuanbian* [Selection of Legal Documents of the Revolutionary Bases During the Period of New Democratic Revolution of China], vol 1. (Beijing: Zhongguo Shehui Kexue Chubanshe, 1981), at 9. For its English translation, see W.E.Butler (ed.), *The Legal System of the Chinese Soviet Republic 1931-1934* (New York: Transnational Publishers, Inc., 1983), at 123-125.

⁷⁷ However, there is an opinion suggesting that a third constitutional draft had been made, see Xie Yibiao, *supra* note 12, at 49; Yu Boliu and Ling Buji, *Zhongy Suqu Shi* [History of the Central Soviet Region] (Jiangxi: Jiangxi Renmin Chubanshe, 2001), at 873-877. But such a draft has not appeared as yet.

⁷⁸ There are three different opinions to explain why they had not been adopted by the First Soviet Congress. One opinion suggested that the constitutional draft of the China Soviet Republic had not been submitted to the First Soviet Congress, see Zhang Xipo and Han Yanlong (ed.), *Zhongguo Geming Fazhishi* [History of Chinese Revolutionary Legal Systems] (Beijing: Zhongguo Shehui Kexue Chubanshe, 2007), at 28. The second idea held that it had been submitted, but not been accepted by the First Soviet Congress, see Zhang Jinfan (ed.),

passed based on the draft prepared by a constitutional committee set up by the First Soviet Congress, who made that draft according to the “seventeen constitutional principals” telegraphed to the congress previously by the Politburo of the CPCCC and Eastern Department of the Comintern from Shanghai.⁷⁹

The Basic Constitutional Program only provided briefly that “supreme power in the Chinese Soviet Republic shall belong to the all-Chinese Congress of Soviets of Workers’, Peasants’, and Soldiers’ Deputies; in the interval between congresses the highest organ of power shall be the all-Chinese Central Executive Committee of soviets; attached to the Central Executive Committee shall be organized the Council of People’s Commissars, which shall conduct all current administrative affairs and issue laws, decrees, and decrees”⁸⁰, and did not mention how the Central Executive Committee and Council of People’s Commissars be organized. The First Soviet Congress also did not make any organic law in this regard.

In reality, 63 people, including Mao Zedong, all of whom had been previously decided by the CPC⁸¹, were suggested by the presidium of the First

Zhongguo Fazhi Shi [Legal History of China] (Beijing: Gaodeng Jiaoyu Chubanshe, 2003), at 367-368; Xie Yibiao, *supra* note 12, at 47-49. The later work also made a brief summarization on earlier account of these two opposing opinions, see Xie Yibiao, *supra* note 12, at 46-47. However, a third opinion held that the constitutional drafts had not arrived at the central soviet successfully at all, see Zhonggong Jiangxi Shengwei Dangshi Yanjiushi (ed.), *Renbishi Zai Jiangxi* [Ren Bishi in Jiangxi] (Jiangxi: Jiangxi Renmin Chubanshe, 2004), at 43; Yu Boliu and Ling Buji, *supra* note 65, at 351-352.

⁷⁹ See Xie Yibiao, *supra* note 12, at 60-63.

⁸⁰ *Zhonghua Suweiai Gongheguo Xianfa Dagang* [The Basic Constitutional Program of the China Soviet Republic] art 3, in Han Yanlong and Chang Zhaoru (eds.), *supra* note 76, at 9.

⁸¹ See Shu Long and Ling Buji, *supra* note 69, at 74; Yu Boliu and Ling Buji, *supra* note 77, at 339.

Soviet Congress and elected by hand voting as the members of the Central Executive Committee (hereafter referred to as "CEC")⁸². After the congress, they gathered together on 27th to hold their first meeting, which not only organized the Council of People's Commissars by deciding its branches and members, but also elected Mao Zedong as the chairman and Xiang Ying and Zhang Guotao as vice chairmen for both the CEC and the Council of People's Commissar⁸³. In addition, two days before this meeting, the CEC also decided that a Central Revolutionary Military Commission set up under the Council of People's Commissars and Zhu De act as the chairman⁸⁴. Hence, the Provisional Central Government of the China Soviet Republic was finally formed, which had a three-level of structure and was no more than a duplicate of its Russian model.

(3) Mao Zedong's nomination as the chairman by Moscow

As matter of fact, prior to the First Soviet Congress, Mao Zedong had been decided as the chairman in advance. On February 20th, 1931, the CPCCC Politburo held a meeting in Shanghai to discuss governmental composition and relevant candidates of the China Soviet Republic. When it came to the chairman of the China Soviet Republic, different people had been proposed.

⁸² See Yu Boliu ang Ling Buji, *ibid*, at 362.

⁸³ See Zhonghua Suweiai Gongheguo Zhongyang Zhixing Weiyuanhui Bugao Diyihaio [Notice of the Central Executive Committee of the China Soviet Republic (No. 1)], in Xiamen Daxue Falvxi and Fujian Sheng Dang'an Guan (ed.), *Zhonghua Suweiai Gongheguo Falv Wenjian Xuanbian* [Selection of Legal Documents of the China Soviet Republic] (Nanchang: Jiangxi Renmin Chubanshe, 1984), at 201 – 202.

⁸⁴ See Yu Boliu ang Ling Buji, *supra* note 77, at 295-298, 365-366. But this was not recorded in the first notice issued by the Central Executive Committee of the China Soviet Republic.

Two selection standards had to set, which required the candidate should be well known by the country and work in the soviet areas. At last, Mao Zedong was thought to satisfy these two criteria as the candidate for the CEC chairman of the China Soviet Republic. His nomination was further approved by Moscow,⁸⁵ who had paid great attention to Mao Zedong's military success in the Central Soviet Area and thought highly of him⁸⁶. Later on, Mao Zedong was further nominated by the CPC as the chairman of the Council of People's Commissars.⁸⁷

(4) Chairman Mao undefined: an independent Chairman?

Before the First Soviet Congress, Mao Zedong had been given various titles according to his positions within the CPC, such as "Mao Weiyuan" (Commissioner Mao), or "Mao Shizhang" (Divisional Commander Mao).⁸⁸ Now as the double chairmen, Mao Zedong now became known as "Chairman Mao"⁸⁹, in spite that he had been criticized for commanding like the head of a family⁹⁰.

⁸⁵ See Yu Boliu and Ling Buji, *supra* note 77, 348; Zhonggong Jiangxi Shengwei Dangshi Yanjiushi (ed.), *supra* note 78, at 41.

⁸⁶ About Moscow's appreciation of Mao Zedong, See Yang Kuisong, *supra* note 13.

⁸⁷ See Yu Boliu and Ling Buji, *supra* note 77, at 348-349.

⁸⁸ See Lu Lin and Chen Dejin (ed.), *Hongse Jiyi: Zhongguo Gongchandang Lishi Koushu Shilu (1921-1949)* [Red Memory: Oral History of the CPC (1921-1949)] (Shandong: Jinan Chubanshe, 2002), at 91.

⁸⁹ See Yu Boliu and Ling Buji, *supra* note 77, at 363; Chen Yushu and Chen Lihua, *Kaiguo Qianye: Maozedong Zai Xibaipo De Fengyun Suiyue* [The Eve before the Founding of the Republic: Mao Zedong's Days and Nights at Xibaipo] (Beijing: Zhonggong Dangshi Chubanshe, 2003), at 238; Huang Yunsheng, *Maozedong San Qi San Luo, Kaipi Zhongguo Geming Daolu De Jiannan Yu Quzhe* [Three Times Rise and Fall of Mao Zedong: Hardship and Tortuous to Explore the Road of Chinese Revolution] (Beijing: Zhongyang Wenxian Chubanshe, 2006), at 232.

⁹⁰ Gao Hua, *Hong Taiyang Shi Zenyang Shengqi De* [How did the Red Sun Rise Up] (Hong Kong: Chinese University Press, 2000), at 7-9.

However, Mao Zedong's positions as the double chairmen were not secure in law. According to the Constitutional Draft that had drafted based on the constitution of the U.S.S.R. made in 1924, the CEC should elect a presidium with a chairman. If so, the chairman was supposed to work in this presidium as one of its member. But while this Constitutional Draft had not been adopted by the First Soviet Congress, the Basic Constitutional Program made neither reference to the CEC presidium or to its chairman, and no organic law was made for the Central Provisional Government. Hence the CEC chairman could have to be understood as a personal body working independently on behalf of the Central Executive Committee when the CEC closed, not being a member of the collective presidium. Besides, as the chairman of the Council of People's Commissars was concurrently held by Mao Zedong, he could be a true individual head of government with real power.

In fact, such a personal chairman was not exceptional in the government of the China Soviet Republic. According to the Organic Law on Local Soviet Government promulgated by the Central Executive Committee, local governments did not have the Council of People's Commissars. Instead, a chairman should be elected by each of the various levels of soviets, including the town, city, district, county and province⁹¹. Whereas other local levels of chairmen were supposed to work within a presidium that included the

⁹¹ Suweiai Difang Zhengfu De Zanzing Zuzhi Tiaoli [Provisional Regulation on the Organization of Soviet Local Governments] (promulgated by the first meeting of the Central Executive Committee of the China Soviet Republic in November 1931), art 6, 19, 34.

chairman and one or two vice-chairmen⁹², the town chairman was a sole body to take place of the town soviet when it closed because neither executive committee nor the presidium had been provided for the town soviet by the organic law⁹³ and the town soviet could only elected a chairman who had to work independently to call the meeting of the town soviet once in ten days, to supervise the execution of decisions made by the town soviet and to handle daily business⁹⁴. When the town was large in size, the chairman had to work together with a vice chairman because the town soviet was permitted to have a vice chairman⁹⁵, and the vice chairman had to co-sign the governmental documents together with the chairman⁹⁶. But he was not provided as an equivalent to the chairman because he could not take the place of the chairman when the chairman was absent. Instead, a deputy chairman had to be elected to exercise the power and function on behalf of the chairman.⁹⁷

⁹² Suweiai Difang Zhengfu De Zanxing Zuzhi Tiaoli [Provisional Regulation on the Organization of Soviet Local Governments] (promulgated by the first meeting of the Central Executive Committee of the China Soviet Republic in November 1931), art 19, 34. However, the Organic Law did not provide how many members a presidium should consist of. Besides, according to these two stipulations, the city soviet had no executive committee, as provided for the district, county and province soviets.

⁹³ Suweiai Difang Zhengfu De Zanxing Zuzhi Tiaoli [Provisional Regulation on the Organization of Soviet Local Governments] (promulgated by the first meeting of the Central Executive Committee of the China Soviet Republic in November 1931), art 6.

⁹⁴ Suweiai Difang Zhengfu De Zanxing Zuzhi Tiaoli [Provisional Regulation on the Organization of Soviet Local Governments] (promulgated by the first meeting of the Central Executive Committee of the China Soviet Republic in November 1931), art 16.

⁹⁵ Suweiai Difang Zhengfu De Zanxing Zuzhi Tiaoli [Provisional Regulation on the Organization of Soviet Local Governments] (promulgated by the first meeting of the Central Executive Committee of the China Soviet Republic in November 1931), art 6.

⁹⁶ Suweiai Difang Zhengfu De Zanxing Zuzhi Tiaoli [Provisional Regulation on the Organization of Soviet Local Governments] (promulgated by the first meeting of the Central Executive Committee of the China Soviet Republic in November 1931), art 69.

⁹⁷ Suweiai Difang Zhengfu De Zanxing Zuzhi Tiaoli [Provisional Regulation on the Organization of Soviet Local Governments] (promulgated by the first meeting of the Central Executive Committee of the China Soviet Republic in November 1931), art 6.

“Chairman Mao” decline with sovietization

(1) Chairman Mao started to fall

After election, Mao Zedong did not take much administrative responsibility of the government. Instead, he spent most of his time on military affairs with the Red Army. About two months after the First Soviet Congress, Zhou Enlai arrived at the Central Soviet Area. He had been appointed by the CPC as the secretary of the Central Bearu to strengthen the implementation of its policy in the Central Soviet Area, which had met great opposition from Mao Zedong as the deputy before Zhou Enlai arrived. With a new head, the Central Bearu could better enforce the CPCCC’s policy to protect the former Soviet Union by attacking major Chinese cities. Mao Zedong was forced to leave for sick due to his opposition to those policy disputes. However, as the Red Army was defeated, he was invited back to command in the capacity of the CSR chairman. But his military command did not last long. As the CPCCC tightened its control over the Central Bearu, Mao Zedong’s military command in the capacity of the CSR chairman was abolished and he had to retain his military power as the political commissar of the red army. In the end, he lost his command completely over the red army in the Ningdu meeting held in October, 1932.⁹⁸ Once again, he was forced to take sick leave.⁹⁹

It was not until after the arrival of the CPCCC at the Central Soviet Area in

⁹⁸ See Yu Boliu and Ling Buji, *supra* note 77, at 450-454.

⁹⁹ For this part of history, see Jin Chongji, *Mao Zedong Zhuan: Shui Zhu Chengfu (1893-1937)* [Biography of Mao Zedong: Who Commanded the Rise and Fall (1893-1937)] (Hong Kong: Mingliu Chubanshe, 1997), at 374-401.

January, 1933 that his retirement was terminated. As he had nothing left but the double government chairmanship,¹⁰⁰ he was sent by the CPCCC to deal with the governmental work¹⁰¹, which had previously been in charge by Xiang Ying¹⁰², one of the two vice chairmen during his absence. The other vice chairman Zhang Guotao never came to the Central Soviet Area¹⁰³ in spite that his name continued to appear in the official documents as a co-signor together with his other two colleagues.

(2) Chairman within the presidium

After the CPCCC move into the Central Soviet Area around the end of 1932, the governmental organization was further restructured towards Moscow. In December, 1933, a new Organic Law on Local Soviet Government was promulgated, which not only required the presidium elected for all the town soviets¹⁰⁴, either large or small in size, but also made further stipulation on the number of members of presidiums at all local soviets¹⁰⁵, which had not been clearly provided by the previous Organic Law and included minimally from

¹⁰⁰ See Li Weihai, *Huiyi Yu Yanjiu* [Memory and Study], vol 1. (Beijing: Zhongyang Dangshi Ziliao Chubanshe, 1986), at 338.

¹⁰¹ For Mao Zedong's performance of his administrative affairs, see Jin Chongji, *supra* note 99, at 401-429.

¹⁰² See Yang Musheng, *Zhongyang Suqu Fazhi Jianshe* [Legal Construction of the Central Soviet Region] (Beijing: Zhonggong Dangshi Chubanshe, 2000), at 228; Wang Fuyi, *Xiang Ying Zhuan* [Biography of Xiang Ying] (Beijing: Zhonggong Dangshi Chubanshe, 2008), at 124.

¹⁰³ See Wang Fuyi, *ibid.*

¹⁰⁴ *Zhonghua Suweiai Gongheguo Defang Suweiai Zanxing Zuzhi Fa* (Caoan) [Provisional Organic Law on Local Soviet of the China Soviet Republic (Draft)] (made by the China Soviet Republic on December 12, 1933), art 34.

¹⁰⁵ *Zhonghua Suweiai Gongheguo Defang Suweiai Zanxing Zuzhi Fa* (Caoan) [Provisional Organic Law on Local Soviet of the China Soviet Republic (Draft)] (made by the China Soviet Republic on December 12, 1933), art 11, 34, 60, 72, 85.

five people at the town level up to 13 people at the province.

Two months later, the Second Soviet Congress convened in January, 1934. It adopted an Organic Law for the Central Government with similar regulations, which was similar to its Russian model in 1930s based on the 1924 constitution¹⁰⁶. A presidium with no more than 25 members including one chairman and two to four vice chairmen¹⁰⁷ was installed for the CEC to serve as the supreme organ when the CEC was not in session¹⁰⁸. So far, the presidium was required for all levels of the government as a standing organ when the relevant executive committee was not in session. As a result, the chairman at various levels became a member of the presidium without exception.

More than this, there was even attempt made at one provincial soviet to define the relationship of the chairman with other members of the presidium in which he worked, in spite that both new organic laws did not make provision in this regard. It was provided that the chairman of the standing commission of the executive committee of this provincial soviet not only had some procedural privileges, such as to “call the meetings of all standing commission members and various departments” and “report to the standing commission”¹⁰⁹, but also enjoyed some substantive functions that other

¹⁰⁶ W. E. Butler, *supra* note 76, at 48, 50.

¹⁰⁷ Zhonghua Suweiai Gongheguo Zhongyang Suweiai Zuzhi Fa [Organic Law on Central Soviet of the China Soviet Republic] (promulgated by the China Soviet Republic on February 17, 1934), art 15.

¹⁰⁸ Zhonghua Suweiai Gongheguo Zhongyang Suweiai Zuzhi Fa [Organic Law on Central Soviet of the China Soviet Republic] (promulgated by the China Soviet Republic on February 17, 1934), art 17.

¹⁰⁹ Chuangshan Sheng Suweiai Zuzhi Fa [Organic Law of Chuanshan Provincial Soviet], in

members did not have when the standing commission was not in session, for which he should “lead and oversee the work of other members of the standing commission”, “handle daily business”, and “establish collective leadership and scientific division of work among members”¹¹⁰. Although collaboration and division of work was stressed among members¹¹¹ and either dictatorship or irresponsibility by the chairman should be against¹¹², the chairman was undoubtedly senior to his colleagues in this collective presidium.

(3) Chairman Mao became “Chinese Kalinin”

After the Second Soviet Congress, although Mao Zedong continued to serve as the CEC chairman for a second term, he became a member of the newly introduced CEC presidium. Being limited by the presidium, he enjoyed no more independence as a personal head of government. Furthermore, Zhang Wentian replaced him as the chairman of the Council of People’s Commissars, who had been nominated by the CPC and taken this office even before the Second Soviet Congress. With the new chairman in charge, the Council of People’s Commissars soon changed Mao Zedong’s policies that had been against the will of the CPCCC.

Hang Yanlong and Chang Zhaoru (eds.), *supra* note 76, vol 2, at 159.

¹¹⁰ Chuangshan Sheng Suweiai Zuzhi Fa [Organic Law of Chuanshan Provincial Soviet], *ibid.*

¹¹¹ Chuangshang Sheng Geji Suweiai Gongzuo Fangshi Zanxing Tiaoli [Provisional Ordinance on the Working Methods of Various Soviets of Chuanshan Province], art 20, 26, in Hang Yanlong and Chang Zhaoru (eds.), *ibid.*, at 175, 176.

¹¹² Chuangshang Sheng Geji Suweiai Gongzuo Fangshi Zanxing Tiaoli [Provisional Ordinance on the Working Methods of Various Soviets of Chuanshan Province], art 26, in Hang Yanlong and Chang Zhaoru (eds.), *ibid.*, at 176.

As a result, Mao Zedong became the Chinese counterpart of Mikhail Kalinin¹¹³, who served as the figure head of state of the U.S.S.R. as the chairman of the CEC presidium. Even so, the CPCCC had intended to send him and Zhou Enlai to Moscow to retire on sick. Finally, he was so ignored that could have not been allowed by the CPCCC to go along with the long march when the CPCCC decided to retreat from the Central Soviet Area, if not for his nominal title of the chairman of the China Soviet Republic.¹¹⁴

Conclusion

Thus, with the introduction of western ideas, the traditional Chinese “Zhuxi” was given another meaning as a meeting convenor, i.e., chairman, and under the influence of the U.S.S.R., the commonly-known chairman was transformed from a meeting convenor into an official title for the head of government at various governmental levels, adopted by the KMT in its Nationalist Government in 1925 and by the CPC in the China Soviet Republic in 1931 successively, in both central government of which the chairman served as the head of state, with varying powers and functions. Finally, Chinese “Zhuxi” was transformed into the modern chairmanship, a fixed leading state organ.¹¹⁵

Although being transplanted from the U.S.S.R., the CEC chairman of the

¹¹³ See Shu Long and Ling Buji, *supra* note 73, at 128; Huang Yunsheng, *supra* note 89, at 274; Li Weihai, *supra* note 100, at 338-339, 353.

¹¹⁴ See Wu Xiuquan, “Wu Xiuquan Tongzhi Huiyilu” [Memoirs of Comrade Wu Xiuquan], *Zhonggong Dangshi Ziliao*, no. 1 (1982):176.

¹¹⁵ *Zhongwen Daxidian Bianzuan Weiyuanhui* (ed.), *supra* note 51, at 460; Luo Zufeng (ed.), *supra* note 51, at 701; Feng Jingrong et al (ed.), *supra* note 52, at 351.

China Soviet Republic began as a personal head of government, serving as a replacement of the CEC when it was not in session. However, with the increasing sovietization of the government organization, such a personal head of state was limited and became a senior member of the presidium, exercising the supreme state power jointly with other members of the presidium based on the principals of democratic centralism and combining the deliberation with execution.

However, in political practice, as evidenced by the experience of its holder, Chairman Mao, not only in terms of his official responsibility, but also of his policies, the chairman was completely subject to the CPCCC, who in turn was controlled by Moscow ultimately from afar. Working in this CPC-dominated government that was modeled after the U.S.S.R., the chairman could be reduced to the extent of a figure head, if without a firm leading position within the CPC and over the administration as well as the army. A conflict was implied in this arrangement with regards to the chairman, i.e., the question of contradiction arising between his legal functions and political practices, which requires some answer in due course of time.

For Chairman Mao, such an experience undoubtedly had never been pleasant.¹¹⁶ However, in spite of all those ups and downs he suffered, Mao Zedong personally liked the title of chairman. As his interpreter recalled,

¹¹⁶ Huang Yunsheng, *supra* note 89, at 197.

“Once when we chat, he (Chairman Mao) told me: ‘they call me as Chairman Mao. But do they call me as the chairman of the Central Military Committee, or the chairman of the CPCCC? Nevertheless, my chairmanship of the Central Military Committee has been decided.’ it was before the seventh party congress that he told me this when he had been decided as the chairman of the central military committee, but the party had not installed the chairman. He showed his preference to the title of chairman. He explained: ‘the chairman is the main figure, the host (Zhurengong)’. The seventh party congress decided that he was the party chairman.”¹¹⁷

¹¹⁷ See Shi Zhe, *Mao Zedong De Fanyi Shi Zhe Yanzhong De Gaoceng Renwu* [High-Level Characters in the Eyes of Mao Zedong’s Interpretator Shi Zhe] (Beijing: Renmin Chubanshe, 2005), at 36-37.

Chairman Mao of the People's Republic of China from 1949 to 1954

The founding of the PRC by the Common Program

The CPC's initial preparation for the founding

(1) A united government based on the soviet system

Having retreated from the Central Soviet Area, the CPC and Red Army finally settled down in Yan'an of Shangxi province, and gradually revived. With the Japanese force being driven out of China, war between the CPC and Nationalist government broke out. As the PLA started to fight back from its first withdrawals, Mao Zedong also began to think about the establishment of a new Chinese government. It seemed that he had envisioned a united government as early as March of 1948. In his cable exchange with Stalin, he suggested the creation of a central government including liberal bourgeoisie and gained Stalin's support.¹¹⁸ To have a better idea about how such a united government could function, Mao Zedong attempted to pay a visit to Moscow and the Eastern European countries. On April 26, 1948, he wrote to Stalin, asking to "move forward my visit to U.S.S.R" and to "travel to the countries of Eastern and Southeastern Europe in order to study the work of the people's

¹¹⁸ *Cold War International Project Bulletin (CWIPB)*, issue 16, at 114-115. The relevant information about the communication between Moscow and the CPC will be from this bulletin. However, as it is made clear in this bulletin, information in that regard has been incomplete as it was translated from the Russian source, which had been omitted and tampered. See *CWIPB*, issue 16, at 105.

front and other kinds of work for about one to three months”¹¹⁹. But the hesitant Moscow declined his request.¹²⁰

However, after the CPC initiated a call for a Political Consultative Conference (PCC) and the PLA had won several major wars against the Nationalist army, Mao Zedong became more eager for such a visit. In his cable to Stalin on July 28, Mao Zedong not only stressed “the situation had changed and he wanted to go to Moscow as soon as possible”¹²¹, but also wrote seven issues he intended to discuss in Moscow, including relations with small democratic parties and groups (and democratic figures), the convocation of a PCC, industrial restoration and construction in China, a silver loan of 30 million American dollars, foreign relations, etc.

Obviously, Mao Zedong had become more optimistic about his success and his consideration of the new government had gone beyond the organization of that united government to its specific works and policies¹²². But he could have known that by that time Stalin had given up the idea of united governments and imposed one-party system in those eastern European countries after splitting with Yugoslavia, he may be uncertain whether Moscow still supported his idea of a Chinese united government, let alone those works and policies. Therefore, Mao Zedong ended the cable by emphasizing the need to “come to an agreement so that our political course fully coincides with the

¹¹⁹ Sergei N. Goncharov, John W. Lewis, and Xue Litai, *Uncertain Partners: Stalin, Mao, and the Korean War* (Stanford, Calif.: Stanford University Press, 1993), at 299-300.

¹²⁰ For a brief introduction and analysis about Mao Zedong’s repeated, but postponed visit to the U.S.S.R., see *CWIPB*, issue 16, at 106.

¹²¹ *CWIPB*, issue 16, at 119.

¹²² *CWIPB*, issue 16, at 120.

U.S.S.R.”¹²³.

(2) The September CPC Politburo meeting

While the trip to Moscow had been delayed time and again¹²⁴, situation in China changed so fast that Mao Zedong could not wait any more to organize the central government. He first raised the issue in a CPC Politburo meeting held in September 1948, by asking: “should our government adopt the parliamentary system, or the democratic centralism?”¹²⁵ To answer this question, he drew attention to their past experience of the China Soviet Republic during 1930s, saying:

“In the past we called the system ‘soviet representative congress’. But as ‘soviet’ meant ‘congress’, we also called it ‘soviet’, then the ‘soviet representative congress’ becomes ‘congress of congress’. This is a rigid transplantation of foreign vocabulary. Now we can use the name ‘people’s congress’ and adopt the democratic centralism.”¹²⁶

Not only did he give the soviet system a more Chinese name, i.e., People’s Congress, but also compared the democratic centralism with parliamentary

¹²³ *CWIPB*, issue 16, at 120.

¹²⁴ *CWIPB*, issue 16, at 106-107.

¹²⁵ Mao Zedong, *Zai Zhonggong Zhongyang Zhengzhiju Huiyi Shang De Baogao* [Report at the Meeting of the CPC Politburo], in *Mao Zedong Wenji* [Collection of Mao Zedong’s Writings], ed. Zhonggong Zhongyang Wenxian Yanjiushi, vol 5 (Beijing: Renmin Chubanshe, 1996), at 136-137.

¹²⁶ Mao Zedong, *ibid.*

system from both domestic and international considerations:

“Parliamentary system had been practiced by Yuan Shikan and Cao Kun and been disliked by the people. It is very appropriate for China to adopt the democratic centralism. If we propose to convene the people’s congress, the Nationalist can not oppose because they have been repeating Sun Zhongshan’s will to convene the national congress.”¹²⁷

“Internationally, neither the capitalist countries nor socialist ones could oppose, because Jiang Jieshi convened the national congress twice and those capitalist countries did not oppose him; the Democratic Germany and North Korea also did similarly.”¹²⁸

Therefore, he concluded that:

“I think we can decide so and it is unnecessary to adopt the capitalists’ parliamentary system and the separation of three powers.”¹²⁹

He further conceived a two step plan. As the first step, the PCC could be prepared from then and hold a meeting in late 1948 or the first half of 1949,

¹²⁷ Mao Zedong, *ibid.*

¹²⁸ Mao Zedong, *ibid.*

¹²⁹ Mao Zedong, *ibid.*

then in the fourth year of the civil war, i.e., 1950, a provisional central government would be established.¹³⁰

As Mao Zedong decided to set up a united government by adapting the model of the China Soviet Republic to the new Chinese situation, the chairman could be a possible organ in the new provisional central government. As matter of fact, this had already been true. In a CPC's internal draft revised by Zhou Enlai in November, 1948, the chairmanship was proposed because it provided that "the new Political Consultative Conference shall elect the chairman, vice chairmen and people's commissars of the provisional central government so as to form the council of people's government to handle state affairs at home".¹³¹ Then who could be that chairman?

By the end of 1948, Mao Zedong's plan seemed to be realized. As in the cable of Mao Zedong to Stalin on December 30, 1948, "around the summer of next year (we) will call the political consultative meeting of the representatives of various democratic parties, groups and people's organizations and create a democratic united government. Now it is extremely important to create such a government, all the conditions have become ripe for this."¹³² In reply on January 6, 1949, Stalin agreed that "the question of the creation of the democratic coalition government is becoming a large and

¹³⁰ Mao Zedong, *ibid.*

¹³¹ Nanshan, "Gongheguo Linshi Xianfa Chutai Shimo" [The Making of Provisional Constitution of the Republic], *Dangshi Bolan*, no. 7 (2003): 6; Liu Wushang, *Zhou Enlai Zai Jianshe Niandai* [Zhou Enlai in the Construction Era] (Beijing: Renmin Chubanshe, 2008), at 17.

¹³² *CWIPB*, issue 16, at 124.

timely question”¹³³, but urged the CPC to establish such a government “immediately after the liberation of Beping” instead of in the summer as planned by the CPC¹³⁴. However, in the cable of January 10, Mao Zedong insisted on conducting his long-delayed visit to the U.S.S.R before the creation of the government, while admitting Moscow’s time also feasible.¹³⁵

Seemingly, Stalin and Mao Zedong were thinking about different things. Whereas Stalin paid his attention to the timing of the formation of this united government, Mao Zedong was more concerned with how such a united government could be organized in the soviet way and its future policies. For him, the formation of this government could have not been a problem any more at that time when his army was ready to cross the Yangtze River to deliver the final defeat to its enemy and the negotiation for a PCC to produce that united government were right under way, in which the CPC was bidding hard to obtain a leadership over those democratic parties and figures and hence in the PCC as well as the new government. If with the support from Moscow, his position would be better strengthened in that competition.

But Moscow was still uncertain about such an outlook of China. Rather Stalin had a different picture of such a government. On 14 January 1949, he advised Mao Zedong:

“To create the central united government organs in such a way that

¹³³ *CWIPB*, issue 16, at 125.

¹³⁴ *CWIPB*, issue 16, at 125.

¹³⁵ *CWIPB*, issue 16, at 125.

approximately three fifths of seats in the consultative council and two thirds of the posts in the government would be retained by the communists, and the other seats and posts would be distributed between other democratic parties and the KMT. Second, it is necessary that the posts of the prime minister, commander in chief, and **if possible, that of the president**, be occupied by communist. if you want we can immediately send an authoritative member of the politburo to Harbin or some other place to negotiate on issues of interest to you."¹³⁶

Once again, Stalin cast his doubt about the victory of the CPC and in particular the leading role of Mao Zedong in China. In his mind, Mao Zedong was not a possible candidate for the presidency of this new united government. Impliedly in his advice, Jiang Jieshi, then nominal Chinese leader and Mao Zedong's chief opponent, could be a better occupant of the presidency. If so, Moscow's interest in China could be more secure because Jiang Jieshi had already joined a friendship agreement with Moscow. Beside, Jiang Jieshi was more popular than Mao Zedong among the capitalist countries. On the contrary, Mao Zedong had long been suspected by Moscow as a figure being too national and militant. If he took the lead, he could pursue new policies for which not only Moscow would have to renegotiate with him to maintain its far

¹³⁶ *CWIPB*, issue 6-7, at 29.

East interest, as had revealed by Mao Zedong in their previous communications, but also Moscow's deal with other great powers in Yalta could be challenged.

(3) Anastan Mikoyan's secret visit to China

To narrow their differences, Mao Zedong "very much welcome" Stalin's suggestion of "sending one comrade member to China"¹³⁷. As a result, Anastas Mikoyan made a secret journey to China from January 26 to February 7 of 1949.¹³⁸ During his stay in Xibaipo, the final transit before Mao Zedong settled in Beijing, Mikoyan was informed by Mao Zedong that:

"Now we are facing some problems. The first one is the establishment of the new government, including its nature, form, composition and name, etc, which has been on our schedule because we have thought about it..... the second question is the composition and members of the government. We think it should be a united government, but the leadership of the new government should remain in the hands of the CPC. **Can such a united government function well? This is a**

¹³⁷ *CWIPB*, issue 16, at 129.

¹³⁸ For study on Anastas Mikoyan's visit to China, see Dieter Heinzig, *The Soviet Union and Communist China, 1945-1950: the Arduous Road to the Alliance* (Armonk, N.Y.: M.E Sharpe, 2004), at 135-156; Sergei n Goncharov, John W. Lewis and Xue Litai, *Uncertain Partners: Stalin, Mao, and the Korean War* (Stanford, Calif.: Stanford University Press, 1993), at 38-51; Sergey Radchenko and David Wolff, "To the Summit via Proxy-Summits: New Evidence from Soviet and Chinese Archives on Mao's Long March to Moscow, 1949", *CWIPB*, issue 16, at 107-109. And also see Shi Zhe, *Zai Lishi Juren Shenbian- Shi Zhe Huiyilu* [Beside the Historical Giant: Memoire of Shi Zhe] (Beijing: Zhongyang Wenxian Chubanshe, 1995), at 372-388; *Wo De Yisheng* [My Life] (Beijing: Renmin Chubanshe, 2001) 273-284; *supra* note 117, at 63.

practical question, including working methods and systematic issues. On one hand, system and order can be set up and improved gradually; working method can also be adjusted and improved along with the progress. Surely there will be contradiction and friction during the work, but this can be dealt with and improved. In one word, the future government will be organized in this way, in which **the CPC is the core and the main stray.** After the establishment, we need to strengthen and expand our work of united front.”¹³⁹

For the composition of such a united government, Mao Zedong continued to introduce as following:

“We do not intend to use the parliamentary form..... in the future government communists and leftist democrats will take probably 2/3 of all seats. Formally communists will not have that many seats, but in fact the majority of seats in the government will belong to them because a number of seats will be taken by covert communists. The rightist’s parties will also take part in the government, but in the minority..... The structure of the central government is similar to the government of the U.S.S.R. It is headed by a **presidium with a chairman**, the premier has not been confirmed yet but probably, it will

¹³⁹ Shi Zhe, (2001), *ibid*, at 273-274; *supra* note 117, at 63-65.

be Zhou Enlai. As to himself, Mao Zedong said he will leave to himself the chairmanship of the CCPCC and will join the government with the rights of a member of the presidium."¹⁴⁰

Then who was supposed to be the chairman of that central government?

According to Mao Zedong,

“Sun Yatsen’s (Sun Zhongshan) widow Sun Qinglin (Song Qingling) is intended as the chairman of the presidium.”¹⁴¹

However, both Ren Bishi and Zhou Enlai, the other two CPC members at present in their talk, did not agree with Mao’s opinion:

“It is better for Mao Zedong to be the chairman of the presidium;if Mao does not take the post of the chairman of the presidium, this will not be understood by the people. In any case, if Sun’s widow becomes the chairman of the presidium, Mao should take the premier’s post.”¹⁴²

After hearing their objections, Mao Zedong continued to propose three other people as the candidates for the chairmanship. they were Zhu De, Dong Biwu

¹⁴⁰ *CWIPB*, issue 16, at 156.

¹⁴¹ *CWIPB*, issue 16, at 156.

¹⁴² *CWIPB*, issue 16, at 156.

and Liu Bocheng, all of who were senior CPC members¹⁴³. Zhu De had created the Red Army together with Mao Zedong and been ranked only after Mao Zedong in the CPC Politburo. Dong Biwu was one of the founding member of the CPC and older in age than Mao Zedong. He had acted as the chairman of the government of the boarder area where the CPC had occupied after it had evacuated from the China Soviet Republic and entered into the anti-Japanese united front the Nationalist Party. Both of them had enjoyed a high reputation within the CPC and could act as a figure head similar to Song Qingling. Being a military general, Liu Bocheng was less famous than his two colleagues and could be less possible for him to take that position as he had never had similar experience before¹⁴⁴.

Their conversation revealed that Mao Zedong had conceived two different arrangements. The first one was to have a nominal head of government other than Mao Zedong, which was similar to Stalin's suggestion; and the other one was to let Mao Zedong as the chairman, which was preferred by the CPC, but new to Stalin. As Mikoyan had claimed at the very beginning of their talks that he could only hear on behalf of Stalin and not been supposed to give any opinion during his visit, Moscow's attitude remained unclear. Therefore, Mao Zedong only concluded in the end of this talk that:

“The question of the chairman should be solved taking into account

¹⁴³ *CWIPB*, issue 16, at 156.

¹⁴⁴ Later on, he became the mayor of Nanjing city, the former capital of the Nationalist government.

the internal and the international situation.”¹⁴⁵

He could have had to acknowledge this. On one side, Stalin seemed still not be ready to accept the new plan by then because Mikoyan once praised Zhou Enlai as the best choice of the premier for the new government in his private conversation with Mao Zedong’s Russian interpreter, but did not mention Mao Zedong in this regard¹⁴⁶. On the other side, Chinese democratic parties and figures participating negotiation for the PCC was still hesitate to recognize the leadership of the CPC in the united government. on January 22, 1949, well in the middle of Mikoyan’s visit, 55 representatives of democratic parties and figures announced to accept the leadership of the CPC “in the course of people’s liberation war”, without mentioning the CPC’s leading role in the future united government¹⁴⁷. In other words, the CPC still had to strive for their final support.

(4) The second Plenary Session of the seventh CPCCC

Two months later, the CPC soon made its decision. Starting from 3rd to 15th of March, 1949, the CPC held the second Plenary Session of its Seventh Central Committee. This meeting not only approved the plan to establish the new united government based on the soviet model rather than on the

¹⁴⁵ *CWIPB*, issue 16, at 156.

¹⁴⁶ Shi Zhe, *supra* note 117, at 164-165; *supra* note 138, (2001), at 283-284.

¹⁴⁷ Daoda Jiefangqu De Minzhu Renshi Li Jishen Deng Wushiwu Ren Fabiao Dui Shiju Yijian [Opinions to the Current Situation Made by Fifty-five People Who Includes Li Jishen and Have Arrived at the Liberated Areas], in Yang Jiangxin, Shi Guangshu and Yuan Tinghua (eds.), *supra* note 15, at 216.

parliamentary system adopted by the capitalist countries¹⁴⁸, but also confirmed that Mao Zedong and Zhou Enlai would join that government, in which Mao Zedong would be the chairman of the presidium and Zhou Enlai would be the premier; such an arrangement was supposed to ensure the leadership of CPC over the new government.¹⁴⁹ Beside, the basic structure of the central government had been outlined, in which that the central government would consist of the military council and cabinet, and three committees would also be established within the cabinet to take charge of various ministries.¹⁵⁰

Liu Shaoqi's secret visit to Moscow

(1) Stalin's opinion on the post of chairman

As the CPC continued its military success at battlefields by taking Nanjing and Shanghai in the following April, Moscow also changed its uncertain attitude towards China. It not only recalled its ambassador lingering in Guangzhou, but also discussed with Mao Zedong about China's request of 300 million US dollars loans and invited Liu Shaoqi to pay a secret visit to Moscow.¹⁵¹

¹⁴⁸ Mao Zedong: Zai Zhonggong Qijie Erzhong Quanhui Shang De Zongjie [Summary at the Second Plenary of the Seventh CPCCC], in Zhonggong Zhongyang Wenxian Yanjiushi (ed.), *supra* note 125, at 265.

¹⁴⁹ Zhang Xuexin (ed.), *Ren Bishi Zhuan* [Biography of Ren Bishi] (Beijing: Zhongyang Wenxian Chubanshe, 1994), at 713; Bian Yingji (ed.), *Yidai Weiren: Mao Zedong Shihua* [the Great Man: History of Mao Zedong], vol 2, (Xinjiang: Xinjiang Renmin Chubanshe, 2002), at 1114; Bo Yibo, *Ruogan Zhongda Juece Yu Shijian De Huigu* [Review of Some Important Decision-Makings and Matters] (Beijing: Renmin Chubanshe, 1997), at 30.

¹⁵⁰ Yang Huolin, *1949-1954 Nian De Zhongguo Zhengzhi Tizhi* [Political System of China During 1949 and 1954] (unpublished PHD thesis, 2005), at 55.

¹⁵¹ Chen Dunde, *supra* note 11, at 159.

On June 21, 1949, Liu Shaoqi started his pioneering visit to Moscow.¹⁵² After arrival, Liu Shaoqi submitted a report to Stalin on July 4, which had been drafted by him and revised by Mao Zedong¹⁵³. In this report, he introduced the CPC's preparation for the new government as following:

“We have decided to convene in August a new political consultative conference and set up a united government.....a preparatory committee on PCC convocation has already been set up. It comprises 134 members, among them 43 communists, 48 progressive figures who will certainly support us, 43 centrists, with 12 centrists with rightist leanings among them. The progressive include 15 undercover communists. The leadership of the preparatory committee is securely with the communist party. A standing presidium of 21 has been set up within the preparatory committee. Leadership in this presidium has likewise been secured for the communist party.....all told, 45

¹⁵² For discussion about Liu Shaoqi's visit to Moscow in 1949, see Dieter Heinzig, *supra* note 138, at 174-231; Sergei n Goncharov, John W. Lewis and Xue Litai, *supra* note 138, at 61-75; Sergey Radchenko and David Wolff, *supra* note 138, at 110-111. And Shi Zhe, *supra* note 138, (1995), at 395-426; (2001), at 273; *supra* note 117, at 63.

¹⁵³ Odd Arne Westad (ed.), *Brothers in Arms: the Rise and Fall of the Sino-soviet Alliance, 1945-1963* (Washington, D.C.: Woodrow Wilson Center Press; Stanford, Calif.: Stanford University Press, 1998), at 301. For English version of this report translated from the Russian publication and amended according to its original document, see Odd Arne Westad (ed.), *Brothers in Arms: the Rise and Fall of the Sino-soviet Alliance, 1945-1963* (Washington, D.C.: Woodrow Wilson Center Press; Stanford, Calif.: Stanford University Press, 1998), at 301-313. For its Chinese text, see Zhonggong Zhongyang Wenxian Yanjiushi (ed.), *Jianguo Yilai Liu Shaoqi Wengao* [Liu Shaoqi's Writings since the Founding of the People's Republic of China] vol 1. (Beijing: Zhongyang Wenxian Chubanshe, 1998), at 1-28. For Chinese translation from Russian writing, see Chen Dhunhua and Liu Cunkun (trans.), *Si Dalin Yu Zhongguo* [Stalin and China] (Beijing: Xinhua Chubanshe, 2001), at 102-115. For a recording on this report by the Chinese interpreter participating Liu Shaoqi's visit to Moscow, see Shi Zhe, *supra* note 138, (2001), at 299-300, and *supra* note 117, at 220-221.

organizations will be represented in the PCC by 510 delegates. The communists will make up a majority.”¹⁵⁴

the composition of the united government was further described as following:

“We have decided to convene a new political consultative conference and establish a united government. The organization of this new central government has not been decided as yet. Except the military council, the new central government will set up finance and economy committee, culture and education committee, and political and legal committee under the cabinet of ministers. Besides, various ministries will also be established, which will include ministry of railroad, agriculture, forestry, commerce, metallurgy, textile, fuels, transportation and post and communication, etc. **Comrade Mao Zedong will be the chairman of the central government** and Comrade Zhou Enlai will be the premier of the cabinet.”¹⁵⁵

When reading that Mao Zedong would be the chairman, Stalin underlined it and marked a question beside:

¹⁵⁴ Odd Arne Westad (ed.), *ibid*, at 303-304.

¹⁵⁵ It is translated by the author based on the Chinese text. There are no differences among those various Chinese versions on this point, but the English version in “Brothers in Arms” has some discrepancies in meaning with those Chinese texts, which translates it as: “Comrade Mao Zedong **has been nominated** chairman of the central government, and Comrade Zhou Enlai prime minister.” See Odd Arne Westad (ed.), *ibid*, at 304.

“Is this in fact the president?”¹⁵⁶

Stalin had good reasons for his doubt on this point. Well when drafting the Russian constitution in 1936, which was later branded as “Stalin constitution”, he had claimed that:

“The Supreme Soviet presidium is the collective president of the U.S.S.R. One of the characteristics in the state organization of the U.S.S.R is being completely democratic, i.e., there is no individual head of state. In the U.S.S.R, there should not have an individual president elected by the people in contrast to the Supreme Soviet which is also elected by the people. Rather, in the U.S.S.R, the president is collective, which is the presidium of the Supreme Soviet, including the chairman. Such a presidium is elected by and should report to the Supreme Soviet.....such a way is the most democratic.”¹⁵⁷

Hence, according to his theory, if Mao Zedong was an individual president, then such a united government would not be the one “close to the regime of

¹⁵⁶ It is translated by the author based on the Chinese text. There is no substantive difference between this translation with that in “Brothers in Arms”, which is “what’s that: president in fact?” See Odd Arne Westad (ed.), *ibid*, at 304.

¹⁵⁷ Liang Da et al (trans.), *Sulian Xianfa Jiaocheng* [Textbook of the Soviet Constitution] (Beijing: Wushi Niandai Chubanshe, 1950), at 170.

soviets”, as claimed by Liu Shaoqi and endorsed by Stalin in Liu’s report¹⁵⁸. Instead, it could be something the least democratic that had only been adopted by the capitalist states.

More importantly, Stalin could be doubtful for other practical reasons. He could have known that, during the first meeting of the preparatory committee of the new political consultative conference convened from June 15 to 19, well just before Liu Shaoqi started his Moscow’s trip, Mao Zedong had debated with his democratic friends about the foreign policy that the new Chinese government would adopt. While Mao Zedong insisted on his orientation towards Moscow, it was a common suggestion from the democratic parties that China should put emphasis both on the USA and the Soviet Union. A non-CPC person even proposed Mao Zedong to follow the example of Yugoslavia and be a “Chinese Tito”.¹⁵⁹ Although Mao Zedong ended this debate by declaring the “lean-on-one-side” policy publicly on 30th¹⁶⁰, Stalin surely could have had that in his mind when he read Liu Shaoqi’s report. Being skeptical of Mao Zedong being likely as another Tito, Stalin could have more preferred a soviet style chairman limited by the presidium than the capitalist individual president.

Therefore, when meeting Liu Shaoqi again to discuss his report together

¹⁵⁸ It was stated in Liu Shaoqi’s report that, “the people’s democratic dictatorship ... comes closer to the regime of soviets.” Stalin marked “Yes” on this point. See Odd Arne Westad (ed.), *supra* note 153, at 305.

¹⁵⁹ Chen Dunde, *supra* note 151, at 112.

¹⁶⁰ Mao Zedong, “Lun Renmin Minzhu Zhuangzheng” [On People’s Democratic Dictatorship], in *Mao Zedong Xuanji* [Selections of Mao Zedong] (Beijing: Renmin Chubanshe, 1960), at 1362.

with the Russian Politburo members and generals in the night of July 10, Stalin raised his question again and asked Liu Shaoqi whether the chairman the same as president and what the nature of the relations between the chairman and premier was. Liu Shaoqi replied that the presidium was a collective president, while the cabinet shall comply with the presidium and was the executive body of the central government. On hearing of this, Stalin said that such a system could be appropriate for China at this stage.¹⁶¹ He may imply that it was not acceptable in the future. In other words, Stalin was still reserved about the Chinese chairman.

(2) Stalin's other advice to the CPC

Then Stalin further suggested to his CPC guests that they could use the Common Program for the time being, but should be prepared to draft a constitution. Liu Shaoqi asked whether that would be a socialist constitution.

Stalin answered as such:

“It is not. I mean a constitution at this stage. Then enemy can make propaganda to the populace against you by two sayings. First they can say you did not hold election, and the government is not produced by election; secondly your country has no constitution. Since the Political

¹⁶¹ Zhonggong Zhongyang Wenxian Yanjiushi (ed.), *supra* note 153, at 22, 24. No Russian record on this point has been found until now. The Chinese interpreter who witnessed this meeting only recalled that Stalin confirmed CPC's designation of the new government and its foreign policy summarized in Liu Shaoqi's report and did not mentioned whether Stalin had ever raised such a question. See Shi Zhe, *supra* note 138, (2001), at 299-300, and *supra* note 117, at 220-221.

Consultative Conference was not elected, they can say that you control the positions by force and form the government on your own; the common program is not passed by the people's representatives, instead it is submitted by one party and agreed upon by other parties. Therefore, you should take this weapon out from your enemies. I agree with your opinion that the common program should be turned into the fundamental law of the state. Content of the constitution should include: firstly, general election; secondly, permit the private property of the entrepreneurs and rich farmers; thirdly, permit foreign countries' rights to lease on Chinese business. I think you can hold election and pass the constitution in 1954. There is also one more problem for China. Since you are a joint government, then the government can not be accountable to one party, instead to all parties, in which case the state secrecy would be hard to keep. It would be harmful to you if your enemies know your plan. But if the CPC wins the majority, as the result of people's election, you can form a one-party government."¹⁶²

In the last meeting with the CPC in August, Stalin asked Liu Shaoqi when the CPC was going to announce the founding of the central government because the Nationalist government had been paralyzed while the CPC had been ready to assume its place. Liu Shaoqi replied that it would be in January

¹⁶² Shi Zhe, *supra* note 138, (2001), at 299-300; *supra* note 117, at 220-221.

1950, and possibly on January 1st. Stalin then suggested that the enemies could interfere by taking advantage of that situation and the CPC should be cautious.¹⁶³

His advice had merits. In the CPC's previous negotiation with John Leighton Stuart, then American ambassador to China, the US government also claimed that it could not give up recognition of the Nationalist government because no other government had been set up to replace the nationalist one.¹⁶⁴ In this trip, the Russian also informed the Chinese that an Islamic Republic was plotted to set up in areas around China's Xinjiang province under the support of the United States, whose recognition would be given immediately upon its establishment.¹⁶⁵ Hence Stalin's advice was sent back home and accepted soon by the CPC.¹⁶⁶ When Liu Shaoqi arrived in Shenyang, China in late August, they learned that the new government would be established on October 1st.¹⁶⁷

Constitutional making of the CPPCC

From June 15 to 20, 1949, the Preparatory Committee of the New Political

¹⁶³ Shi Zhe, *supra* note 138, (2001), at 316-317; *supra* note 117, at 237.

¹⁶⁴ Huang Hua, "Situ Leideng Lihua Zhenxiang" [The Truth of John Leighton Stuart's leaving China], in *Yanda Wenshi Ziliao* (Beijing: Beijing university press, 1995), no. 9, at 76.

¹⁶⁵ Li Ge, "Mao Zedong Choujian Zhongyang Renmin Zhengfu De Jihua He Jiben Yuanze" [Mao Zedong's Plan and Basic Principal for the Establishment of the Central People's Government], *Dang De Wenxian*, no. 6 (2007): 54.

¹⁶⁶ In a telegram dated on August 6th, from Zhou Enlai to his wife Deng Yingchao, Zhou Enlai informed her that the New Political Consultative Conference would meet in September. See Ma Yongshun, *Zhou Enlai He Renmin Zhengxie* [Zhou Enlai and the People's Consultative Conference] (Beijing: Zhongguo Wenshi Chubanshe, 2004), at 9. Therefore, Stalin's suggestion must have played a major role in CPC's changing its plan. But there is also other viewpoint among Chinese scholars that the CPC made its decision independently. See Chen Dunde, *supra* note 151, at 167.

¹⁶⁷ Shi Zhe, *supra* note 138, (2001), at 316-317, and *supra* note 117, at 237.

Consultative Conference¹⁶⁸ held its first meeting in Beijing. It was decided in this meeting to set up a Standing Committee headed by Mao Zedong and other six working groups responsible for drafting relevant documents, among which the third group led by Zhou Enlai was assigned to draft the Common Program of the Chinese People Political Consultative Conference (the Common Program), and the fourth group led by Dong Biwu was to draft the Organizing Law of the Central People's Government (the Organic Law).

Almost the same time as Liu Shaoqi's visit, the six working groups of the preparatory committee started their drafting. On June 18, the third group held its first meeting, in which the CPC members were delegated to write the first draft. About two months later, Zhou Enlai completed a draft titled as "the New Democratic Common Program", which did not provide for the chairmanship¹⁶⁹. On August 22, it was first sent to Mao Zedong for review, who personally revised it five times.¹⁷⁰ While the revision continued within the CPC, the drafts were also submitted by the CPC formally on September 6¹⁷¹ and underwent seven meetings' deliberation, including three meetings of

¹⁶⁸ It was renamed as the Chinese People's Political Consultative Conference (CPPCC).

¹⁶⁹ "Guanyu Zhou Enlai Yu Gongtong Gangling Qicao Guocheng De Yizu Wenxian" [Some Documents Concerning Zhou Enlai's Participation to the Drafting of the Common Program], *Dang De Wenxian*, no. 2 (2003): 4-12.

¹⁷⁰ Liu Yitao and Xue Peisong, "Mao Zedong Yu Xin Zhengzhi Xieshang Huiyi" [Mao Zedong and the New Political Consultative Conference], in *Yinlai Shuguang De Shenghui: Xin Zhengzhi Xieshang Huiyi Qinli Ji* [Grand Meeting in the Dawn: Record of Personal Participation to the New Political Consultative Conference], ed. Shi Guangshu (Beijing: Zhongguo Wenshi Chubanshe, 1987), at 227; Huqiaomu Huiyi Maozedong Bianxie Zu (ed.), "Mao Zedong Yu Gongtong Gangling De Zhiding" [Mao Zedong and the Making of the Common Program], *Dangdai Zhongguoshi Yanjiu*, no. 1 (1994): 11; Wang Hongyan, "Sanci Qicao Sanci Mingming De Gongheguo Linshi Xianfa" [The Republic's Provisional Constitution Being Drafted and Named for Three Times], *Zhongheng*, no. 11 (2002): 42.

¹⁷¹ Xu Chongde, *Zhonghua Renmin Gongheguo Xianfashi* [Constitutional History of the People's Republic of China] (Fujian: Fujian Renmin Chubanshe, 2005), vol. 1, at 30.

the third working group, two meetings of representatives of the PCC and two meetings of the preparatory committee.¹⁷²

Well during the first meeting of the Preparatory Committee, the fourth working group held its first meeting on June 18 to discuss the Organic Law. Dong Biwu not only made a keynote speech on principals to be laid down in this draft¹⁷³, but also prepared the first draft¹⁷⁴. His draft was further discussed by the fourth working group, the Standing Committee and the Preparatory Committee successively.¹⁷⁵

On September 17, the Preparatory Committee held its second meeting and the 126 members passed both law drafts by standing votes.¹⁷⁶ Then when the First Congress of Chinese People's Political Consultative Conference (CPPCC) convened its first session from September 21st, these two drafts were reported to the session on the second day¹⁷⁷ and passed unanimously on 27th by hand

¹⁷² Huqiaomu Huiyi Maozedong Bianxie Zu (ed.), *supra* note 170, at 11; Wang Hongyan, *supra* note 170, at 42; Huang Dingchen, "Xin Zhengxie De Fenggong Weiji Jiang Yongzai Shice" [Great Achievements of the New Political Consultative Conference will be Record in History], in Shi Guangshu (ed.), *supra* note 170, at 118. However, it has remained unknown about the details of these repeated revisions within and outside of the CPC on the draft, except that its title was changed to "the common program of China's Political Consultative Conference" on September 5th. For this, see Wang Hongyan, *supra* note 170, at 42.

¹⁷³ Gao Jianzhong (ed.), *Zhongguo Renmin Zhengzhi Xieshang Huiyi Chengli Jishi* [Documentary of the Establishment of the CPPCC] (Beijing: Dangdai Zhongguo Chubanshe, 2002), at 221-222; Dongbiwu zhuanxiezu, *Dong Biwu Zhuan 1886-1975* [Biography of Dong Biwu 1886-1975], vol. 2, (Beijing: Zhongyang Wenxian Chubanshe, 2006), at 647-649.

¹⁷⁴ Dong biwu, *supra* note 15, at 519-520.

¹⁷⁵ Dongbiwu zhuanxiezu, *supra* note 173; Dong Biwu, *supra* note 15, at 519-520; Lei Jieqiong, "Wo Canjia Yijie Zhengxie De Huiyi" [My Memory of Participating the First Political Consultative Conference], in Shi Guangshu (ed.), *supra* note 170, at 101.

¹⁷⁶ Shidai Shuju (ed.), *Cong Zhongguo Renmin Zhengzhi Xieshang Huiyi Dao Zhongyang Renmin Zhengfu Chengli* [From the Chinese People's Political Consultative Conference to the Establishment of the Central People's Government] (Shanghai: Shidai Shuju, 1949), at 42-44.

¹⁷⁷ Zhongguo Renmin Zhengzhi Xieshang Huiyi Diyi Jie Quanti Huiyi Xinwen Chu (ed.), *Zhongguo Renmin Zhengzhi Xieshang Huiyi Diyi Jie Quanti Huiyi Huikan* [Bulletin of the First Plenary of the Chinese People's Political Consultative Conference], no. 2 (1949): 2.

votes¹⁷⁸ with a few minor changes¹⁷⁹.

The Common Program had a preamble and seven chapters. Apart from the first chapter about the general principal and the second chapter about organs of state power, the rest five chapters were all policy statements in terms of military, economic, cultural and educational, foreign affairs as well as nationalities. With respect to state organs, the second chapter did not give a full account. In stead, it just named what organs exercised the state power¹⁸⁰, by what procedures those organs should be produced¹⁸¹ and on what principals they should functions¹⁸², such as the democratic centralism¹⁸³. To learn more detailed information about the organization of those state organs at the central level, the organic law of the central government had to be referred to. Therefore, policy issues and state organization was divided into two separate laws, i.e., the common program and organic law. It seems that such a practice of separation between policy statement by constitutional document and governmental organization by legal code was inherited from the China Soviet Republic. Similarly, the China Soviet Republic of 1930s not only had a

¹⁷⁸ Shidai Shuju (ed.), *supra* note 176, at 136-137.

¹⁷⁹ Zhongguo Renmin Zhengzhi Xieshang Huiyi Diyi Jie Quanti Huiyi Xinwen Chu (ed.), *Zhongguo Renmin Zhengzhi Xieshang Huiyi Diyi Jie Quanti Huiyi Huikan* [Bulletin of the First Plenary of the Chinese People's Political Consultative Conference], no. 8 (1949): 1.

¹⁸⁰ The Common Program of the Chinese People's Political Consultative Conference (adopted by the First Plenary Session of the Chinese People's Political Consultative Conference on September 29, 1949), art 12, 13, 14, 19, 20.

¹⁸¹ The Common Program of the Chinese People's Political Consultative Conference (adopted by the First Plenary Session of the Chinese People's Political Consultative Conference on September 29, 1949), art 12, 13, 14.

¹⁸² the Common Program of the Chinese People's Political Consultative Conference (adopted by the First Plenary Session of the Chinese People's Political Consultative Conference on September 29, 1949), art 15, 16, 17, 18.

¹⁸³ The Common Program of the Chinese People's Political Consultative Conference (adopted by the First Plenary Session of the Chinese People's Political Consultative Conference on September 29, 1949), art 15.

constitutional program which had primarily been concerned with policy issues, but also had two organic laws, one for the central government and the other about the local government.

Chairman of the Central People's Government

A four-layer central government

According to the Common Program, the state power belongs to the people¹⁸⁴, who were to exercise through state organs organized by two different procedures, pending on the convocation of the All-China People's Congress. Before the convocation of the All-China People's Congress, the Plenary Session of the Chinese People's Political Consultative Conference would take place of the All-China People's Congress, enact the Organic Law of the Central People's Government, elect the Central People's Government Council (CPGC) and vest it with the authority to exercise state power;¹⁸⁵ after that, the All-China People's Congress shall be the supreme organ of state power and when it was not in session, the Central People's Government shall exercise the state power as the supreme organ.¹⁸⁶

Consisting 63 members elected by the CPPCC, including a chairman, six

¹⁸⁴ The Common Program of the Chinese People's Political Consultative Conference (adopted by the First Plenary Session of the Chinese People's Political Consultative Conference on September 29, 1949), art 12.

¹⁸⁵ The Common Program of the Chinese People's Political Consultative Conference (adopted by the First Plenary Session of the Chinese People's Political Consultative Conference on September 29, 1949), art 13.

¹⁸⁶ The Common Program of the Chinese People's Political Consultative Conference (adopted by the First Plenary Session of the Chinese People's Political Consultative Conference on September 29, 1949), art 12.

vice-chairmen and 56 other people,¹⁸⁷ the CPGC was provided to represent the PRC in international relations and assume the leadership of the state apparatus at home¹⁸⁸. Under it, there were four more parallel organs, i.e., the Government Administration Council (GAC) as the highest executive body, the People's Revolutionary Military Council as the commander of armed force, the Supreme People's Court (SPC) as the highest judicial body, and the People's Procurator-General's Office as the highest supervisory organ.¹⁸⁹

Therefore, the Central People's Government had two levels of bureaucracies¹⁹⁰, which can be comparable to the Central Government of the China Soviet Republic. For example, the CPGC has almost the same size with the first CEC, and both have no presidium within them; the GAC can be seen as another Council of People's Commissars. In particular, similar to the CRS, the armed force of PRC has been separated from the administrative body to an independent committee, i.e., the People's Revolutionary Military Council, which also consisted of a chairman, several vice-chairmen and other members¹⁹¹.

However, whereas the CEC was subject to the All-Chinese Congress of

¹⁸⁷ The Organic Law of the Central People's Government of the People's Republic of China (adopted by the First Plenary Session of the Chinese People's Political Consultative Conference on September 29, 1949), art 6.

¹⁸⁸ The Organic Law of the Central People's Government of the People's Republic of China (adopted by the First Plenary Session of the Chinese People's Political Consultative Conference on September 29, 1949), art 4.

¹⁸⁹ The Organic Law of the Central People's Government of the People's Republic of China (adopted by the First Plenary Session of the Chinese People's Political Consultative Conference on September 29, 1949), art 5.

¹⁹⁰ Yang huolin, *supra* note 150, at 62-63.

¹⁹¹ The Organic Law of the Central People's Government of the People's Republic of China (adopted by the First Plenary Session of the Chinese People's Political Consultative Conference on September 29, 1949), art 32.

Soviets, the CPGC was the highest state organ, since the All-China People's Congress was yet to be established in 1954. More notably, the GAC was internally more sophisticated than the flat structure of the Council of People's Commissars. Headed by the premier¹⁹², the GAC had also been divided into three levels, i.e., the council, committee and ministerial level. At the council level, there were the premier, vice premiers, secretary-general and a number of members, all of whom were to be appointed by the CPGC.¹⁹³ Under the council, there were three committees to direct the work of about thirties ministries, commissions, etc.¹⁹⁴ Hence, the Central People's Government of the PRC would be a four-levels bureaucracy from top to bottom, and was more diverse than that of the China Soviet Republic.

The Central People's Government Council

(1) The CPGC as a soviet style head of state

As the authority to exercise state power¹⁹⁵, the CPGC was vested with ten items of powers, including: making and interpreting law, deciding administrative policies, correcting the government administration council's

¹⁹² The Organic Law of the Central People's Government of the People's Republic of China (adopted by the First Plenary Session of the Chinese People's Political Consultative Conference on September 29, 1949), art 16.

¹⁹³ The Organic Law of the Central People's Government of the People's Republic of China (adopted by the First Plenary Session of the Chinese People's Political Consultative Conference on September 29, 1949), art 13.

¹⁹⁴ The Organic Law of the Central People's Government of the People's Republic of China (adopted by the First Plenary Session of the Chinese People's Political Consultative Conference on September 29, 1949), art 18.

¹⁹⁵ The Organic Law of the Central People's Government of the People's Republic of China (adopted by the First Plenary Session of the Chinese People's Political Consultative Conference on September 29, 1949), art 3.

decisions and orders, ratifying foreign treaties, handling issues concerning war and peace, approving state budget, granting amnesty and pardon, giving honorary awards, and appointing and removing senior officials.¹⁹⁶ These powers were explained by the drafter as following:

“The powers and functions of the Central People’s Government Council are often provided by other countries’ constitutions as those of the heads of state.”¹⁹⁷

Thus the CPGC was intended to be the head of state of the PRC, and it was a collective one because of its sizable members. Taking into consideration the provision of the Organic Law stipulating that the Central People’s Government Council represented the PRC in international relations and assumed the leadership of the state apparatus at home¹⁹⁸, this could be true. Compared with the China Soviet Republic, this is a progress, because the latter had not mentioned this point at all either in its laws or by its law-makers, possibly because it was not an effective government at that time. This is also an agreement with Stalin’s theory of collective head of state. Stalin should be relaxed at this point.

¹⁹⁶ The Organic Law of the Central People’s Government of the People’s Republic of China (adopted by the First Plenary Session of the Chinese People’s Political Consultative Conference on September 29, 1949), art 7.

¹⁹⁷ Dong Biwu, *supra* note 15.

¹⁹⁸ The Organic Law of the Central People’s Government of the People’s Republic of China (adopted by the First Plenary Session of the Chinese People’s Political Consultative Conference on September 29, 1949), art 4.

Then if examined in details, these powers were of different natures in western theories. In Western countries, some of these powers belonged to parliaments, such as law-making and interpreting, approval of government budget and correcting the administration; some were owned by the administration independently or jointly with the parliament, like determining administrative policies, dealing with wars and peace, and promulgating general amnesty; and some were performed by the head of state, with or without the prior decisions of the parliament, such as appointment of government officials and issuing pardon. Besides, the power to interpret law fell into the jurisdiction of the court in some western countries.¹⁹⁹ Therefore, to be more accurate, the CPGC was a soviet style of head of state, i.e., a collective head of state with mixing legislative, administrative and judicial authorities.

(2) Meeting of the CPGC

To perform its power and function, the CPGC was provided to convene a meeting in every two month. In these meetings, three different procedures were provided for the CPGC to make laws. It could either legislate on bills submitted by the GAC²⁰⁰, or accept resolutions submitted by the Plenary

¹⁹⁹ Zhang Zhiran, "Zhongyang Renmin Zhengfu Zuzhifa Pouxi" [Analysis of the Organic Law of the Central People's Government], in *Zhongguo Renmin Zhengzhi Xieshanghuiyi Gongtong Gangling (Xuexi Ziliao)* [The Common Program of the Chinese People's Political Consultative Conference (Study Materials)], ed. Bai Yan (Lianyi Chubanshe, 1950), at 109-111.

²⁰⁰ The Organic Law of the Central People's Government of the People's Republic of China (adopted by the First Plenary Session of the Chinese People's Political Consultative Conference on September 29, 1949), art 15, paragraph 3.

Session of the CPPCC prior to the convocation of the All-China People's Congress²⁰¹. It could also consider proposals from the National Committee of the CPPCC²⁰².

It has been suggested that the CPGC is the supreme organ of PRC²⁰³. However, it should also be noted that the involvement of the CPGC with the administrative affairs is limited. According to the legal provisions, the CPGC was supposed to focus mainly on major administrative policy-setting²⁰⁴, rather than specific implementation, which should be carried out by the GAC, legally "the highest executive body for state administration"²⁰⁵. Besides, the CPGC's administrative capacity was also constrained by its working method, which was meeting in every two month²⁰⁶. Only when it convened, the CPGC could exercise its administrative powers and the GAC could report and be accountable to the CPGC²⁰⁷.

²⁰¹ The Organic Law of the Chinese People's Political Consultative Conference of the People's Republic of China (adopted by the First Plenary Session of the Chinese People's Political Consultative Conference on September 29, 1949), art 7, paragraph 3, subparagraph 3.

²⁰² The Organic Law of the Central People's Government of the People's Republic of China (adopted by the First Plenary Session of the Chinese People's Political Consultative Conference on September 29, 1949), art 13, paragraph 2.

²⁰³ Li Ge, "Guanyu 1949-1954 Nian Zhongyang Renmin Zhengfu De Guoran Wenti" [Several Issues Concerning the Central People's Government during 1949 and 1954], *Dang De Wenxain*, no. 4 (1996): 78; "1949-1954 Nian Zhongyang Renmin Zhengfu Zuzhi Jigou Shezhi Jiqi Bianhua" [Organization of the Central People's Government and Relevant Changes during 1949 and 1954], Part 1, *Dang De Wenxain*, no. 5 (2001): 86-87.

²⁰⁴ The Organic Law of the Central People's Government of the People's Republic of China (adopted by the First Plenary Session of the Chinese People's Political Consultative Conference on September 29, 1949), art 7, paragraph 2.

²⁰⁵ The Organic Law of the Central People's Government of the People's Republic of China (adopted by the First Plenary Session of the Chinese People's Political Consultative Conference on September 29, 1949), art 5.

²⁰⁶ The Organic Law of the Central People's Government of the People's Republic of China (adopted by the First Plenary Session of the Chinese People's Political Consultative Conference on September 29, 1949), art 10.

²⁰⁷ The Organic Law of the Central People's Government of the People's Republic of China (adopted by the First Plenary Session of the Chinese People's Political Consultative Conference on September 29, 1949), art 14.

The chairman of the Central People's Government

(1) Convenor of the CPGC meeting

According to the Organic Law, the CPG chairman was provided for several responsibilities, first of which was to convene and preside the CPGC meetings²⁰⁸. It was mandatory that the chairman should convene such a meeting once in two months, but the chairman could decide to meet earlier or later when conditions demanded.²⁰⁹ In other words, the chairman had full discretion to choose when the council should meet as long as the requirement of once in two months was satisfied.

(2) The CPGC director

Furthermore, the chairman was to "direct" ("lingdao" in Chinese) the work of the CPGC²¹⁰. Thus by this provision, the chairman was distinguished from the rest of his peers in the CPGC. The chairman was the "director" and other members were to be directed by him. Hence the chairman was not equal to other members. Instead, he was a member senior to others.

Compared with the chairman of the china soviet republic, this is unique

²⁰⁸ The Organic Law of the Central People's Government of the People's Republic of China (adopted by the First Plenary Session of the Chinese People's Political Consultative Conference on September 29, 1949), art 8.

²⁰⁹ The Organic Law of the Central People's Government of the People's Republic of China (adopted by the First Plenary Session of the Chinese People's Political Consultative Conference on September 29, 1949), art 10.

²¹⁰ The Organic Law of the Central People's Government of the People's Republic of China (adopted by the First Plenary Session of the Chinese People's Political Consultative Conference on September 29, 1949), art 8.

because no chairmen had been accorded by law with such a power over his peers in the China Soviet Republic. The first soviet congress of the CSR had only elected one chairman and two vice chairmen. Since they had not formed a presidium, the chairman could be regarded as independent from his vice chairmen, but such independence had not been provided by law as no law had been made about the relationship between the chairman and his vice chairmen. On the other hand, the second soviet congress had followed the example of the former Soviet Union and formed a presidium. But the title of chairman had carried no substance for the person who held it. Therefore, the chairman of the presidium had been no more than an equal member within the presidium, enjoying no preiviliges by law.

This could be a necessary device to ensure the CPC's leadership over the state. As the new government was a united one, and those democratic parties and figures had different ideas from the CPC, it was crucial for the CPC to maintain a leading role in the CPGC to ensure the socialist direction. Being the CPGC director, the chairman could help to achieve this goal at large.

However, the Organic Law did not elaborate on the substance and procedure of such a power of direction. Although it did require that a regulation on the organization of the CPGC be made,²¹¹ such a regulation had never been made ever since. Therefore, how the chairman perform his "direction" in the CPGC remains unclear. For example, although it could be

²¹¹ The Organic Law of the Central People's Government of the People's Republic of China (adopted by the First Plenary Session of the Chinese People's Political Consultative Conference on September 29, 1949), art 12.

expected that the chairman's direction should be within the limits of powers and functions of the council as he was also a member of the council, what is his direction ion contradict with the Common Program and Organic Law? Besides, one more fundamental question was at issue. since the CPGC should work by the way of meeting, which be once in every two month with attendance of more than one half of its 63 members, and to decide any resolution upon the concurrence of over one half of the members present at that particular meeting²¹², what if the chairman's direction conflicts with the voting of the CPGC?

(3) A personal supervisory "presidium"

Since the CPGC only convened every two months, a standing body had to be set up to oversee the execution of the GAC²¹³. In the U.S.S.R., such a task should be performed by the Presidium of the Supreme Soviets, and the Russian presidium had been defined by Stalin as the collective head of state, whereas the chairman of the Russian Presidium was no more than an equal member to the rest, taking no individual responsibility for the administration. The Russian model had been accepted by the Second Soviet Congress of the China Soviet Republic²¹⁴.

²¹² The Organic Law of the Central People's Government of the People's Republic of China (adopted by the First Plenary Session of the Chinese People's Political Consultative Conference on September 29, 1949), art 10.

²¹³ The Organic Law of the Central People's Government of the People's Republic of China (adopted by the First Plenary Session of the Chinese People's Political Consultative Conference on September 29, 1949), art 15.

²¹⁴ Zhonghua Suweiai Gongheguo Zhongyang Suweiai Zuzhi Fa [Organic Law of the Central Soviet of the China Soviet Republic], Chapter 4.

A presidium could also be a feasible choice for the CPGC, composed by the chairman and six vice chairmen, but the laws did not provide so, and the CPGC had no such a presidium. Instead, both the vice chairmen and the Secretary-General, was required to assist the chairman to perform his duty. Then why was the soviet model not followed? It was explained as following:

“The Central People’s Government Council has chairman and vice-chairman, but does not set up either a presidium or standing committee. The Soviet Union adopts federal system and has sixteen states. Each of these has a vice-chairman in its central government, thus forming its presidium. We are not a federal one in fact and should not imitate such a system. As for the daily business, the Central People’s Government Council can elect a Secretary-General among its members and lead the Secretariat of the council to take charge.”²¹⁵

It was true that the unitary system had been adopted by the Common Program and local government did not have the same elevated status as in the former Soviet Union, therefore the soviet style presidium may not suit the case of China. However, neither the General-Secretary nor the Secretariat should be expected as the appropriate bodies to oversee the execution of the GAC. Instead, they should be supposed to deal with the daily administration of the

²¹⁵ Dong Biwu, *supra* note 15, at 522.

CPGC. As it was provided that the chairman “directed” the work of the CPGC, the Secretariat and the Secretary-General should seek final decision from the chairman first during the time when the Central People’s Government Council adjourned.²¹⁶ In other words, it only could be the chairman of the CPGC to serve as such a standby body. After all, it was also provided that when the CPGC adjourned, the GAC should be responsible and accountable to the chairman.²¹⁷ Therefore, implicitly the chairman could act as the presidium.

Then it was inevitable for the chairman to get involved with the administration. Although no law was made concerning how the GAC should be accountable to the chairman, the role of the chairman was intended to be supervisory and concentrated on policy issues and overall operation rather than detailed affairs²¹⁸. On one hand, the GAC was legally the highest executor of state administration²¹⁹, and understandably, the chairman should not take place of its work. On the other hand, there were two more administrative levels, i.e., the committees and ministries under the GAC²²⁰, and the chairman was designed to maintain the necessary supervision without

²¹⁶ The Organic Law of the Central People’s Government of the People’s Republic of China (adopted by the First Plenary Session of the Chinese People’s Political Consultative Conference on September 29, 1949), art 9.

²¹⁷ The Organic Law of the Central People’s Government of the People’s Republic of China (adopted by the First Plenary Session of the Chinese People’s Political Consultative Conference on September 29, 1949), art 14.

²¹⁸ Zhang Zhiran, *supra* note 199, at 113.

²¹⁹ The Organic Law of the Central People’s Government of the People’s Republic of China (adopted by the First Plenary Session of the Chinese People’s Political Consultative Conference on September 29, 1949), art 5.

²²⁰ The Organic Law of the Central People’s Government of the People’s Republic of China (adopted by the First Plenary Session of the Chinese People’s Political Consultative Conference on September 29, 1949), art 18.

contact with the specific administration of state affairs²²¹.

Therefore, while conforming to Stalin's theory of collective head of state, the new Chinese government had not followed the Russian practice fully in terms of the post of the chairman of the CPGC. Instead, the CPGC chairman is more like the chairman of the CEC of the First Soviet Congress in the China Soviet Republic, working in a committee with same size and same organization. But distinctively, the PRC' chairman was more secure and significant legally than his predecessor. By law, he was not only an internal "leader" of the collective head of state, i.e., the Central People's Government Council, but also externally could be regarded as a presidium, supervising the daily operation of the multi-level state apparatus. With such a legal seniority, the chairman could virtually function as an individual head of state. Mao Zedong might just have thought so when he was elected to take this post.

Chairman Mao back in office

Election of Mao Zedong as the CPG chairman

On September 27, 1949, the Plenary Session of the CPPCC decided that the CPGC consist of six vice-chairmen and 56 members, and their candidates be produced by the presidium based on negotiations among the participating units of the plenary session.²²² The decision did not mention about the chairman of the CPGC, possibly because it could have been acknowledged

²²¹ Zhang Zhiran, *supra* note 199, at 114.

²²² Zhongguo Renmin Zhengzhi Xieshang Huiyi Diyi Jie Quanti Huiyi Xinwen Chu (ed.), *supra* note 177, no. 10 (1949): 2.

that there would be only one chairman and he would be Mao Zedong. Three days later, the Plenary Session elected out the 63 CPGC members, with Mao Zedong as the chairman.²²³ On the morning of October 1, these members swore into office and held the first CPGC meeting, deciding Zhou Enlai as the premier of the GAC and the foreign minister, Mao Zedong as the chairman of the People's Revolutionary Military Council.²²⁴

Chairman Mao as "the head of state" in foreign affairs

(1) Receive foreign guests

On the second day of the founding of PRC, the former Soviet Union declared its recognition to this new government. On October 16, 1949, Mao Zedong received the Russian ambassador to China and accepted his letter of credence.²²⁵ Such a duty was normally undertaken by the head of state. Although the CPGC was construed as the head of state, it could be impractical for such a big group of people to act. Considering the senior role of the chairman, it would be understandable for the chairman to perform as the head of state on behalf of the council, which was also a Russian practice. Since then, Chairman Mao continued to receive numerous foreign visitors, including ambassadors and diplomats from other countries.

²²³ Zhongguo Renmin Zhengzhi Xieshang Huiyi Diyi Jie Quantu Huiyi Xinwen Chu (ed.), *supra* note 177, no. 11 (1949): 3.

²²⁴ *Renmin Ribao*, October 1, 1949.

²²⁵ For a brief documentary introduction of the establishment of diplomatic relations between PRC and the U.S.S.R., see Lian Zhengbao et al (ed.), *Jiemi Waijiao Wenxian Zhonghua Renmin Gongheguo Jianjiao Dangan 1949-1955*[Declassifying Diplomatic Documents: Documents of the People's Republic of China Concerning Establishment of Diplomatic Relations 1949-1955] (Beijing: Zhongguo Huabao Chubanshe, 2006), at 12-45.

(2) Pay a state visit to Moscow

In the end of 1949, Mao Zedong started his long-planned visit to Moscow to carry out the foreign policy of “lean-on-one-side” he had set for the new Chinese government. Throughout his entire life, Mao Zedong had only been abroad two times, all of which had been to Moscow. This was the first time of his two overseas visits. The main goal of this state visit was to conclude a new friendship treaty with the former Soviet Union²²⁶. On the first day of his arrival, he raised this issue to Stalin and asked whether Zhou Enlai, the premier and foreign minister, should come to Moscow, implying that if a new treaty be signed, Zhou Enlai would have to come.²²⁷ Stalin rejected at first, but conceded later on January 2, 1950.²²⁸ Having gained this consensus, Mao soon informed his CPC colleagues in Beijing of this “breakthrough” and instructed them about the basic purpose and main content to prepare for the forthcoming negotiations.²²⁹

After his arrival in Moscow on January 20, 1950, Zhou Enlai joined Mao Zedong in the negotiations with their Russian partners. After Mao Zedong settled the general principles and major issues with Stalin, Zhou Enlai took

²²⁶ See Dieter Heinzig, *supra* note 138, at 265; Sergei N. Goncharov, John W. Lewis, Xue Litai, *supra* note 138, at 86; Pang Xianzhi and Jin Chongji (ed.), *Mao Zedong Zhuan 1949-1976* [Biograph of Mao Zedong 1949-1976], vol. 1, (Beijing: Zhongyang Wenxian Chubanshe, 2003), at 31;

²²⁷ See Dieter Heinzig, *supra* note 138, at 275.

²²⁸ See Dieter Heinzig, *supra* note 138, at 293.

²²⁹ Zhonggong Zhongyang Wenxian Yanjiushi (ed.), *Jianguo Yilai Mao Zedong Wenguo* [Writings of Mao Zedong since the Founding of the People's Republic of China], vol. 1, (Beijing: Zhongyang Wenxian Chubanshe, 1987), at 211-213.

charge of the rest of their negotiations, including preparing document drafts, deliberating details with his Russian counterparts.²³⁰ On February 14, 1950, with the presence of Mao Zedong and Stalin, Zhou Enlai signed the new treaties on behalf of Chinese government with the Russia Foreign Minister.

Why had Mao Zedong insisted Zhou Enlai coming to Moscow? It was suggested as a matter of international formality. During their talks, Stalin could have thought that as the real leader of both countries, Mao Zedong and he could jointly negotiate and sign the treaties, without the involvement of Zhou Enlai.²³¹ But Mao Zedong could have thought otherwise. He could have thought that they were not equal, either because he was the head of state of China, while Stalin were the chairman of the People's Commissars, a position similar to Chinese Premier,²³² or because he surpassed Stalin and did not want to have any connection with Stalin by joint signature.²³³ Also, it could be "more than a question of protocol", rather it was to "signal the Chinese leadership's intense interest in concluding a new treaty".²³⁴ In addition, Mao Zedong could have intended to "avoid signing the potentially damaging document" and not to "take full responsibility for the pact"²³⁵, so he put Zhou

²³⁰ Dieter Heinzig, *supra* note 138, at 337; Sergeri N. Goncharov, John W. Lewis, Xue Litai, *supra* note 138, at 110.

²³¹ Sergeri N. Goncharov, John W. Lewis, Xue Litai, *ibid*, at 110; Bu Xiuyan and Zhang Ruixuan (trans.), *Liangda Lingxiu Si Dalin Yu Mao Zedong* [Two Great Leaders: Stalin and Mao Zedong] (Sichuan: Sichuan Renmin Chubanshe, 1999), at 254.

²³² Shi Zhe, *Shi Zhe Koushu Zhongsu Guanxi Jianzhenglu* [Shi Zhe's Oral Documentary about the Sino-Ussr Relations] (Beijing: Dangdai Zhongguo Chubanshe, 2005), at 49

²³³ Bu Xiuyan and Xhang Ruixuan (trans.), *supra* note 231, at 255-258.

²³⁴ Dieter Heinzig, *supra* note 138, at 264.

²³⁵ Sergeri N. Goncharov, John W. Lewis, Xue Litai, *supra* note 138, at 86, 110

Enlai out front while controlling from behind²³⁶.

Whereas all these ideas could have relevance, other explanations can also be made. Zhou Enlai was called for possibly because Mao Zedong needed the assistance of Zhou Enlai as he was more capable and experienced than Mao Zedong in foreign affairs. Mao Zedong had been known for a strategist, and Zhou Enlai had been more famous for his diplomacy. As evidence in this Moscow round of negotiation, a rather clear division could be found between Mao Zedong and Zhou Enlai, i.e. Mao Zedong set the major policies and general principals, and Zhou Enlai executed them into existence. Mao Zedong was the ultimate decision-maker, and Zhou Enlai was more specialized in execution. Such a way of cooperation between them can be traced back to the “Chongqing negotiation” in 1945 when the CPC and KMT tried to negotiate for a possible peace agreement after defeating the Japanese. At that time, Mao Zedong reached accord with the KMT leader Jiang Jieshi, whereas Zhou Enlai hammered out the details of their agreements.

More importantly, by law, Mao Zedong was not delegated to sign any international treaty. As the chairman of the CPGC, he could direct the council to ratify treaties, and supervise the work of the GAC, including the Foreign Minister’s negotiations. But neither the Common Program nor the Organic Law provided him with the power to conclude any treaty with other countries. On the contrary, Zhou Enlai was the Foreign Minister and had sufficient legal

²³⁶ Sergeri N. Goncharov, John W. Lewis, Xue Litai, *ibid*, at 110.

authority to negotiate and sign any treaty with foreign states, even if such treaty had to be approved by the CPGC.

As a result, despite that neither the Common Program nor Organic Law did explicitly or implicitly authorized either the CPGC or its chairman with functions concerning receiving foreign guests and conducting diplomatic negotiations, Chairman Mao Zedong's practices added new items to the legal power and function of the chairman to serve as the head of state in China's foreign affairs, not only in terms of the formality required for the head of state, but also with substantial power in China's foreign affairs by conducting "diplomacy of the head of state" with cooperation by the GAC.

Chairman Mao as the supreme leader of domestic affairs

(1) Convene the CPGC meetings

After returning from Moscow, Mao Zedong led the government to launch a series of movements to restore social order and consolidate governance.

Generally he followed the procedures laid down by the Common Program and Organic Law, i.e., he imitated policy, which was then accepted by the CPCCC and submitted to the CPPCC or the GAC, who in turn proposed it to the CPGC.²³⁷ For example, in a letter written by Liu Shaoqi about a legal draft on January 28th, 1951, he directed that:

²³⁷ Yang Huolin, *supra* note 150, at 195.

“Comarade Liu Shaoqi, Zhou Enlai, Chen Yun and Peng Zhen: The draft is concerned with the jurisdiction of the military and court. Therefore it should be passed by the meeting of the CPGC, and promulgated by the chairman. Before this, members of the Standing Committee of the CPPCC, the CPGC, the court, judicial department and procuratorate should be convened for their consensus in this regard. Besides, in the CPGC meeting, some officials should report on the recent situation about the Anti-Revolutionaries activities.”²³⁸

According to his direction, the CPGC held its eleventh meeting on February 20, 1951. In this meeting, five local officials from several Administrative Regions reported about their work in these areas and the Ordinance on the Punishment of Anti-Revolutionaries was adopted by the CPGC.²³⁹

Since the founding of PRC on October 1, 1949 to September 9, 1954 when the first constitution was adopted, the CPGC had convened 34 meetings altogether²⁴⁰. However, if examined by year, that legal requirement had not been followed strictly. The council met 4 times in 1949, 6 times in 1950, 3 times in 1951, 6 times in 1952, 10 times in 1953, 5 times in 1954. Comparatively with the other three years, meetings in 1951 were much less

²³⁸ Zhonggong Zhongyang Wenxian Yanjiushi (ed.), *supra* note 229, vol. 2, at 80-81.

²³⁹ Xu Dashen (ed.), *Gongheguo Shiji* [Records of the Republic] (Jilin: Jilin Renmin Chubanshe, 1996), at 434-435.

²⁴⁰ There are also two different opinions. One held that there were only 29 meetings of the council, see Li Ge, *supra* note 203, “Guanyu 1949-1954 Nian Zhongyang Renmin Zhengfu De Guoran Wenti” [Several Issues Concerning the Central People’s Government during 1949 and 1954], *Dang De Wenxian*, no. 4 (1996): 78. The other one thought there were 35 meetings, see Xu Chongde, *supra* note 171, at 65.

and those in 1953 were far more than the legal requirement of “once in every two months”. This could suggest that while conforming to the legal requirement generally, the chairman had also exercised his discretion given by law quite often.

For example, on January 18, 1950, Mao Zedong sent telegraphed Liu Shaoqi that Wang Jiaxiang, then the Chinese ambassador to the U.S.S.R., be nominated as the head of Chinese delegation to the UN. It was also decided that:

“The procedure of his appointment to be completed by the Central People’s Government Council can be made in its sixth meeting to be **held in the future**. If you think it is necessary, you can invite the vice chairmen of the Central People’s Government Council and leaders of those democratic parties to have a discussion about this.”²⁴¹

When sending out this telegram, Mao Zedong was in Moscow for his first state visit. It had been decided previously by the CPC’s Politburo that Liu Shaoqi convened the CPGC on behalf of Mao Zedong when he was visiting Moscow²⁴². By this telegram, Mao Zedong could suggest that Liu Shaoqi did not have to convene the sixth meeting and it could be held after he returned from his Moscow trip. This was true. The sixth meeting was not held until on

²⁴¹ Zhonggong Zhongyang Wenxian Yanjiushi (ed.), *supra* note 229, at 242-243.

²⁴² Pang Xianzhi and Jin Chongji (ed.), *supra* note 226, at 31.

April 11, 1950 when Mao Zedong had been back in Beijing, about three months later after this telegram.

In addition to the irregularity of certain meetings, participants to the CPGC meetings also varied. Although the CPGC had 63 members, including one chairman, 5 vice chairmen and 56 members, about a dozen of members could not attend each meeting before 1953 because they had taken positions in local government and been dispersed in the whole country.²⁴³ As a result, mostly, the attendance was around 40²⁴⁴, and even as less as 33 in the fifth meeting held on January 8, 1950²⁴⁵. But even after these local officials were moved to Beijing successively in 1953, the attendance seemed to remain approximately the same. Besides, since from the second meeting, the CPGC had been opened its meeting to other people to sit in, but their numbers had also been varying, ranging from one people in the second meeting to around 200 people²⁴⁶ at most in the thirtieth meeting²⁴⁷.

In these meetings, the CPGC made laws and decisions, approve personal appointments, hear reports by the executive, military and judicial organs. It appears that Mao Zedong had played a very comprehensive role in these meetings, not only by nominating key government officials in advance, as indicated by the above telegram, but also by deciding who could speak in the

²⁴³ Li Ge, *supra* note 203, "1949-1954 Nian Zhongyang Renmin Zhengfu Zuzhi Jigou Shezhi Jiqi Bianhua" [Organization of the Central People's Government and Relevant Changes during 1949 and 1954], Part 1, *Dang De Wenxian*, no. 5 (2001): 88.

²⁴⁴ Li Ge, *ibid.*

²⁴⁵ *Renmin Ribao*, January 8, 1950.

²⁴⁶ Li Ge, *supra* note 243.

²⁴⁷ Xu Dashen (ed.), *supra* note 239, at 942-943.

council meeting. For instance, when reading Zhou Enlai's report about the Sino-U.S.S.R. treaty to be delivered to the six CPGC meeting, he directed that:

“In this meeting, in addition to Zhou Enlai, Chen Yun, Lin Biao and Deng Xiaoping who would speak, it seems to be better if other six people, i.e., Zhang Zhizhong, Cheng Qian, Zhang Lan, Li Jisheng, Huang Yanpei and Guo Moruo, also be given the opportunities to speak. Zhou Enlai please considers it and informs them to be prepared. Beside, to explain the marriage law, Wang Ming would better to make some introduction to it.”²⁴⁸

Sometimes, his direction was so detailed as to require that Zhou Enlai's report should be printed and dispersed to council members who would attend that meeting²⁴⁹.

(2) Hold the GAC accountable

Although no legal stipulations had been made regarding how the GAC should be accountable to the CPGC chairman when the CPGC did not meet, it seems that a passive procedure of “report and approval” had adopted as a way of accountability, in which the premier filed a report on a certain issue to the

²⁴⁸ Zhonggong Zhongyang Wenxian Yanjiushi (ed.), *supra* note 229, at 288-289.

²⁴⁹ Zhonggong Zhongyang Wenxian Yanjiushi (ed.), *ibid.*

chairman and promulgated a piece of administrative order after the chairman approved his report. Such a practice firstly appeared on June 7, 1951, when an administrative order was issued by the GAC to protect the state secrets, declaring that this had been given prior approval by the chairman²⁵⁰. Following this case, two more similar cases were recorded on August 16, 1951²⁵¹ and August 9, 1952²⁵² respectively.

However, apart from such an occasional formal practice of “report and approval”, there was one more active and constant way for the chairman to control the government. This was the order and report mechanism of the CPC, by which the CPCCC issued orders to its party subordinates at various levels and received reports from them as a feed-back. Such a mechanism had first adopted by Mao Zedong within the CPC after he became its chairman and been well established by Mao Zedong during the civil war.

Soon after the founding of the PRC, the CPC formed its party groups within the government apparatus. At the central level, there were two party groups, one being in the CPGC led by Mao Zedong himself, and the other in the GAC, led by Zhou Enlai.²⁵³ Similar party organs were also established within the

²⁵⁰ Zhongyang Renmin Zhengfu Fazhi Weiyuanhui (ed.), *Zhongyang Renmin Zhengfu Weiyuanhui Faling Huibian (1951)* [Collection of Decrees Issued by the Central People's Government Council (1951)] (Beijing: Renmin Chubanshe, 1953), at 19.

²⁵¹ Zhongyang Renmin Zhengfu Fazhi Weiyuanhui (ed.), *ibid*, at 49.

²⁵² Zhongyang Renmin Zhengfu Fazhi Weiyuanhui (ed.), *Zhongyang Renmin Zhengfu Weiyuanhui Faling Huibian (1952)* [Collection of Decrees Issued by the Central People's Government Council (1952)] (Beijing: Renmin Chubanshe, 1954), at 64.

²⁵³ Li Ge, “1949-1954 Nian Zhongyang Renmin Zhengfu Zuzhi Jiegou Shezhi Jiqi Bianhua” [Organization of the Central People's Government and Relevant Changes during 1949 and 1954], Part 2, *Dang De Wenxian*, no. 6 (2001):58-60; Qin Lihai, “Jaingguo Zhichu Zhengfu Dangzu De Sheli Yu Dangzheng Guanxi De Chuli” [The Establishment of the Party Group in the Government and the Handling of the Relationship between the Party and the Government in Early Time after the Founding Year], *Jinan Daxue Xuebao*, no. 2 (2009): 77-78.

local government at each level, which also were led by Zhou Enlai.

By issuing internal directives to and receiving reports from these party groups in the government from top to the bottom, Mao Zedong obtained a second way of control over the government in the capacity of the CPC chairman. For example, in the “Three-anti Movement” taking place from 1951 to 1952, more than 200 pieces of directives had been issued from the CPCCC and its subdivisions in the six Administrative Regions, whereas laws and regulations issued by the central government was less than 10 pieces.²⁵⁴ While sending out directives, Mao Zedong also demanded reports about the government affairs from various local party organs, sometimes so far down the line as to the county level²⁵⁵.

In these directives, Mao Zedong provided detailed instructions on state affairs; from local reports, he checked and oversaw the governmental implementation of his directives. Hence, by this order and report mechanism, he had also exerted a comprehensive involvement into the administration far more than he could achieve through the formal government apparatus. Thus by combining both the authority of the CPC’s chairman and CPG chairman, his influence on the administration had been far more greater than a mere “supervisory presidium”.

²⁵⁴ Yang Huolin, *supra* note 150, at 53.

²⁵⁵ For example, in an internal directive, Mao Zedong demanded that the county committee of the CPC should file a report about the work of inspecting and punishing briberies directly to the CPCCC. See Zhonggong Zhongyang Wenxian Yanjiushi (ed.), *supra* note 229, vol. 2, at 542-543.

(3) Tightening control of the CPC chairman over the government

When it came to the middle of 1952, the consolidation of the new government was near to complete, and the economic development became the top priority. The CPC started to draft the first five-year plan. As the economy was to be concentrated, the decision-making power had to be further centralized. This meant the loose multi-level government organization was no more adequate and had to be restructured. In August, 1952, Mao Zedong proposed the first adjustment on the CPC and government apparatus, in which the direction over local government and economic affairs was changed from the GAC to the CPGC. As a result, the vertical government body was flattened and the chairman's control was extended in these aspects.²⁵⁶

To win Moscow's support for Chinese economic construction, Zhou Enlai paid a visit to Moscow in that September. During his visit, Stalin not only endorsed China's new plan, but also repeated his suggestions that he had made during Liu Shaoqi's secret visit in 1949 when he advised Chinese to make constitution and form the one-party government. Mao Zedong accepted his advice and decided that China should begin its "transition to a socialist state" since then, not a dozen years later as he had envisioned before. This new policy meant that the Stalinist one-party state would then the final goal of the CPC for China, in which the CPC would be the final decision-making of the state affairs.

²⁵⁶ Li Ge, *supra* note 240, at 81, and *supra* note 253, at 60-62.

But the old double way of governance could not meet the requirements of the new situation and new policy. If the Stalinist state²⁵⁷ was to be established in China, the government would be more predominantly controlled by the CPC. In other words, the CPC's leadership over the government had to be tightened. On the other hand, the focus of government work had to change. According to the new policy, the democratic people would no longer be the allied partner of the CPC. Instead, they would become the new target that the CPC was going to lead the government to fight against, and had to be further limited. With the changing focus, the government also had to weigh more towards the CPC.

Besides, there had also been practical problems existing between the double systems of governance. As the government chairman, Mao Zedong was constrained by the vertical bureaucratic structures and his direction over the execution should mainly be supervising the overall operation of the GAC, only covering at the level of the premier. But as the CPC's chairman, with the power of "last-say", he was the final authority of decision-making and demanded a more substantive control over the state affairs. Thus the limited government chairman could not match perfectly with the requirement of the CPC chairman for a more direct and regular control over the governmental affairs.²⁵⁷

Since the establishment of the Central People's Government, several cases had occurred that the government departments had failed to seek his prior

²⁵⁷ A different opinion suggested that the government structure had not ensured the direct and regular control over the administration by the CPGC chairman. See Li Ge, *supra* note 253, at 60.

approval to some government issues.²⁵⁸ Between the party's command and the formal government bureaucracy, Mao Zedong had been different from Zhou Enlai and Dong, Biwu and always preferred the former²⁵⁹, emphasizing the control of major policy issues²⁶⁰ and key governmental affairs, for example the security department²⁶¹, by the CPC. These cases were considered by him a risk of the government being evaded from the leadership of the CPC²⁶².

For all these reasons, the further adjustment on the government became inevitable. On March 10, 1953, an internal directive was issued from the CPCCC, which not only demanded that all major actions by the government should seek the permission of the CPCCC before being implemented, thus changing the leadership of the CPC over the government from afterward to beforehand, but also specified fourteen senior party cadres holding positions in the government to be directly responsible to the CPCCC for their assigned works.

After these adjustments, the double command systems became substantially opted towards the side of the party, and the decision-making power was further concentrated to the CPCCC²⁶³ and ultimately in the hands of the CPC's chairman Mao Zedong.²⁶⁴

²⁵⁸ Qin Lihai, *supra* note 253, at 79-80.

²⁵⁹ Li Ge, "1953 Nian Fan Fensan Zhuyi Wenti Chutan" [Study on the Issue of Anti-Seperationism in 1953], *Shixue Jikan*, no. 4 (2001): 52-53.

²⁶⁰ Zhonggong Zhongyang Wenxian Yanjiushi (ed.), *supra* note 229, vol. 3, at 682.

²⁶¹ Zhonggong Zhongyang Wenxian Yanjiushi (ed.), *supra* note 229, at 535.

²⁶² Li Ge, *supra* note 259, at 48-56.

²⁶³ Yang Huolin, *supra* note 150, at 81.

²⁶⁴ Qin Lihai, *supra* note 253, at 80; Li Ge, *supra* note 253, at 63, and *supra* note 259, at 55.

“The abolishment of the party group in the GAC had a great impact on its daily work, resulting in a ‘vacuum’ in the agenda of the GAC meeting. Before that, a lot of working summaries and policy reports had been sent to the GAC from its various subordinates, from which the GAC had discretion to decide to list in its agenda. Now, since all these documents had to be examined and approved by the CPCCC in advance before submitting to the GAC, the GAC had no item to list in its agenda before the approval of the CPCCC. The GAC official who was responsible for setting the agenda was very worried and discussed with us. I had by chance a report from the People’s Bank about the management of gold and silver. To avoid the cancellation of the GAC meeting, I thought it was a minor issue and could be added to the agenda, while being examined by the CPCCC in the meantime. At that time, Mao Zedong was not in Beijing. Zhou Enlai sent my suggestion to Liu Shaoqi for approval, who decided it could be better to submit to the GAC after the CPCCC examined it. As a result, the GAC meeting had to delay for once.”²⁶⁵

Conclusion

²⁶⁵ Wu Ganqun, “Zai Xihuating Zhou Zongli Shenbian Gongzuo” [Working beside Premier Zhou in Xihuating], in *Zhongguo Gongchandang Ruogan Lishi Wenti Xiezhen* [Portrait of Some Historical Issues of the CPC], ed. Han Taihua (Beijing: Zhongguo Yanshi Chubanshe, 1998), at 480–481. The author had worked in the office the Premier of the GAC since June 1950. See Han Taihua (ed.), at 476.

Although the new Chinese government was a transplantation of the former Soviet Union, the CPG chairman was an exceptional one, which was more akin to, and also more distinct than, that of the First Soviet Congress of the Chinese Soviet Republic. However, as the CPC was far more organized and effective than the government apparatus, there could be a risk that the government chairmanship be overshadowed and even overturned by the CPC chairmanship, if without a clear harness on the operation of both authorities. By occupying the majority in the government and loose legal constraints on one hand, and enjoying the supreme authority in the CPC on the other hand, Mao Zedong successfully overcame the formal limits on his governmental chairmanship by way of the CPC's leadership during the process of "learning from the big brother". As a result, the decision-making power was finally concentrated into the hand of the CPC's chairman Mao Zedong. The legally provided governance headed by the CPG chairman had been overshadowed and become obsolete since then and a new office was needed to take its place.

Constitutional Making of the Chairmanship in 1954

Stalin's suggestion to and lesson for the CPC

According to Mao Zedong's idea, the Chinese revolution had to go through ages. The first step was to establish a "new democratic nation"²⁶⁶, and the second step was to build a socialist one. The second step was based on the first step and would not be initiated until the new democratic nation had achieved fully development. Mao had estimated that it would have to take at least two or three decades after its founding before China was ready to take the second step.²⁶⁷

However, in three years since its founding to 1952, the new Republic soon recovered from the war and the new government had been fairly consolidated. Based on these developments, Mao Zedong changed his mind and suggested that China could start the second step from that time rather than several decades later. In other words, he would give up his new democratic policies and accelerate his speed towards the Stalinist socialism. This change was a fundamental one and completely new to his colleagues who had still inclined to their new democratic policies. To win Moscow's support for his new idea, Mao Zedong asked Liu Shaoqi to take advice from Stalin during his visit to the former Soviet Union attending the nineteenth congress of the CPSU in

²⁶⁶ It is an idea based on Mao Zedong's understanding of Marxist doctrine.

²⁶⁷ Pang Xianzhi and Jin Chongji (ed.), *supra* note 226, at 236-240.

October, 1952.²⁶⁸

During the congress, Liu Shaoqi wrote a letter to Stalin, in which he not only introduced Mao Zedong's new idea, but also raised the issue of constitutional-making in China:

“The issue of constitutional-making has been raised within the CPC in China..... we think we do not have to make a constitution in the transitional period at present, and use the Common Program as a constitution. The Common Program can be revised by the Plenum of the CPPCC or NPC. After the class relationship in China achieves substantial change later, i.e., China achieves socialism basically, we can make a constitution then, when we can basically make a socialist constitution.”²⁶⁹

Although preoccupied with the succession to him, Stalin still met Liu Shaoqi and responded to his letter. In reply, he not only endorsed Mao Zedong's new idea to transit to the socialism²⁷⁰, but also suggested making a constitution for such a transitional period for almost the same reasons he had given about three years ago:

²⁶⁸ Pang Xianzhi and Jin Chongji (ed.), *supra* note 226, at 240-242.

²⁶⁹ “Liu Shaoqi Yijiu Wuer Fangsu Wenxian Xuanzai” (Yijiu Wuer Nian Jiuyue – Shi'er yue) [Selected Documents Concerning Liu Shaoqi's Visit to the Former Soviet Union in 1952 (September to December of 1952)], *Dang De Wenxian*, no. 1 (2005): 9.

²⁷⁰ *Ibid*, at 10.

“If you do not make a constitution and conduct election, your enemies will disseminate two accusations against you. Firstly, they can say that your government was not elected by the people; secondly, your country had no constitution. Since the CPPCC is not elected by the people, they can accuse you of establishing your government on the basis of force and your own will. Besides, the Common Program is not adopted by a congress elected by the people. Instead, it was submitted by the CPC and agreed upon by other parties. Therefore they also can accuse you of having no law. You should take these accusations from enemies both at home and abroad and give them no excuse. I agree your idea in your letter to transform the Common Program into a constitution, i.e., the basic law. Of course such a constitution is a raw product, but it is better to have one than without a constitution.....there is one more problem in China. At present your government is a united one, hence the government can not be responsible only to one party, and instead, it should be responsible to all parties. If so, it will be hard to protect the state secrecy. I think foreigners have known some of your important confidential information. For example, your government delegation will come to us, and then the United States and Britain know we are going to discuss the issue of Lushunkou. Since your have other political parties, the government has to account to them and have to discuss with them the

important state affairs, in turn the United States and Britain will also know about these state affairs as many of them maintain relationship with the United States and Britain. If your plans are known by enemies, it will be harmful to you. If you win the majority in the election, you can form a one-party government.”²⁷¹

This had been the third time that Stalin made similar suggestion to the CPC.²⁷² Stalin’s suggestion had merits, because otherwise China could have to go without a constitution for quite a long time, where problems concerning legitimacy and security could arise, as suggested by Stalin. On the other hand, this also indicated that Stalin was still suspicious about the CPC’s so-called new democratic practices. For Stalin, the CPC would not a true Marxist party and China would not be a true socialist country, if without a government of his style, which had been followed by the Eastern European countries during 1949 and 1950.

While inviting advices from Stalin, Liu Shaoqi and his Chinese delegation also noticed that Stalin’s health had been deteriorating and the struggle to succeed him after his death had already begun in Moscow.

Mao Zedong’s idea of “two fronts”

Soon the CCPCC changed its mind and accepted Stalin’s suggestion of

²⁷¹ *Supra* note 269, at 11-12. Shi Zhe, *supra* note 138, (2001), at 407-408.

²⁷² The first two was made in July, 1949 when Liu Shaoqi paid his secret visit to Moscow and in 1950 when Mao Zedong paid his first state visit to Moscow.

constitutional making²⁷³. On December 24, 1952, Zhou Enlai advised on behalf of the CPC that the CPPCC National Committee should propose the Central People's Government to convene the National People's Congress and make a constitution in 1953.²⁷⁴ Then, on January 13, 1953, the twentieth meeting of the Central People's Government Council accepted this proposal and decided accordingly.²⁷⁵ A Constitutional Drafting Committee of 32 members headed by Mao Zedong was also set up²⁷⁶ based on the nomination of Mao Zedong²⁷⁷.

What kind of government organization should be codified by this new constitution? As discussed in the previous part, since the middle of 1952, the CPC had taken actions to restructure the government, moving towards the Stalinist model. As a result, by the middle of 1953, the government system stipulated by the Common Program and the Organic Law had been substantially modified, in which Mao Zedong had been in tight command of government affairs and he must have been satisfactory with this new government structure, as indicated by Liu Shaoqi in his letter to Stalin.

But it would not be feasible any more since Stalin questioned and the CPC decided to move closer to Moscow. The Stalinist government could be a better choice. After all, Moscow had become the only example for China to follow

²⁷³ Weng Youwei, "Zhonghua Renmin Gongheguo Diyibu Xianfa Zhiding Kanlun" [Study on The Making of the First Constitution of the People's Republic of China], *Shixue Yuekan*, no. 11 (2007): 65.

²⁷⁴ Xu Chongde, *supra* note 171, at 107. Han Dayuan, *supra* note 4, at 60.

²⁷⁵ *Renmin Ribao*, January 15, 1953.

²⁷⁶ *Renmin Ribao*, January 15, 1953.

²⁷⁷ Xu Chongde, *supra* note 171, at 110.

in its pursuit of a socialist country. In fact, after the CPC decided to make the constitution, the CPC had considered seriously following Stalin's example and fully adopting the Russian model. It had been suggested within the CPC that the Council of Ministers of the former Soviet Union could be adopted for China's highest administrative body of the government²⁷⁸, and the organization of the CPC had also been suggested to reform by adding new positions of vice chairmen or general secretary²⁷⁹. It seemed that the CPC had intended the CPC's chairman and vice chairman to form a presidium, but been uncertain about the choice between the general secretary and the presidium²⁸⁰.

In the writer's opinion, irrespective of Mao Zedong's own thoughts about the Russian model of government, he did not want a complete adoption of the soviet model. While it was a heavy burden to lead such a big and under-developed country like China, his health had been deteriorating, for which he had to take sick leave for three times after 1949. He was also hit greatly by the death of his eldest son in the Korean War²⁸¹. It would be better for him if he could relieve from such a heavy workload, even to a certain degree. It was said that on hearing the death of Stalin, Mao Zedong was in

²⁷⁸ Pang Xianzhi and Jin Chongji, *supra* note 226, at 278; Pang Song, *Mao Zedong Shidai De Zhongguo (1949-1976)* [China in the Era of Mao Zedong (1949-1976)], vol. 1, (Beijing: Zhongyang Wenxian Chubanshe, 2003), at 433-434. Zhao Jialiang and Zhan Xiaoji, *Banji Mubei Xia De Wangshi* [Stories behind the Half Tombstone] (Hong Kong: Dafeng Chubanshe, 2008), at 17.

²⁷⁹ Pang Xianzhi and Jin Chongji, *supra* note 226, at 278. Pang Song, *ibid.*

²⁸⁰ According to a record made by a senior CPC cadre on February 25, 1954, Zhou Enlai said it had been suggested whether the general secretary or presidium could be adopted for the CPCCC. See Zhao Jialiang and Zhao Xiaoji, *supra* note 278.

²⁸¹ Li Yinqiao and Han Guixin, *Mao Zedong He Ta De Weishizhang* [Mao Zedong and His Chief Bodyguard] (Beijing: Jiefangjun Chubanshe, 2002), at 234; *Zai Mao Zedong Shenbian Shiwu Nian* [Fifteen Years alongside Mao Zedong] (Hebei: Hebei Renmin Chubanshe, 2006), 2d ed., at 237-238.

such a low mood as to give up his government chairmanship.²⁸² If the Russian form of government was fully adopted for the new Chinese government, the center of government power would be changed from the post of the chairman of the Central People's Government to the new chairmanship of the Council of Ministers. If Mao Zedong continued to take the lead in the country, he would surely have to follow the example of Stalin and take the new post of the chairman of the Council of Ministers in the new Chinese government, which had already been suggested by Zhou Enlai as early as January, 1949 in their talk with "Stalin's ear" Mikoyan during his secret visit to China. This meant no difference to Mao Zedong from his CPG chairmanship, in both of which he served as the final decision-maker and took direct responsibility for government affairs. Therefore, for the sake of his health, Mao Zedong could not have preferred the soviet model.

More importantly, the struggle to succeed Stalin after his death in Moscow reminded Chinese leaders of the succession to Mao Zedong and made them, including Mao Zedong himself, to think more about it when designing the constitution. If the Russian model were followed, Moscow's experience of power struggles for succession could be repeated in China after Mao Zedong died. Having witnessed it, Mao Zedong suggested at around the latter half of 1953 that the CPC Central Secretariat²⁸³ could be divided into "two fronts",

²⁸² *Ibid.*

²⁸³ The Central Secretariat of the CPC was the highest organ of decision-making of the CPC then and replaced by the Standing Committee of the Politburo later in the Eighth Party Congress in 1956.

i.e., Mao Zedong would retire to the second front, while other CPC leaders who were younger than him remained in the first front.²⁸⁴

Years later, he explained this idea as following:

“Why was the central committee divided into two fronts? It was because of my bad health and the lessons of the Soviet Union. Malenkov was chosen by Stalin, but he was not so experienced. He had not been in power before the death of Stalin, and lost power soon after Stalin’s death. I wanted to help to establish the authorities of Liu Shaoqi and Deng Xiaoping before I died.....”²⁸⁵

“Considering Malenkov could not take control, the Russian government met problems, and the revisionist line emerged there, I suggested the division of the first and second front to make the country more secure. Before the eleventh Plenum of the eighth Central Committee, I had been in the second front and not involved with daily business, letting many works done by others. By this way, I thought they could establish their own reputation among the people so that the country would not suffer much turbulence when I died.”²⁸⁶

²⁸⁴ Pang Xianzhi and Jin Chongji (ed.), *supra* note 226, at 278; Jin Chongji (ed.), *Liu Shaoqi Zhuan* [Biography of Liu Shaoqi], Vol. 2, (Beijing: Zhongyang Wenxian Chubanshe 1998), at 743; Deng Xiaoping, *Deng Xiaoping Wenxuan (1975-1982)* [Selection of Deng Xiaoping (1975-1982)] (Beijing: Renmin Chubanshe 1983), at 257; Liu Ying, *Liu Ying Zishu* [Narrative History of Liu Ying] (Beijing: Renmin Chubanshe, 2005), at 226.

²⁸⁵ Mao Zedong, *Zai Zhongyang Zhengzhi Gongzuo Huibao Huiyi Shang De Jianghua* [Speech at the Meeting of Reporting Central Political Work] (October 24, 25, 1966).

²⁸⁶ Pang Xianzhi and Jin Chongji (ed.), *supra* note 226, vol. 2, at 1449-1450.

These explanations indicated that Mao Zedong had thought Moscow's experience as a failure and Stalin should have put his chosen successor in power earlier, which could be lessons from China to take; therefore, he decided to put his successors on stage before instead of after his death. This meant that Mao Zedong had to give up his powers, at least some if not all, and share with his successors. By dividing the CPC leaders into two fronts, other CPC leaders ran the regular working of the party-state as the first front, whereas Mao Zedong retreated from it, maintained control and supervision on the first front and enjoyed the final say on major policies to ensure the first front on the right track preferred by the first front. This could be beneficial for both sides. On one hand, by retiring to the second front, Mao Zedong could extract from daily state affairs, thus being saved from the tiresome chores and able to more focus on major policy issues. On the other hand, other younger CPC leaders would take care of the daily operation, accumulating experience in running the country. To be concise, the first front leaders were on the stage as apprentices, Mao Zedong played behind scenes.

Such an idea is not new to Chinese. In ancient China, many emperors had adopted this method to decide their successors, in which they play behind their candidate successors to choose those who could faithfully perform their policies. The timely idea of "two fronts" suggested that Mao Zedong could have intended to use this traditional way of succession to solve the question

left by Stalin and achieve a better outcome in China.

But as having repeated in Chinese history, such a tradition had its own problem, i.e., the dilemma of successor. As implied by Mao Zedong, in the course of apprenticeship, if those first front leaders were proved to be faithful executors of his policies, they could succeed him after his death; if their performance were not satisfactory and they were found to be revisionist like Khrushchev, he still had the time to change his successors. In other words, a tension would exist between these two fronts.

Then what about the government? No solid evidences have been found that Mao Zedong had also divided the government into “two fronts” and an independent office of chairmanship had been in his mind as early as then. To the contrary, it seemed that he had only intended to apply his idea of two fronts to the CPC, without referring to the government side of the party-state. It was said that Mao Zedong had intended not to sever as the state chairman and only serve as the CPC chairman, whereas Liu Shaoqi, his apparent successor, would take the post of the government chairmanship or the speaker of the congress.²⁸⁷ In this case, taking into consideration that Mao Zedong could have not wanted to be the chairman of the Council of Ministers, it could mean that Mao Zedong could have been truly intended to retreat completely from the new government. As the second front, he could still hold the CPC chairmanship and maintain a control on the first front leaders, who also

²⁸⁷ Zhao Jialiang and Zhang Xiaoji, *supra* note 278, at 45-46, 113.

concurrently held positions in the government, such as Liu Shaoqi.

Mao Zedong might have preferred such an arrangement, but it was interrupted by Gao Gang's challenge to Liu Shaoqi²⁸⁸, Mao Zedong's apparent successor. Although Gao Gang failed in the end, his attempts suggested that Liu Shaoqi's candidacy as Mao Zedong's successor had not so firmly established within the CPC, not only being opposed by some other CPC senior members, like Gao Gang²⁸⁹, but also possibly being suspicious by Mao Zedong because of their differences about policies that China should adopt²⁹⁰.

For all these reasons, Mao Zedong had to change his idea and continue to work in the government. To make a balance between Mao Zedong's wish to relieve from the heavy workload and political needs for him, a new position different from the previous chairmanship could be necessary for this new situation in which Mao Zedong could be relieved from the burden to a certain degree, while maintaining his control over the governance on the whole. In other words, after the interruption of Gao Gang, the government also had to be divided into "two fronts" and a government position similar to Mao Zedong's status as the "second front" leader was demanded.

²⁸⁸ Although different opinions existed concerning the reasons behind Gao Gang's challenge to Liu Shaoqi, the fact that Gao Gang challenged Liu Shaoqi's succession to Mao Zedong has been commonly agreed. See Pang Xianzhi and Jin Chongji (ed.), *supra* note 226, at 278; Pang Song, *supra* note 278; Zhao Jialiang and Zhang Xiaoji, *supra* note 278, at 23. For the English study on the case of Gao Gang, see F.C. Teiwes, *Politics at Mao's Court: Gao Gang and Party Factionalism in the Early 1950s* (New York: M.E.Sharpe, 1990).

²⁸⁹ Gao Gang had once won support from several senior CPC leaders before Mao Zedong took actions.

²⁹⁰ For a brief discussion about disagreements and controversies between Liu Shaoqi and Mao Zedong, see, for example, Cong Jin, *Quzhe Fazhan De Suiyue* [Years of Tortuous Development] (Zhengzhou: Henan Renminchubanshe, 1989), at 599-606; Jin Chunming, *Wenhua Dageming Lunxi* [Study on the Cultural Revolution] (Shanghai: Shanghai Renmin Chubanshe, 1985), at 57-85.

The chairmanship originated from Mao Zedong

Chairmanship firstly suggested by Mao Zedong

Since from December 27, 1953, Mao Zedong led a team of CPC members and started to draft the constitution in Hang Zhou²⁹¹, the Chinese city famed as “heaven on earth”. His draft then would be submitted to the Constitutional Drafting Committee as a basis for further discussion. Mao Zedong personally made a working schedule for this team, in which some constitutions were listed by Mao Zedong as references, including the constitutions of the Soviet Union, the People’s Republic of Romania, the Polish People’s Republic, German Democratic Republic, Czechoslovakia Republic and France as well as China’s constitutional documents made before 1949. In particular, among these different constitutional documents, he commented the German and Czech constitutions were quite detailed and had their own uniqueness, whereas the French constitution was a progressive representative of capitalist cabinet system.²⁹²

What was the uniqueness of the German and Czech constitutions? While

²⁹¹ For introduction to Mao Zedong’s work in Hang Zhou, see Xu Chongde, *supra* note 171, at 110-112; Xu Wendong, “Xin Zhongguo Diyibu Xianfa De Zong Shejishi: Mao Zedong Liuzhuang Caoxian Yiwen” [The General Designer of the First Constitution of New China: Stories about Mao Zedong’s Constitutional Making in Liuzhuang], *Dangshi Zhongheng*, no. 5 (1994): 25-26; Wang Qin, “Wusi Xianfa Dansheng Ji” [The Birth of the May 4th Constitution], *Dangshi Bocai*, no. 2 (2005): 47-48.

²⁹² Mao Zedong, “Guanyu Xianfa Qicao Xiaozu De Gongzuo Jihua Gei Liu Shaoqi Bing Zhongyang De Dianbao” [Telegram from Mao Zedong to Liu Shaoqi and The CPCCC about the Working Plan of the Constitutional Drafting Small Group], in *Jianguo Yilai Zhongyang Wenxian Xuanbian* [Selection of Important Documents Since the Founding of the People’s Republic of China], ed. Zhonggong Zhongyang Wenxian Yanjiushi (Beijing: Zhongyang Wenxian Chubanshe, 1993), at 437-438; Zhonggong Zhongyang Wenxian Yanjiushi (ed.), *supra* note 125, vol. 5, at 320.

following the basic structure of the Soviet Union, both constitutions had a presidency, thus being different from those of Romania and Poland. The Czechoslovak Republic had a constitution adopted on February 29, 1920, which was “mainly shaped in accordance with the constitutional patterns of the Western European democracies and adhered to the doctrine of separation of powers”²⁹³. After the communist took full control of the government, it adopted a second constitution on May 9, 1948, which was the one referred to by Mao Zedong. Although the people’s democracy and socialism were claimed as goals by this constitution, it still retained elements of the old constitution, including the principal of separation of powers and the presidency.²⁹⁴ According to this constitution, the Czech president was elected by the National Assembly as the head of state²⁹⁵ and could exercise a dozen of “powers and functions” (“Zhiquan” in Chinese)²⁹⁶, including proposing, convening, postponing and dissolving the Assembly²⁹⁷, and commanding the armed forces. Most distinctively, he would take no responsibility for any of his “duties” (“Zhiwu” in Chinese), which was to be born by the

²⁹³ William B. Simons (ed.), *The Constitutions of the Communist World* (The Hague: Martinus Nijhoff Publishers, 1984), at 136.

²⁹⁴ Jancar-Webster, Barbara, *Czechoslovakia and the Absolute Monopoly of Power: A Study of Political Power in a Communist System* (New York: Praeger Publishers, 1971), at 55.

²⁹⁵ Jieke Siluo Fake Gongheguo Xianfa [Constitution of the Czechoslovakia Republic] (adopted on May 9th, 1948), art 6, in *Renmin Minzhu Guojia Xianfa Huibian* [Collection of Constitutions of People’s Democratic Countries], ed. Zhongyang Renmin Zhengfu Fazhi Weiyuanhui Bianyishi (Beijing: Renmin Chubanshe, 1953), at 62.

²⁹⁶ Jieke Siluo Fake Gongheguo Xianfa [Constitution of the Czechoslovakia Republic] (adopted on May 9th, 1948), art 74, in *Renmin Minzhu Guojia Xianfa Huibian* [Collection of Constitutions of People’s Democratic Countries], ed. Zhongyang Renmin Zhengfu Fazhi Weiyuanhui Bianyishi (Beijing: Renmin Chubanshe, 1953), at 79.

²⁹⁷ Jieke Siluo Fake Gongheguo Xianfa [Constitution of the Czechoslovakia Republic] (adopted on May 9th, 1948), art 74, paragraph 3, in *Renmin Minzhu Guojia Xianfa Huibian* [Collection of Constitutions of People’s Democratic Countries], ed. Zhongyang Renmin Zhengfu Fazhi Weiyuanhui Bianyishi (Beijing: Renmin Chubanshe, 1953), at 80.

administration.²⁹⁸ His documents could only be effective when co-signed by responsible administrative officials. Similar to its predecessor, this presidency was regarded as “the greatest single institutional departure from soviet constitutionalism”,²⁹⁹.

On the contrary, the German president was rather a weak one. Elected and removed by both chambers³⁰⁰, he represented the country in international relations³⁰¹, performed several functions³⁰², excluding commanding the armed forces, to be effective either with co-signature of the premier or relevant government ministers³⁰³, or based on proposals of certain committee of the chambers³⁰⁴. Besides, the French constitution adopted in 1946 also provided a presidency.

²⁹⁸ Jieke Siluo Fake Gongheguo Xianfa [Constitution of the Czechoslovakia Republic] (adopted on May 9th, 1948), art 76, in *Renmin Minzhu Guojia Xianfa Huibian* [Collection of Constitutions of People's Democratic Countries], ed. Zhongyang Renmin Zhengfu Fazhi Weiyuanhui Bianyishi (Beijing: Renmin Chubanshe, 1953), at 81.

²⁹⁹ Jancar-Webster, Barbara, *supra* note 294.

³⁰⁰ Deyizhi Minzhu Gongheguo Xianfa [Constitution of the German Democratic Republic] (adopted may 30, 1949, effective on October 7, 1949), art 101, paragraph 1 and art 103, in *Renmin Minzhu Guojia Xianfa Huibian* [Collection of Constitutions of People's Democratic Countries], ed. Zhongyang Renmin Zhengfu Fazhi Weiyuanhui Bianyishi (Beijing: Renmin Chubanshe, 1953), at 161, 162.

³⁰¹ Deyizhi Minzhu Gongheguo Xianfa [Constitution of the German Democratic Republic] (adopted May 30, 1949, effective on October 7, 1949), art 105, paragraph 1, in *Renmin Minzhu Guojia Xianfa Huibian* [Collection of Constitutions of People's Democratic Countries], ed. Zhongyang Renmin Zhengfu Fazhi Weiyuanhui Bianyishi (Beijing: Renmin Chubanshe, 1953), at 162.

³⁰² Deyizhi Minzhu Gongheguo Xianfa [Constitution of the German Democratic Republic] (adopted may 30, 1949, effective on October 7, 1949), art 104, and 105, in *Renmin Minzhu Guojia Xianfa Huibian* [Collection of Constitutions of People's Democratic Countries], ed. Zhongyang Renmin Zhengfu Fazhi Weiyuanhui Bianyishi (Beijing: Renmin Chubanshe, 1953), at 162.

³⁰³ Deyizhi Minzhu Gongheguo Xianfa [Constitution of the German Democratic Republic] (adopted May 30, 1949, effective on October 7, 1949), art 106, in *Renmin Minzhu Guojia Xianfa Huibian* [Collection of Constitutions of People's Democratic Countries], ed. Zhongyang Renmin Zhengfu Fazhi Weiyuanhui Bianyishi (Beijing: Renmin Chubanshe, 1953), at 162.

³⁰⁴ Deyizhi Minzhu Gongheguo Xianfa [Constitution of the German Democratic Republic] (adopted May 30, 1949, effective on October 7, 1949), art 107, in *Renmin Minzhu Guojia Xianfa Huibian* [Collection of Constitutions of People's Democratic Countries], ed. Zhongyang Renmin Zhengfu Fazhi Weiyuanhui Bianyishi (Beijing: Renmin Chubanshe, 1953), at 162.

Mao Zedong must have noticed these different presidencies and could have been inspired by them. In the original drafts that he made and discussed with his CPC colleagues, an office of chairmanship had been designed independent from the NPC and the State Council³⁰⁵. Such an independent chairmanship finally took its shape in the “Constitutional Draft of the People’s Republic of China (first draft)” (the first draft) submitted by Mao Zedong on behalf of the CPC to the Constitutional Drafting Committee in its first meeting held on March 23, 1954.

According to the first draft, the chairman was to be elected among PRC citizens who had reached the age of 35 and had the right to vote and to stand for election³⁰⁶, and removed from office by the NPC³⁰⁷ with a term of office of five years³⁰⁸ until the new chairman was elected by the succeeding NPC³⁰⁹.

In article 41, the chairman was provided with six items of “powers and functions”, which could be differentiated into two categories, depending on whether the chairman had to obtain the prior decisions of the NPC and its Standing Committee (NPCSC). The first one was those provided by the first paragraph of article 41:

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“1, in pursuance of the decisions of the NPC and NPCSC”, the chairman shall exercise powers and functions including: I. to

³⁰⁵ Xu Chongde, *supra* note 171, at 113-116.

³⁰⁶ Xianfa Chugao [The first draft of the Constitution] (1954) (P.R.C.), art 38.

³⁰⁷ Xianfa Chugao [The first draft of the Constitution] (1954) (P.R.C.), art 26, 29.

³⁰⁸ Xianfa Chugao [The first draft of the Constitution] (1954) (P.R.C.), art 39.

³⁰⁹ Xianfa Chugao [The first draft of the Constitution] (1954) (P.R.C.), art 42.

promulgate laws, other ordinances with legal effect and other orders. II. to appoint or remove the premier, vice-premiers, ministers and deputy ministers in charge of ministries or commissions, and members of the Council of National Defense. III. to confer state medals and titles of honor. IV. to proclaim general amnesties and grant pardons. V. to proclaim martial law, a state of war, order of mobilization.”

The second category was those “powers and functions” provided by the other five paragraphs of article 41 that the chairman could perform without the decisions of the NPC and NPCSC, including:

“2, propose the NPC and its Standing Committee. 3, appoint or remove chairman and vice chairman of governments of those provinces, municipalities directly under the Central Government, autonomous regions, autonomous provinces. 4, represent the PRC, appoint or remove plenipotentiary representatives abroad, receive foreign diplomatic representatives and ratify treaties concluded with foreign states. 5, command the armed forces and server as the chairman of the Council of National Defense. 6, convene the vice chairman, premier and other persons concerned for a Supreme State Conference whenever necessary.”

Apart from the chairmanship, based on Mao Zedong's suggestion³¹⁰, an office of vice chairman was also provided to exercise those functions and powers on behalf of the chairman that the chairman may entrust to him³¹¹; when the chairman was recalled, dead or incapacitated for a prolonged period, the vice chairman should exercise the full functions and powers of the chairman before the NPCSC should convene to elect a new chairman.³¹² Compared with the Common Program, this was an improvement. During that period, the vice chairman of the CPG could only assist the chairman and no details were provided regarding such assistance. In 1949, when Mao Zedong paid his first state visit to the former Soviet Union, Liu Shaoqi, who had been the vice chairman of the CPGC, had been designated by the CPC Politburo to act as the deputy chairman on his behalf.³¹³ It was unconstitutional for the CPC Politburo to decide on this issue, and the new provision could be a remedy to it.

Mao Zedong's explanations for the chairmanship and his contradicts

(1) The chairman in a soviet government

³¹⁰ Xu Chongde, *supra* note 171, at 114.

³¹¹ Xianfa Chugao [The first draft of the Constitution] (1954) (P.R.C.), art 43.

³¹² Xianfa Chugao [The first draft of the Constitution] (1954) (P.R.C.), art 44.

³¹³ About Liu Shaoqi's performance on behalf of Mao Zedong during this period of time, see Zhonggong Zhongyang Wenxian Yanjiushi (ed.), *Jianguo Yilai Liu Shaoqi Wengao* [Writings of Liu Shaoqi since the Founding of the People's Republic of China], vol. 1. (Beijing: Zhongyang Wenxian Chubanshe, 1998). Liu Shaoqi had been acted on as Mao Zedong's deputy for three times, see Ma Yunfei, "Liu Shaoqi Dangxuan Guojia Zhuxi Qianhou" [How was Liu Shaoqi Elected as the State Chairman], *Bainian Chao*, no (3) 2001, at 30-31.

Why had Mao Zedong made such an individual chairmanship? During the first meeting of the Constitutional Drafting Committee, Mao Zedong delivered his explanations. On one hand, he distinguished the chairman from the Western presidency:

“Is our chairman the same as the presidents in the capitalist countries?

No. their presidents oppose to their congress, and are personal figure.”

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The difference between the Chinese chairman and the Western presidency was that:

“While the capitalist presidents can dissolve the congress, our chairman can not. On the contrary, the National People’s Congress can recall the chairman”³¹⁵

On the other hand, he also suggested that with such an individual chairman, China was also different from the former Soviet Union,

“For this, China is also different from the Soviet Union in that the

³¹⁴ Xu Chongde, *supra* note 117, at 118-119.

³¹⁵ Mao Zedong, “Zai Xianfa Qicao Weiyuanhui Diyici Huiyi Shang De Chahua” [Mao Zedong’s Speech in the First Meeting of the Constitutional Drafting Committee], *Dang De Wenxian*, no. 1 (1997): 11.

Soviet Union just had a Supreme Soviet Presidium, while we are more than that and have a chairman.”³¹⁶

“What is called in the Soviet Union as the Supreme Soviet is the National People’s Congress in China, the Presidium of the Soviet Union is China’s standing committee of the National People’s Congress, and the Council Of Ministers is China’s State Council. Compared with the Soviet Union, we have one more chairman.”³¹⁷

But in his mind, such a difference would not change the soviet nature of the new Chinese government.

“Although we are different in form, in substance we are the same as Soviet Union, because our chairman is not personal figure and can not dissolve the National People’s Congress. Our country is collective leadership, represented by an individual.”³¹⁸

To support this point, he also cited the presidency in some Eastern European countries as examples:

“Among those people’s democratic countries, the Czech and Germany

³¹⁶ Xu Chongde, *supra* note 171, at 118-119.

³¹⁷ Mao Zedong, *supra* note 315, at 10.

³¹⁸ Xu Chongde, *supra* note 171, at 118-119.

have similar institutions. They call them as presidents, whereas we call it as 'chairman'.”³¹⁹

Therefore, he repeatedly stressed that the Chinese chairman should be subordinate to the NPC and enjoyed no independence:

“Our chairman is elected by the National People’s Congress and exercises his functions and powers according to the decisions by NPC or its Standing Committee. He can not act on his own. He is not opposed to the NPC and its Standing Committee. Instead, he is in agreement with them. Based on our own lessons, it is beneficial to have a chairman.”³²⁰

“Our chairman and premier are all elected by the National People’s Congress, they must obey to the congress and can not evade from it”³²¹

As a result, when referring to the chairman’s powers and functions stipulated in article 41 of the first draft, Mao Zedong said:

“What in from the first to fourth paragraph (of article 41) is nothing but formality. Especially, whereas the second paragraph provides that

³¹⁹ Mao Zedong, *supra* note 315, at 10.

³²⁰ Xu Chongde, *supra* note 171, at 118-119.

³²¹ Mao Zedong, *supra* note 315, at 10.

the chairman can make proposal, his proposal is not decisive, subject to the will of the National People's Congress. If the Congress has no intention to accept, he can not do anything."³²²

Besides, when comparing China with the former Soviet Union, Mao Zedong related the chairman to the "speaker of the congress" and suggested that the chairman was a part of the deliberative body:

"Compared with the Soviet Union, we have one more chairman. Apart from the Speaker of the Congress, there is the chairman in China, thus making layers upon layers.....Those decisions made by the Congress should be promulgated by the chairman, but he can not promulgate those that the Congress does not decide. Also the chairman could not execute, which belongs to the State Council."³²³

In particular, he cited Kliment Yefremovich Voroshilov, the chairman of the Presidium of the Supreme Soviet of the former Soviet Union, to illustrate the Chinese chairman:

"The chairman is an equivalent of less than half of Kliment Yefremovich Voroshilov. The chairman is less than half of Voroshilov,

³²² Mao Zedong, *ibid*, at 11.

³²³ Mao Zedong, *ibid*, at 10.

not up to the half, because the Standing Committee has to deliberate on everything, and turn its decisions to the chairman to promulgate.”³²⁴

This further implied that the chairman was originated from the presidium; the chairman, plus the NPCSC would equal to the Supreme Soviet Presidium. In other words, the Supreme Soviet Presidium of the former Soviet Union, or the Central People’s Government Council was split into two parts in China, i.e., the chairman and the Standing Committee of the NPC.

(2) Purposes for the chairmanship

However, while insisting on the supremacy of the NPC and the chairman’s subordination to it, Mao Zedong also admitted that what the chairman could perform would not only be formality, but also of substance.

“According to the sixth paragraph, the chairman convenes the Supreme State Conference if necessary. Although it is not clearly stipulated what kind of business can be discussed in such a conference, he can not go against the National People’s Congress. As for ‘if necessary’, it means that few conferences will be convened, only in emergencies that we gather together to discuss”.³²⁵

³²⁴ Xu Chongde, *supra* note 171, at 121-122.

³²⁵ Mao Zedong, *supra* note 315.

This not only implied that while the NPCSC maintained the normal operation, the chairman could take its place when emergence occurred by convening the Supreme State Conference, but also meant that the chairman could have much discretion in the Supreme State Conference, such as deciding major state policies, thus sharing the policy-making power with the NPCSC.

Besides, the chairman also shared the military power with the State Council:

“With regard to the chairman’s functions and powers, according to the fifth paragraph of article 41, the chairman is also the chairman of the Council of National Defense, whereas the State Council has a defense department. So we make another layer by dividing some work from the State Council to the Council of National Defense.”³²⁶

Therefore, the chairman had also enjoyed some independence by these two powers and functions. As concluded by Mao Zedong:

“These two paragraphs mean that the chairman has some something to do, he is not just eating.”³²⁷

Why had he made such a chairmanship? As he explained:

³²⁶ Mao Zedong, *supra* note 315.

³²⁷ Mao Zedong, *ibid.*

“It is for the security of the country to establish the chairman. China is a big country, the purpose of adding a chairman is to make it safer. We have the speaker, the premier, and now we have the chairman, it becomes safer because it will be impossible for all of these three offices to be out of order in the same time. If there is something wrong with the National People’s Congress, then we have no way out, except waiting for another four years. By having a chairman, he can act as a buffer between the State Council and the Standing Committee of the NPC.”³²⁸

In his mind, national security and the need of government organization were the major purposes to establish such a chairmanship. Why would the country be more secure with a chairman? When making this constitution, the new China had been established amid the cold war, just fighting against “its enemy” in Korea. In such a special situation, national security was undoubtedly the first priority.

“The reason to establish a chairman is the same as to divide the Party leadership into the first front, second front and consider devising the vice chairman and general secretary within the Party. They are Mao

³²⁸ Mao Zedong, *ibid.*

Zedong's important proposal regarding the system of leadership to ensure security of the Party and State.”³²⁹

In other words, by establishing the chairmanship, the soviet government was added new element and could be further divided into two fronts with the chairmanship as a “second front”. By so doing, the government power concentrated into the hands of Mao Zedong was divided and shared among the CPC leaders.

Secondly, he thought there was a need to install a buff between the supreme state organ, i.e., the NPC and NPCSC, and its executor, i.e., the State Council. Why? Mao Zedong must have realized from experiences both at home and the former Soviet Union that two different types of concentration of power would occur in the soviet model of government. The first one was the concentration of power into the hands of the head of the deliberative branch, as in his own cases of the chairman of the China Soviet Republic during the period of the First Soviet Congress and the chairman of the Central People's Government of PRC during the Common Program period. The second type of concentration of power was into the hands of the head of the administration, whereas the deliberative organ became a figure, as in cases of Zhang Wentian as the chairman of the Council of People's Commissars during the period of the Second Soviet Congress of the China Soviet Republic and Stalin as the

³²⁹ Pang Xianzhi and Jin Chongji (eds.), *supra* note 226, at 324.

chairman of the Council of Ministers in the former Soviet Union. Now with an individual chairmanship taking shares in policy-making and military administration, such extremes could be avoided and the power structure of the government could be more balanced.

Therefore, for national security and political balance, Mao Zedong delicately designed the chairman enjoying certain independence by sharing policy-setting power with the NPCSC and military power with the State Council. But there were contradictions between such arrangements and his statements concerning the supremacy of the NPC and subordination of the chairman to it and would make the individual chairman appear to be a western presidency established according to the principle of separation of powers.

Revisions to the chairmanship

After deliberation, the Constitutional Drafting Committee decided to submit the first draft for discussion to the CPPCC National Committee, leading organs of main administrative regions, provinces and cities, democratic parties, peoples' organizations as well as the military organs. Amid these discussions³³⁰, the organization of the state organs provided in the first draft, including the chairmanship, was revised by the CPC in a notice³³¹ issued

³³⁰ In these discussions, about 8000 people participated and about 5900 pieces of suggestions were produced, all of which have been documented into 25-volume book titled "*Xianfa Caoan Chugao Taolun Yijian Huiji*" [Compilation of Suggestions in Discussions of the First Draft of the Constitution]. See Zhonghua Renmin Gongheguo Xianfa Qicao Weiyuanhui Banggongshi (ed.), *Xianfa Caoan Chugao Taolun Yijian Huiji* [Compilation of Suggestions in Discussions of the First Draft of the Constitution], vol. 1-25.

³³¹ The CPC's notice was titled as "Duiyu Zhonghua Renmin Gongheguo Xianfa Caoan (Chugao) Dier Zhang Diyi, Er, San , Si Jie De Xiugai Yijian" [Opinions on the Revisions of

before May 6, 1954, possibly a response to the results of the CPPCC's discussions³³². Thus another constitutional draft was formed by the CPC (the revised draft).

Is the chairman the head of state?

The first major revision made to the first draft was a new article stipulating the chairman was the head of state of the PRC. The CPC seemed to have different opinions about whether the chairman was the head of state. Mao Zedong opposed such an idea and the original draft prepared by his team in Hangzhou made no express provision in this regard. When his draft was discussed within the CPC, a new clause providing so was added, but later deleted because of objection by Mao Zedong. Therefore, when the first draft turned out, it did not have such an article.

However, in discussions organized by the CPPCC National Committee, it was repeatedly suggested by participants that the chairman should be provided as the head of state³³³. In response, that article was added in the revised draft, which also was supported by the CPPCC in its proposed constitutional

the First, Second, Third and Fourth Section of the Second Chapter of the Constitutional Draft (the First Draft) of the People's Republic of China]. See Zhonghua Renmin Gongheguo Xianfa Qicao Weiyuanhui Bangongshi, *Quanguo Zhengxie Xianfa Qicao Zuotanhui Gezu Zhaojiren Lianxi Huiyi Guanyu 'Zhonghua Renmin Gongheguo Xianfa Caoan (Chugao) De Zhengshi Xiugai Yijian'* ['Formal Revising Opinions of the Draft Constitution of the People's Republic of China (First Draft)' Submitted by the Joint Meeting of Group Conveners of Talks on Constitutional Draft Organized by the CPCCC], at 43.

³³² The first 17 volumes of *"Xianfa Caoan Chugao Taolun Yijian Huiji"* [Compilation of Suggestions in Discussions of the First Draft of the Constitution] recorded those suggestions and opinions resulted from discussions taking place before May 6th, 1954, mainly organized by the National Committee of the CPPCC. Therefore, the CPC's revision possibly was made based on those results of the first 17 volumes.

³³³ Zhonghua Renmin Gongheguo Xianfa Qicao Weiyuanhui Bangongshi (ed.), *supra* note 330, vol. 1, at 15; vol. 6, at 1, 2, 5, 6, 8, 9.

draft.³³⁴

Later, when all these discussion completed, all drafts and suggestions turned to the Constitutional Drafting Committee for consideration³³⁵. In its sixth meeting, some committee members held that the chairman should not be provided as the head of state. For example, those CPC members changed their attitudes towards this issue once again and were against this article for the following reasons:

“We are the people’s congress, the chairman exercises his functions and powers based on the decision of the National People’s Congress and its Standing Committee. Therefore, at most, the chairman could be thought as much as a ‘head of state with partial functions and powers’, but not of ‘the head of state’. Otherwise it would be unscientific. Therefore, we think it will not hurt the status of the chairman without such a clear provision. Instead, it will be hard for us to explain if we adopt this provision.”

But some other committee members who did not belong to the CPC were in favor of it and held that it should be made clear that the chairman was the

³³⁴ Zhonghua Renmin Gongheguo Xianfa Qicao Weiyuanhui Bangongshi, *Quanguo Zhengxie Xianfa Qicao Zuotanhui Gezu Zhaojiren Lianxi Huiyi Guanyu 'Zhonghua Renmin Gongheguo Xianfa Caoan (Chugao) De Zhengshi Xiugai Yijian'* ['Formal Revising Opinions of the Draft Constitution of the People's Republic of China (First Draft)' Submitted by the Joint Meeting of Group Conveners of Talks on Constitutional Draft Organized by the CPCCCC], art 40. It was made on May 22, 1954.

³³⁵ The committee had held nine meetings all together to discuss the constitutional draft.

head of state, or at least “the representative of the State”, “the leader of the State”; “the leader of the people”; “the supreme leader of the country”; “the State’s representative in foreign affairs”, etc; otherwise, “it would go against the idea and wishes of the people”, as they argued.³³⁶

This controversy was finally decided by Mao Zedong in the next meeting of the Constitutional Drafting Committee. When a non-CPC committee member continued to ask about it, Mao Zedong replied:

“The chairman is not the head of state. I think we had better not to stipulate him as the head of state.”³³⁷

He explained why it should be deleted as following:

“It was said that the abolishment of a certain clause³³⁸ was because some people (Mao Zedong) was very modest. This is not true. It is not because that I am modest. Rather it is inappropriate, unreasonable and unscientific if we keep that clause. In a country of people’s democracy like ours, that kind of inappropriate stipulation should not be made.”³³⁹

³³⁶ Xu Chongde, *supra* note 226, at 135-136.

³³⁷ “Xianfa Qicao Weiyuanhui Diqici Huiyi Taolun Tongguo Xianfa Caoan Jilu” [Record of the Seventh Meeting of the Constitutional Drafting Committee to Discuss and Adopte the Constitutional Draft], *Dang De Wenxian*, no. 1 (1997): 16.

³³⁸ It is the clause of head of state. See Pang Xianzhi and Jin Chongji (ed.), *supra* note 226, at 336; Gong Yuzhi, *Dangshi Zaji Erji* [The Second Volume of Notes about the CPC’s History] (Zhejiang: Zhejiang Renmin Chubanshe, 2004), at 312, 327-329.

³³⁹ Mao Zedong, *Guanyu Zhonghua Renmin Gongheguo Xianfa Caoan* [About the Draft Constitutional of the Pople’s Republic of China], in *Zhonggong Zhongyang Wenxian Yanjiushi* (ed.), *supra* note 229, at 506.

As a result, when the constitutional draft was published for national discussion³⁴⁰, that article was removed from the draft. Again despite that it was widely supported by the Chinese populace³⁴¹, the national discussion did not change the status quo.

But some non-CPC people thought that “this issue still exists in many people’s minds”, and suggested making some explanations when submitting the constitutional draft to the first NPC. In response, Liu Shaoqi made a special remark in his “Report on the Draft Constitution of the People’s Republic of China” delivered to the first NPC as following:

“The functions and powers of the head of state in our country are jointly exercised by the Standing Committee of the National People’s Congress, which is elected by the National People’s Congress, and by the Chairman of the People’s Republic of China. This conforms to the actual situation of our country and is based on our experience in the building up of the highest bodies exercising state power since the founding of the People’s Republic of China. Ours is a collective head

³⁴⁰ The whole country spent almost three months on discussion, in which about 150 million people participated. See Xiao Xinli (ed.), *Mao Zedong Yu Gongheguo Zhongda Lishi Shijian* [Mao Zedong and Important Historical Event of the Republic] (Beijing: Renmin Chubanshe, 2001), at 133. All those suggestions made during this public discussion have been compiled into 14-volume books titled as “Quanguo Renmin Taolun Xiancao Yijian Huibian” [Compilation of Suggestions from the National Discussion about the Constitutional Draft].

³⁴¹ See *Quanguo Renmin Taolun Xiancao Yijian Huibian* [Compilation of Suggestions From the National Discussion about the Constitutional Draft], vol. 3, at 61; vol. 6, at 52; vol. 10, at 87; vol. 12, at 45, 46, 49; vol. 13, at 134.

of state. Neither the Standing Committee nor the Chairman of the People's Republic of China has powers exceeding those of the National People's Congress."³⁴²

His explanation was accepted by the NPC together with the constitutional draft. Thus, the chairman was finally construed as a "partial" head of state of the PRC.

The chairman's "power" or "duty"?

The second major revision that the CPC made to the first draft was concerned with the chairman's jobs stipulated in article 41 of the first draft, which had been provided as his "powers and functions" and could be divided into two categories, as discussed previously. The phrase "power and function" could have originated from Mao Zedong because he had used it in his initial drafts to refer to jobs that the chairman could fulfill.³⁴³ Seemingly he thought those jobs were the chairman's "powers and functions". This phrase was accepted by the CPC in the first draft, not only in its article 41, but also in other places of the first draft whenever the chairman's jobs were generally mentioned, for example, the first draft also provided that the chairman exercise his "power

³⁴² Liu shaoqi, *Collected works of Liu Shao Ch'i 1945-1957* (Kowloon, Hong Kong: Union Research Institute, 1969), at 297.

³⁴³ Mao Zedong, *Dui Zhonghua Renmin Gongheguo Xianfa Caoan De Piyu* [Notes about the Constitutional Draft of the People's Republic of China], in *Zhonggong Zhongyang Wenxain Yanjiushi* (ed.), *supra* note 229, at 455.

and function” until the new chairman was elected by the NPC³⁴⁴; the vice chairman could perform some or all “power and function” of the chairman on his behalf.³⁴⁵

In the revised draft, the first category of the chairman’s jobs, i.e., the first paragraph of article 41 referring to those “powers and functions” that the chairman had to perform in pursuance with the decision of the NPC and NPCSC, became a new article and the phrase “powers and functions” in it was rewritten as “duties”(“Zhiwu” in chinese)³⁴⁶.

Among the second category of the chairman’s jobs, i.e., those five “powers and functions” provided in the rest five paragraphs of article 41 that the chairman could do without the decisions of the NPC and NPCSC, the fourth paragraph, stipulating the chairman to represent the PRC, appointed or removed the Chinese diplomats, received foreign diplomats and approved treaties concluded with other countries, was further revised and became an independent clause. The revision to it was the insertion of the condition of “the decision of the NPC and NPCSC” before the chairman could appoint or remove the Chinese diplomats and approve treaties concluded with other countries. Thus, these two jobs used to be the chairman’s “powers and functions” was regrouped to the first category. Taking into consideration of

³⁴⁴ Xianfa Chugao[The first draft of the Constitution] (1954) (P.R.C.), art 42.

³⁴⁵ Xianfa Chugao[The first draft of the Constitution] (1954) (P.R.C.), art 43, 44.

³⁴⁶ Zhonghua Renmin Gongheguo Xianfa Qicao Weiyuanhui Bangongshi, *Quanguo Zhengxie Xianfa Qicao Zuotanhui Gezu Zhaojiren Lianxi Huiyi Guanyu ‘Zhonghua Renmin Gongheguo Xianfa Caoan (Chugao) De Zhengshi Xiugai Yijian’* [‘Formal Revising Opinions of the Draft Constitution of the People’s Republic of China (First Draft)’ Submitted by the Joint Meeting of Group Conveners of Talks on Constitutional Draft Organized by the CPCCC], art 42.

the revision to the first paragraph, it could be understood that “to appoint and remove Chinese diplomats and approve international treaties” now also were the chairman’s “duty”.

As for the rest four paragraphs of the second category, two were abolished, i.e., the second paragraph authorizing the chairman to propose the NPC and NPCSC and the third paragraph to appoint or remove local government heads, and the fifth and sixth paragraph also became individual articles. Although none of these new articles mentioned the phrase “power and function” in their wordings any more, they could still be understood as the chairman’s “powers and functions” because the phrases “powers and functions” that were generally mentioned in other articles of the first draft remained unchanged in the revised draft³⁴⁷, from which it could be inferred that those jobs that the chairman could do without conditions, i.e., “to convene the supreme state conference, command the military forces, represent the country and receive foreign diplomats”, could still be regarded as his “powers and functions”.

To summarize, as a result of all these revisions, those jobs included in the first paragraph of article 41 of the first draft and “to appoint and remove Chinese diplomats and approve international treaties” were the chairman’s duties, whereas the rest jobs remained as his “powers and functions”. Such a division was in accordance with Mao Zedong’s explanations because it not

³⁴⁷ Zhonghua Renmin Gongheguo Xianfa Qicao Weiyuanhui Bangongshi, *Quanguo Zhengxie Xianfa Qicao Zuotanhui Gezu Zhaojiren Lianxi Huiyi Guanyu ‘Zhonghua Renmin Gongheguo Xianfa Caoan (Chugao) De Zhengshi Xiugai Yijian’* [‘Formal Revising Opinions of the Draft Constitution of the People’s Republic of China (First Draft)’ Submitted by the Joint Meeting of Group Conveners of Talks on Constitutional Draft Organized by the CPCCC], art 46, 47, 48.

only helped to strengthen the supremacy of the NPC as the highest state organ, but also agreed with his definition of both the first and the fourth paragraphs of article 41 as formalities and the fifth and sixth paragraph as “buff” between the NPCSC and the State Council with some independence.

However, these revisions would be contradictory. Since there were other “powers and functions” that were generally mentioned in the first draft and they remained unchanged³⁴⁸, what kind of works could be regarded as these “powers and functions”? For example, the chairman was provided to perform his “powers and functions” until the new chairman was elected, could this be understood that the chairman’s “power and function” excluded the first groups of his constitutional works as these were revised as his “duties”? Obviously it could not and should be understood as to include both groups. The same contradiction could occur when it came to terms of the other two stipulations requiring the vice chairman to exercise “powers and functions” of the chairman on his behalf under certain circumstances.

More specifically, the choice of “duty” could also contradict with the chairman’s role in the Supreme State Conference. As revised, now the chairman became the chairman of the Supreme State Conference. Apart from the vice chairman, premier and the vice premier, he could convene the chairman and vice chairman of the NPCSC, the vice chairman of the

³⁴⁸ Zhonghua Renmin Gongheguo Xianfa Qicao Weiyuanhui Bangongshi, *Quanguo Zhengxie Xianfa Qicao Zuotanhui Gezu Zhaojiren Lianxi Huiyi Guanyu 'Zhonghua Renmin Gongheguo Xianfa Caoan (Chugao) De Zhengshi Xiugai Yijian'* [‘Formal Revising Opinions of the Draft Constitution of the People’s Republic of China (First Draft)’ Submitted by the Joint Meeting of Group Conveners of Talks on Constitutional Draft Organized by the CPCCC], art 46, 47, 48.

Council of National Defense, the chairman of the Supreme People's Court and the Procurator-General of the Supreme People's Procuratorate for such a Conference. If necessary, he could also specify other persons concerned to take part. The views resulted from the Supreme State Conference can also be submitted by the chairman, according to the nature of the views, to the NPC and NPCSC, the Central People's Government or other government bodies for their consideration and decision. Hence, compared with the sixth paragraph of article 41 in the first draft, the chairman had been accorded with a leading role in the Supreme State Conference, by which he could override the decisions of the NPC and NPCSC "when necessary".

Therefore, in the following discussions of the Constitutional Drafting Committee, the choice between the phrases "power and function" and "duty" became an issue that was subject to change time and again.

Then what is the difference between "duty" ("zhiwu" in Chinese) and "power and function" ("zhiquan" in Chinese)? According to the explanation made by one member of the Constitutional Drafting Committee, in Chinese, "quan" had more element of independent decision than "wu" because "wu" means "affair", whereas "quan" means to make a decision on something.³⁴⁹ Accordingly those works that the chairman had to perform in accordance with decisions of the NPC and NPCSC were not the chairman's "powers and functions"; instead, they were his "duties". Liu Shaoqi supported this opinion

³⁴⁹ Xu Chongde, *supra* note 171, at 127.

and thought that “duty” should be adopted. According to his idea, the chairman must promulgate the law made by the NPC and NPCSC and he could not do otherwise. If those were “powers and functions”, it would mean that he could decide to promulgate or not.³⁵⁰ To the contrary, possibly to avoid that contradiction analyzed in the above, a third opinion suggested that the word of “duties” be deleted from the revised draft, thus giving no answer as to whether those works of the chairman in the original first paragraph were “powers and functions” or “duties”.³⁵¹ This suggestion could help to avoid the controversy and hence was a compromise.

At first, the constitutional drafting committee accepted the revision and adopted “duties” in its revising opinions.³⁵² But somehow in its seventh meeting, it was changed back again from “duties” to “powers and functions”, which was further adopted by the Central People’s Government Council in its thirtieth meeting³⁵³. But this was not the end. When the constitutional draft was published for national discussion on June 15, the third opinion was adopted by the published draft, with the phrase of “powers and functions”

³⁵⁰ Cai Dingjian, *supra* note 3, at 366.

³⁵¹ Xu congde, *supra* note 171, at 133.

³⁵² Zhonghua Renmin Gongheguo Xianfa Qicao Weiyuanhui Duiyu Zhonghua Renmin Gongheguo Xianfa Caoan (Chugao) De Xiugai Yijian [Revising Opinions of the Constitutional Drafting Committee of the People’s Republic of China to the Constitutional Draft of the People’s Republic of China (The First Draft)], art 42. It is shown on the cover page of this document that it was printed in June, 1954 by “Zhonggong Zhongyang Huadong Ju Bangongting” [The Office of the Eastern-China Bureau of the CPCCC]. Therefore, it could be a result of the first six meetings of the Constitutional Draft Committee, all of which were convened by Liu Shaoqi.

³⁵³ Zhonghua Renmin Gongheguo Xianfa Caoan [Constitutional Draft of the People’s Republic of China] (adopted by the 30th Meeting of the Central People’s Government Council on June 14, 1954), art 40. Both the seventh meeting of the Constitutional Draft Committee and the 30th conference of the Central People’s Government Council were presided by Mao Zedong. Besides, the Central People’s Government Council had held three conferences to discuss the constitutional draft, i.e., the 30th, 34th and a temporary conference.

being deleted³⁵⁴, and this option was maintained in the constitution when it was passed by the NPC and promulgated³⁵⁵.

The chairman's relationship with the State Council

According to Mao Zedong's explanation, on one hand, the chairman had no interference with the administration of the State Council because:

“.....The chairman also can not execute, because it is the responsibility of the State Council..... the chairman is also not the government, the State Council does not have to report to the chairman. It is the State Council, not the chairman, which should take any responsibility that may arise.”³⁵⁶

On the other hand, he also pointed out that the chairman shared the military power with the State Council:

“With regard to the chairman's functions and powers, according to the fifth paragraph of article 41 (of the first draft), the chairman is also the chairman of the Council of National Defense, whereas the State Council has a defense department. So we make another layer by

³⁵⁴ Zhonghua Renmin Gongheguo Xianfa Caoan [Constitutional Draft of the People's Republic of China], *Renmin Ribao*, June 15, 1954, art 40.

³⁵⁵ Zhonghua Renmin Gongheguo Xianfa [Constitution] (1954) (P.R.C.), *Renmin Ribao*, September 21, 1954, art 40.

³⁵⁶ Mao Zedong, *supra* note 315, at 10-11.

dividing some work from the State Council to Council of National Defense.”³⁵⁷

Therefore, in the first draft, the chairman was the commander of the armed forces³⁵⁸ and could appoint or remove members of the Council of National Defence³⁵⁹ based on the decisions of the NPCSC³⁶⁰, whereas the State Council had the power to “guide the building up of the defence forces”³⁶¹.

Besides, apart from division of military work, the chairman was also involved with the civil administration of the State Council in terms of government personal affairs. In accordance with the decision of the NPC and NPCSC, he could appoint and remove key officials of the State Council, including the premier and vice premier;³⁶² independently, he also could appoint or remove certain local government heads based on legal provisions.³⁶³

In the revised draft, the chairman’s involvement with government personal affairs was modified. At the central level, the chairman was newly provided with the power to nominate the premier, the vice chairman and other members of the Council of National Defense, thus adding an element of “check and balance” into the “division of military power” between the chairman and the

³⁵⁷ Mao Zedong, *supra* note 315.

³⁵⁸ Xianfa Caoan Chugao [The Constitutional Draft (the First Draft)], art 41, paragraph 5.

³⁵⁹ Xianfa Caoan Chugao [The Constitutional Draft (the First Draft)], art 41, paragraph 1.

³⁶⁰ Xianfa Caoan Chugao [The Constitutional Draft (the First Draft)], art 36, paragraph 10.

³⁶¹ Xianfa Caoan Chugao [The Constitutional Draft (the First Draft)], art 46, paragraph 12.

³⁶² Xianfa Caoan Chugao [The Constitutional Draft (the First Draft)], art 41, paragraph 1.

³⁶³ Xianfa Caoan Chugao [The Constitutional Draft (the First Draft)], art 41, paragraph 2.

State Council. At the local level, his power to appoint and remove local government heads was deleted, thus he could not exert influence on local governments any more. As a result, the chairman's influence on the administration was further limited to the central government.

Although these revisions were all accepted by subsequent discussions and deliberations, if taking into consideration the chairman's involvement with the administration, including the personal nomination, the Supreme State Conference, and division of military work, it would be contradictory to Mao Zedong's explanation that the chairman take no responsibility for the administration. Based on the constitution, the chairman had two powers that had to do with the civil administration, i.e., the power to nominate the premier³⁶⁴ and convene the Supreme State Conference. Both powers enabled the chairman exert direct and indirect influence on the State Council. First of all, the chairman could set national policy for the State Council to carry out by convening the Supreme State Conference, thus having direct impact on the administration. As the constitution made no definition on what time was necessary, what kind of affairs of state was important, it was all up to the chairman to decide when to convene such a conference and what kind of issue could be raised in the conference. If the chairman thought his policies were important, he could convene the premier for such a conference and submitted his views to the State Council for consideration and decision. Undoubtedly the

³⁶⁴ Zhonghua Renmin Gongheguo Xainfa [Constitution] (1954) (P.R.C.), art 27, paragraph 5.

premier should have to take some responding actions to the chairman even if no further procedural or substantive requirements had been made by the constitution in this regard. Besides, by the power to nominate the premier, the chairman could exert an indirect influence on the state administration through the premier as he could choose the person who was in favor of his policies to take charge of the State Council.

The vice chairman

Apart from these major revisions, provisions concerning the vice chairman were also improved by the revised draft. With the same terms of office and election as the chairman³⁶⁵, the vice chairman was not only provided to assist the chairman in his work³⁶⁶, but also could exercise parts of powers and functions of the chairman on his behalf with his authorization³⁶⁷ or when he was incapacitated for a prolonged period by reason of health³⁶⁸. He could even succeed the chairman if the chairmanship fell vacant until the term of the chairman ended and a new chairman was elected into office.³⁶⁹ Besides, the term of the office of chairman was reduced from five years to four years³⁷⁰.

All of these revisions went through various discussions and deliberations and

³⁶⁵ The second paragraph of article 46 of the Revised Draft, *Zhonghua Renmin Gongheguo Xianfa Qicao Weiyuanhui Bangongshi, Quanguo Zhengxie Xianfa Qicao Zuotanhui Gezu Zhaojiren Lianxi Huiyi Guanyu 'Zhonghua Renmin Gongheguo Xianfa Caoan (Chugao) De Zhengshi Xiugai Yijian'* ['Formal Revising Opinions of the Draft Constitution of the People's Republic of China (First Draft)' Submitted by the Joint Meeting of Group Conveners of Talks on Constitutional Draft Organized by the CPC], at 83.

³⁶⁶ The first paragraph of article 46 of the Revised Draft, *ibid.*

³⁶⁷ *Ibid.*

³⁶⁸ The first paragraph of article 48 of the Revised Draft, *ibid.*, at 85.

³⁶⁹ The second paragraph of article 48 of the Revised Draft, *ibid.*

³⁷⁰ The first paragraph of Article 41 of the Revised Draft, *ibid.*

finally became a part of the constitution³⁷¹.

Adoption of the chairmanship by the NPC

On September 15, 1954, the First National People's Congress held its first session in Beijing, in which the final version of the constitutional draft was submitted and Liu Shaoqi, representing the constitutional drafting committee, made a speech "Report on the Draft Constitution of the People's Republic of China"³⁷². Five days later, it was put for vote³⁷³. 1197 people's deputies in attendance all voted in favor of it. Then the Constitution was passed and promulgated on the next day by the NPC.³⁷⁴

To conclude, by taking lessons from abroad and aimed to solve the succession to him, Mao Zedong proposed an individual chairmanship in the constitution, thus adding elements of Western ideas of separation of powers into the Stalinist structure of government. Such a chairmanship was weakened and centralized in the constitutional-making process after various rounds of revisions, with contradicts remaining. Being different from the almighty CPG chairman during the period of the Common Program, the new chairmanships was better defined and far more limited in its scope of jurisdiction, with "necessary" policy-making power, allegedly no administrative responsibility, shared power in military affairs, and complete irrelevance to the judicial

³⁷¹ Zhonghua Renmin Gongheguo Xianfa [Constitutoni] (1954) (P.R.C.), art 44, 45, 46.

³⁷² Liu shaoqi, *supra* note 342.

³⁷³ Before voting, the constitutional draft had been further revised by the Central People's Government Council based on the opinions from the PNPC deputies, but not concerned with the chairmanship. See Xu Chongde, *supra* note 171.

³⁷⁴ *Renmin Ribao*, September 21, 1954.

bodies.

Chairman Mao Zedong in office from 1954 to 1959

Mao Zedong elected as the first chairman

Ultimate decision-maker of the one-party government

On September 27, 1954, the first NPC started to elect the governmental officials. Before the election, a list of candidates for top governmental positions had been produced from several rounds of consultations between the CPC and other parties, which was then submitted to the NPC jointly by 109 deputies from the 33 delegations to the NPC.³⁷⁵ Mao Zedong was the only candidate for the chairmanship and elected into office by 1210 deputies without opposition.³⁷⁶ After election, an office of the chairman was established, with its head appointed by the chairman.³⁷⁷

As a result of this election, the CPC's control over the new government was increased greatly. During the Common Program period, many leaders of democratic parties and prominent non-CPC figures had been elected as senior government officials, such as the vice chairman of the Central People's Government Council and vice premier of the State Administration Council. But after this round of election, none of them was elected as vice chairman and vice premier. Instead, they were all elected into the NPCSC, taking up 39

³⁷⁵ Mu Zhaoyong, *supra* note 10, at 191.

³⁷⁶ Mu Zhaoyong, *ibid*, at 196-197.

³⁷⁷ Zhou Fang, *Woguo Guojia Jigou* [The Structure of the State of Our Country] (Beijing: Zhongguo Qingnian Chubanshe, 1955), at 66.

positions out of its 79 members and 8 out of its 13 vice chairmen. Even though 13 non-CPC people were elected into the ministerial offices of the State Council, they just counted about one third of all ministerial offices and one fourth of all members of the State Council.³⁷⁸ Therefore, with the changes of Non-CPC people's positions, the CPC occupied half of the NPCSC and majority in the State Council, apart from the chairmanship. Hence, the one-party government suggested by Stalin was largely formed in China.

Undoubtedly, the CPC's chairman Mao Zedong was the focus of decision-making of this new government. As the balance of the state power leaned towards the CPC, its collective Central Secretariat became the decision-making center of the state affairs, in which Mao Zedong had been playing a dominant role. Although his power of "last say" had not been re-endorsed by the CPC after the establishment of the PRC, he continued to enjoy such a privilege in practice. As introduced in the previous chapter, before the constitutional making, the decision-making power of the government had been concentrated towards the CPC, and ultimately into the hands of its chairman Mao Zedong.

In particular, even though the Council of National Defense was established according to the constitution and included 29 non-CPC people in its all 97 members, this does not mean that the control over the armed force changed hands. On the contrary, this new council was only considered as a consultative

³⁷⁸ Mu Zhaoyong, *supra* note 10, at 204-205.

organ, and the true leader of the armed forces remained to be the CPC. Just a few days after the election, a Military Committee was set up by the CPC, under direct control of its Politburo and the Central Secretariat, to take full responsibility for the military affairs, with Mao Zedong being the chairman of this new committee.³⁷⁹

The Supreme State Conference

According to the constitution, the Supreme State Conference was an important function for the chairman to perform. As the constitution provided few details about its working, the Supreme State Conference had been very flexible in practice in terms of its frequency, duration and participants. Throughout his five years in office, Mao Zedong convened 16 Supreme State Conferences all together. Dividing by year, the frequency of conference had been in decline. It is estimated that five such conferences could have convened by the end of 1955³⁸⁰, 4 respectively in 1956 and 1957 when the great leap-forward took place, 2 in 1958, and only 1 in 1959 before he was succeeded by Liu Shaoqi. Participants to these conferences had also been fluctuating from 37 persons in the tenth conference to about 1800 of the eleventh conference, expanding to include people not clearly provided by the constitution, such as distinguished figures in different social circles, local government officials, university

³⁷⁹ Zhou Jian, *Zhongguo Junshi Fashi* [History of Military Law of China] (Beijing: Falv Chubanshe, 2008), at 453-454; Pang Song, *supra* note 278, at 450.

³⁸⁰ It is reported that the 6th Supreme State Conference was held on January 25, 1956. See *Renmin Ribao*, January 26, 1956.

principals, scholars, etc.³⁸¹ Generally, duration of these conferences was within days³⁸², varying from half day, like the sixth conference, to several days, such as the eleventh one which was enlarged and held from February 27th to March 1st of 1957³⁸³.

In spite of irregularities in these respects, the Supreme State Conference had become an important way for Mao Zedong to involve with the state affairs by raising and discussing various issues that were all significant to the development of the country at that time. First of all, government works were discussed, which set important government policies, produced specific proposals for legislation and administrative action. For example, in a Supreme State Conference held on May 12, 1955, Mao Zedong suggested that the policy for the elimination of counterrevolutionaries should be “be alert to eliminate every counterrevolutionary; avoid any bias to accuse any innocent one”, which became a guiding line for that movement³⁸⁴. The “Double-Hundred” policy was official announced at another conference held on May 2nd, 1956³⁸⁵, which was the seventh conference³⁸⁶.

In particular, the agriculture was an issue repeatedly discussed in the Supreme State Conference. It was first raised in a Supreme State Conference

³⁸¹ Li Lin, “Zuigao Guowu Huiyi Zuzhi Jiegou Jiqi Gongneng Fenxi” [Analysis on the Organization and Function of the Supreme State Conference], *Zhonggong Dangshi Yanjiu*, no. 1 (2005): 64.

³⁸² Li Lin, *ibid*, at 64-65.

³⁸³ *Renmin Ribao*, March 3, 1957.

³⁸⁴ Xu Chongde, *supra* note 171, at 207.

³⁸⁵ Pang Xianzhi and Jin Chongji (ed.), *supra* note 226, at 491.

³⁸⁶ Mao Zedong, “Mao Zedong Zai Zuigao Guowu Huiyi Diqici Huiyi Shang De Jianghua Jilu” [Record of Mao Zedong’s Speech in the Seventh Supreme State Conference], in Pang Xianzhi and Jin Chongji (ed.), *supra* note 226, at 492, footnote 1.

held from October 19 to 21 of 1955, by discussing a standard charter for agricultural cooperatives³⁸⁷. Then in the sixth conference held on January 25, 1956³⁸⁸, a draft outline for China's agricultural development from 1956 to 1969 was discussed³⁸⁹, which was raised again in the thirteenth conference³⁹⁰ convened on October 14th, 1957³⁹¹. The draft was finally submitted to and adopted by the NPC. Other important government works were also brought to discussion before being submitted for deliberation by the NPC. In the fourteenth conference undertaken on January 28, 1958, state budget and economic plan was discussed.³⁹² The next one, held in September of 1958, discussed overall domestic and international situations.³⁹³ Specific administrative decisions were also made as results of the conferences.

Secondly, political consultation was also conducted in the Supreme State Conference between the CPC and democratic parties as well as other social sectors. One of these consultations was Mao Zedong's call to the democratic parties to help the CPC's rectification movement, which was made in the twelfth³⁹⁴ and thirteenth conference³⁹⁵ all convened in 1957. Then in his last Supreme State Conference held on April 15, 1959 to make preparation for the

³⁸⁷ Li Lin, *supra* note 381, at 64.

³⁸⁸ Yang Jiandang, "Zuigao Guowu Huiyi Zhidu Tanlue"[Study on the System of the Supreme State Conference], *Yunnan Xingzheng Xueyuan Xuebao*, no. 4 (2006); Li Lin, *supra* note 381.

³⁸⁹ *Renmin Ribao*, January 26, 1956.

³⁹⁰ Li Lin, *supra* note 381, at 64.

³⁹¹ *Renmin Ribao*, October 14, 1957.

³⁹² Pang Xianzhi and Jin Chongji (ed.), *supra* note 226, at 781.

³⁹³ Pang Xianzhi and Jin Chongji (ed.), *supra* note 226, at 862; *Remin Ribao*, September 6 and 9, 1958.

³⁹⁴ Pang Xianzhi and Jin Chongji (ed.), *supra* note 226, at 619-620.

³⁹⁵ *Renmin Ribao*, October 13, 1957.

second NPC³⁹⁶, Mao Zedong explained to his participants why Liu Shaoqi were decided by the CPC as the candidate for the next chairman.

More specifically, ideological issue were also raised and discussed in some of these conferences, such as those concerning Mao Zedong's idea about "contradictions within people", by which he firstly suggested on February 7, 1957 that properly handling contradictions within the people should be the main theme of Chinese political life. He took two conferences to illustrate his idea and solicit opinions from participants. On February 26, 1957, he held the tenth conference with 37 participants, discussing contradictions within the people, contradictions between the people and its enemies³⁹⁷. From the next day till to March 1, he invited more people to convene an enlarged Supreme State Conference, i.e., the eleventh, to discuss the issue of how to properly handle the contradiction within the people. Firstly Mao Zedong illustrated his ideas in the afternoon of February 27. Then, for the next one and half day, those 1800 participants were divided into groups to discuss his ideas. In the afternoon of March 1st, all participants joined together again and some of them gave individual speeches.³⁹⁸ By such an arrangement, this sizable conference can only be comparable to a plenary session of the NPC.

In summary, during Mao Zedong's term, the Supreme State Conference became a place where Mao Zedong could coordinate the working of the government, intervene the state affairs, conduct political consultations, and

³⁹⁶ *Renmin Ribao*, September 16, 1959.

³⁹⁷ Pang Xianzhi and Jin Chongji (ed.), *supra* note 226, at 620.

³⁹⁸ *Renmin Ribao*, March 3, 1957.

illustrate his ideological ideas.³⁹⁹ However, with these multiple functions, it had already trespass the constitutional provisions and could contravene with other state organs, such as the NPC and CPPCC.⁴⁰⁰

Dispute over the “Grand Marshal”

The dominance of Mao Zedong in the CPC’s collective leadership as its chairman not only made prominent the Supreme State Conference above other state establishments, but also could add substance to those formalities required by the constitution that the government chairman had to fulfill according to the decision of the NPC and its Standing Committee. In February 1955, the NPCSC adopted an ordinance on military ranking and awarding medals. In this new law, a rank of Grand Marshal was provided. As an initial plan, it was suggested that Mao Zedong be ranked as Grand Marshal and awarded medal, but he refused. Later, this suggestion was raised again in an NPCSC meeting and gained wide support from attending NPCSC members, including those non-CPC members. A non-CPC member even asked, “if the NPCSC made the decision, what could Mao Zedong do except to accept?”⁴⁰¹ He implied that constitutionally Mao Zedong had to follow if the NPCSC made such a decision.

However, knowing Mao Zedong’s opposition, the NPCSC chairman Liu

³⁹⁹ Li Lin, *supra* note 381, at 66; Yang Jiandang, *supra* note 388, at 46-47.

⁴⁰⁰ Yang Jiandang, *supra* note 388, at 48.

⁴⁰¹ Song Renqiong, *Song Renqiong Huiyilu* [Memoirs of Song Renqiong] (Beijing: Jiefangjun Chubanshe, 2007), at 273-275. The author was a General of the People’s Liberation Army.

Shaoqi who presided the meeting insisted on not so doing. In reply to that question, he responded that, although the NPCSC could make a decision, it still had to be promulgated by the chairman by issuing an order; what if the chairman did not issue such an order? Instead, Liu Shaoqi proposed not making a decision in that meeting unless they could persuade Mao Zedong to accept this suggestion when they met him in person. Afterwards, when this suggestion was put forward to Mao Zedong for his approval, he expressly rejected it once again. Hence, the Grand Marshal was left vacant.⁴⁰²

Delegation of power to the NPCSC

While Mao Zedong chaired the Republic, he had also concurrently held the position of the CCP chairman. It must have been a burdensome job to lead such a great country and an escalating party⁴⁰³. Chairman Mao Zedong needed to rest and took a period of leave in the latter half of 1955. It may be because of this that on December 28th, 1955, a resolution was passed by the first NPCSC in its thirtieth meeting, providing that “the chairman of the NPCSC should receive foreign diplomats when the chairman and vice chairman of PRC take leave or are away”,⁴⁰⁴.

⁴⁰² Song Renqiong, *ibid.* It is said that the uniform of the Grand Marshal is still kept in the National Military Museum in Beijing.

⁴⁰³ In 1949 when the PRC was founded, the CCP had about 4.5 million members; by 1951, its members increased to 5.8 million; and by the end of June, 1953, the figure reached about 6.4 millions. See Pang Song, *supra* note 278, at 262, 268.

⁴⁰⁴ Quanguo Renmin Daibiao Dahui Changwu Weiyuanhui Bangongting Yanjiushi (ed.), *Zhonghua Renmin Gongheguo Renmin Daibiao Dahui Wenxian Ziliao Huibian (1949-1990)* [Compilation of Documents of the National People's Congress of the People's Republic of China] (Beijing: Zhongguo Minzhu Fazhi Chubanshe, 1991), at 309.

Resumption of Mao Zedong's idea of two fronts

Mao Zedong's failed attempt to Resign the chairmanship

After learning Krushchev's report about Stalin's faults, Mao Zedong thought more about the state affairs and decided to resume his old idea of two fronts⁴⁰⁵, which had previously been interrupted by the incident of Gao Gang and Rao Sushi. As early as in the middle of 1956 when preparing for the forthcoming eighth party congress, Mao Zedong suggested resigning from the office of the chairman, then the party's chairmanship later. He told his senior party colleagues that he did not want to take a second term. Although his partners had discussed and held that "it is feasible in the future when time is ripe", his request had been rejected because they thought "it is not for now".⁴⁰⁶

However, partly because it was so burdensome to be chairman, and partly in view of the succession of the CPC's leadership, Mao Zedong soon repeatedly demanded he not be elected for a second term.⁴⁰⁷ He made his idea public in the twelfth Supreme State Conference on April 30th, 1957, when he told the participating members of democratic parties that:

"I must resign the state chairman in the second National People's

⁴⁰⁵ Pang Xianzhi and Jin Chongji (ed.), *supra* note 226, at 510.

⁴⁰⁶ Zhonggong Zhongyang Wenxian Yanjiushi (ed.), *supra* note 229, at 457.

⁴⁰⁷ He may be tired of those ceremonial routines required by the job, see Ma Yunfei, *supra* note 313, at 26. Also he may take lesson from Stalin because he once commented to his close guard that Stalin had been very tired and he did not want to be the chairman either, see Ye Zilong, *Ye Zilong Huiyilu [Memoirs of Ye Zilong]* (Beijing: Zhongyang Wenxian Chubanshe, 2000), at 255-256. Besides, Mao Zedong also suffered a lot from the loss of his son in the Korean War in 1953.

Congress next year to reduce my workload so that I can focus on some major issues. Switzerland has a seven-member committee, with the president rotating among them. We can also rotate in several years and adopt the policy of getting out gradually.”⁴⁰⁸

It is very interesting that he mentioned the Swiss presidency as an example. Based on the principal of separation of powers, the Swiss administration was executed by its Federal Council, which included seven members nominated by several political parties and elected by its congress, i.e., the Federal Assembly, without term of office. Election of the Swiss president was made by the assembly from these seven members with a one-year term of office basically, which became a formality according to the system of seniority.⁴⁰⁹ One of the two main functions of the Swiss president was the formal duty of representing the country at home and abroad,⁴¹⁰ and the other one was the chairmanship of the Federal Council meeting held twice in a week, in which he was not dominant in the meeting⁴¹¹, because each member had equal voting and all seven members made decisions collectively. Therefore, although the Swiss president is similar to the Chinese chairman by working in a collegial decision-making group without term of office, it is different from the latter in

⁴⁰⁸ Pang Xianzhi and Jin Chongji (ed.), *supra* note 226, at 672-673; Li Feng, “Woguo Guojia Zhuxi Zhidu De Bianqian” [Evolution of the State Chairmanship], *Fujian Dangshi Yuekan*, no (3) 2004, at 41.

⁴⁰⁹ Christopher Hughes, *The Federal Constitution of Switzerland* (Oxford: Clarendon Press, 1954), at 109-110.

⁴¹⁰ Christopher Hughes, *ibid*, at 109.

⁴¹¹ Nicholas Gillett, *The Swiss Constitution: Can It be Exported?* (Bristol: Youth Education Service, 1989), at 23.

that the Chinese chairman was functioned on different principal in theory, and as a dominating figure in that group in practice. However, by comparing to the Swiss president, Mao Zedong could suggest that the Chinese chairman would be reduced to a figure head of state if taken by other people rather than himself.

The alternative of constitutional revision

The next day, on hearing about this news, two non-Party members wrote a letter to Liu Shaoqi and Zhou Enlai, proposing that:

“We think that, considering the reality of our country, now we are under a great transformation in the transition from democratic revolution to socialist revolution. We have gone through rather well during the past seven years. But we should admit that development far exceeds consolidation, in other words, we can not say that the country has been well consolidated. Even further, Taiwan has not been liberated and the two international camps are in severe struggle. Therefore, in such a period, we have better not change our supreme leaders. Although the collective leadership should be stressed, our people have not got used to it in such a short period of time, personal authority in the collective leadership remains essential to hold our people tight together. It seems to us that the chairman had better take

one more term and one more provision can be added as “no more than two terms should be consecutively held” to the second paragraph of the thirty-ninth constitutional article stating “the term of office is four years”. After this, we can act according to law.....as for the delegation of power and function, two or three vice chairmen should also be provided by the constitution. Two years ago, the NPC Standing Committee chairman was entrusted to receive foreign diplomats, for which the constitution should be revised.....also we need pay much attention to the heavy workload of our leaders and should ease their burden when arranging domestic and foreign affairs.”⁴¹²

Four days later, Mao Zedong commented on this letter that:

“I agree with the suggestion to revise constitution. The state chairman and vice chairman can take a second term when they are elected again after their first term. Comrade Deng Xiaoping please make relevant preparation so that the constitution can be revised by the National People’s Congress this year. Two reasons should be clarified for why I will not take a second term: (1) it has been eight years since I take the position as the chairman of Central People’s Government and the chairman of the People’s Republic of China consecutively, I may not

⁴¹² See Ma Yunfei, *supra* note 407, at 26-27.

take a second term; (2) since the constitution is made, I will have one more term to go if I can pursue a second term and do not take it consecutively. If I leave this position temporarily from 1958, I can concentrate on some important issues (for example I can give report on main themes in the Supreme State Conference in the capacity of the CPC chairman or its Politburo member when it is necessary). This would be more beneficial to the nation comparatively. At present, I have too much work, which extremely obstructs my study. Now more and more senior leaders within the CPC agree with me, while many non-CPC people disagree due to litter exchange of ideas. Therefore, it is necessary to put this idea forward and exchange views and opinions calmly.”⁴¹³

To win more support for his idea, Mao Zedong asked wider discussion. In a CPC document, he directed:

“Before this September, the issue of my resignation should be considered. It should be debated among cadres in various levels, in factories and cooperative societies to seek opinions from our cadres and people so that most of them agree. This is because by getting rid of the state chairman and focusing on the CPC chairman, I can save more

⁴¹³ Pang Xianzhi and Jin Chongji (ed.), *supra* note 226, at 674; Gao Jimin, “Mao Zedong Qingci Guojia Zhuxi Fengbo” [The Storm of Mao Zedong’s Request to Resign the State Chairman], *Dangshi Wenyuan*, no. (4) 2005; Ma Yunfei, *supra* note 407, at 27.

time to do more work as required by the party. It will also be beneficial to my health. If there is any disagreement during debate among the people, it should be made clear to them that I can take some position as this if any emergency occurs in our country and the party decides. Now we are in a time of peace, it is better to get rid of one of the chairman positions. The CPC Politburo and many comrades at central and local level have agreed with my request and thought it was a good idea. Please explain all of these to all cadres and people to prevent any misunderstanding.”⁴¹⁴

He even asked the Chinese diplomat to Britain to make his attempt public.⁴¹⁵

Finally, His request was endorsed by the CPC in its sixth Central Committee meeting of the eighth congress held on December 10, 1958.⁴¹⁶ However, once again, the proposal to revise the constitution was not put into practice.

Concentration of power by Mao Zedong

Apart from Mao Zedong's withdrawal from the state chairmanship, other measures were also taken within the CPC for the purpose of succession. One of them was the strengthening of the collective leadership by installing the new office of the vice chairmen, which were taken by Liu Shaoqi, Zhou Enlai, Zhu De, Chen Yun, who formed together with Mao Zedong a Standing

⁴¹⁴ Zhonggong Zhongyang Wenxian Yanjiushi (ed.), *supra* note 229, vol. 7, at 64.

⁴¹⁵ Ma Yunfei, *supra* note; Gao Jimin, *supra* note 413.

⁴¹⁶ *Renmin Ribao*, December 18, 1958.

Committee of the Politburo (PSC) and took place of the Central Secretariat.

According to Mao Zedong, such a measure was suggested by Liu Shaoqi and made as a lesson from the Soviet Union:

“It was comrade Liu Shaoqi who suggested the adoption of four vice chairmen. With several vice chairmen and a GS, there are several windbreaks around me. If an atomic bomb falls upon us who happens to stay together, another election could have to be held. But if there is only some of us who are injured or sick, or dead by accident, others can always hold on and the country would not suffer as much as the former Soviet Union, which was devastated by the death of Stalin. We should take caution against that situation. In the meantime, it is good to have a few more people to handle works.”⁴¹⁷

For the new collective leadership, Mao Zedong also divided it by their ages into two groups:

“I think some of us, including Zhu De and me, and Liu Shaoqi in between, excluding Zhou Enlai, Chen Yuan and Deng Xiaoping who were younger generation, are those who run errands. We can not play leading roles now as we are not qualified. What we can do is to

⁴¹⁷ Pang Xianzhi and Jin Chongji (eds.), *supra* note 226, at 519-520.

maintain the situation and assist the young generations.’⁴¹⁸

In his eyes, Zhu De and he were the older generations who were then still on the stage and could have to retire sooner or later to let the younger people, like Liu Shaoqi, Zhou Enlai, Chen Yun and Deng Xiaoping, to take charge. In other words, he implied that in the new Politburo Standing Committee, he and Zhu De belonged to the second front, whereas the other three vice chairmen were the first front.

While the PSC was formed, the old Central Secretariat was reduced to an executive organ of the new PSC and given a new head: the General Secretary, which Deng Xiaoping was recommended by Mao Zedong to take. Thus, the principal of deliberation and execution was applied to the CPC’s decision-making process, with the PSC making decisions and the Central Secretariat specialized on execution. In other words, the Central Secretariat was the CPC’s “State Council”⁴¹⁹. By then, so far as the central level was concerned, the Stalinist party state was finally established in China, in which both state apparatus were virtually controlled by the CPC with paralleled and corresponding organs⁴²⁰ by way of overlapping membership⁴²¹, and further ultimately controlled by one decision-maker, i.e., Mao Zedong.

But the Chinese had its own innovations. In Moscow, Stalin maintained his

⁴¹⁸ Pang Xianzhi and Jin Chongji (eds.), *supra* note 226, at 520.

⁴¹⁹ Latterly, the General Secretary Deng Xiaoping was appointed as the vice premier, assisting Zhou Enlai who was serious sick during the Cultural Revolution.

⁴²⁰ L.G. Churchward, *Contemporary Soviet Government*, (Revised 2nd Edition) (Routledge & Kegan Paul: London, 1975), at 224-225.

⁴²¹ L.G. Churchward, *ibid*, at 227.

control over the party state either from the party as the General Secretary before 1940, or by taking the governmental post of the chairman of the Council of Ministers since 1940 till to his death. Stalin personally had not commanded the armed forces. Being different from his great teacher, Mao Zedong maintained his control by both chairmanships, i.e., the CPC's chairmanship and the state chairmanship, both of which were new to the Russian, especially the state chairman. Besides, in China, as the military was a special force, both Chinese chairmanships were further supplemented by a military chairmanship.

Yet Mao Zedong's innovation was more than this. The state chairmanship was only a part of his idea of two fronts, the end of which was an honorary chairmanship he suggested for the CPC: “

“I am ready not to take the party's chairmanship at a proper time and ask you to give me a title of honorary chairman. Will the honorary chairman do anything? Surely he will do anything as much as he can.”⁴²²

Thus taking Moscow's experience as lessons, Mao Zedong conceived a multi-steps plan of succession by the idea of two fronts. As the first step, he would retire from the government by evacuating the state chairmanship, but

⁴²² Pang Xianzhi and Jin Chongji (eds.), *supra* note 226, at 520.

keep the CPC's chairmanship; then the PSC would be divided into two fronts and he would further retreat to the second front as the chairman. Later on, as conditions were met, he would further retire from the CPC's chairmanship and only take an honorary title. He could even envisage a consultative committee in the far future, formed by those retired senior party cadres, like himself.⁴²³ Therefore, the state chairmanship was an interim post corresponding to the party's chairman in the second front.

In practice, Mao Zedong had just started his plan. After resigning the state chairmanship, he was going to take the next step, i.e., to retreat to the second front within the CPC. As matter of fact, in the eighth party congress, the CPC's report was delivered by Liu Shaoqi instead of Mao Zedong. This could be seen as a sign that Mao Zedong was taking steps to retire, similar to Stalin's move in the nineteenth congress of the CPSU in which Malenkov gave the report instead of Stalin.

This is a delicate plan, but it is faulted by the problem of responsibility. What is uncertain in such a plan is the division of responsibility among the chairman and his successors. For example, what will the party's chairman differ from the state chairman in their scope of responsibility? And where will the line be drawn between the first front and second front in their decision-making power? Even for the honorary chairman, won't he intervene the working of the party state?

⁴²³ Pang Xianzhi and Jin Chongji (ed.), *supra* note 226, vol. 2, at 1666.

However, one thing is clear. In Mao Zedong's mind, the focus of power was on the side of the party, not the state. As suggested by the principal of the combination of deliberation and execution, the party made the decision and the state executed it. And more importantly, he could not give up his power completely. When he said that he would do anything he could even if he assumed the honorary chairmanship, it could be understood that he would keep the power in his hands and remain as the ultimate decision-maker of the party state.

Just in the same meeting in which Liu Shaoqi was nominated as the candidate of the state chairmanship, Mao Zedong made a concluding speech to the whole participants. He said:

“The decision-making power should be concentrated to the Politburo Standing Committee and Central Secretariat. I am the commander-in-chief, and Deng Xiaoping is the deputy commander, plus several correspondents.”⁴²⁴

This indicated that when he resigned the state chairmanship, he was not going to relieve any power to Liu Shaoqi and retire to the second front immediately.

On the contrary, his power of “last say” was further fortified in the meantime.

As early as January, 1958, it was discovered by the CPC senior cadres that Liu

⁴²⁴ Lin Yunhui, *Wutuobang Yundong: Cong Da Yuejin Dao Da Jihuang (1958-1961)* [The Utopian Movement: From the Great Leapforward to Great Famine (1958-1961)] (Hong Kong: The Chinese University Press, 2008), at 419-422.

Shaoqi, the only CPC member who could discuss with Mao Zedong with an equal status before, had gradually lost such equality. Instead, Mao Zedong was developing superiority within the CPC, including his PSC colleagues.⁴²⁵ Several months later, in the second session of the CPC's Eighth party congress, the praise made to Mao Zedong by his CPC colleagues reach its peak since the founding of PRC, being considered as the precursor of the personality cult in 1960s.⁴²⁶ Just after the session, Zhou Enlai, the premier, asked to resign from the premiership to take responsibility for taking measures to relieve those pressures on the state brought about by Mao Zedong's Great Leap-forward policy.⁴²⁷ Although his request was denied, his authority as the premier was further undermined by the PSC's decision to set up special party groups to direct the government works, such as finance and economy, political and legal affairs, the foreign affairs, scientific works, culture and education, etc. Accordingly, Mao Zedong's grip on the government was tightened, especially over the economic issues.⁴²⁸ More than these, in July 1958, it was further decided that the chairman of the Central Military Committee was the commander of the armed forces.⁴²⁹

In the end, before Liu Shaoqi took office of chairmanship from Mao Zedong, Mao Zedong had also distinguished himself from his peers in the CPC's collective leadership and established his absolute authority firmly

⁴²⁵ Lin Yunhui, *supra* note 424, at 33.

⁴²⁶ Lin Yunhui, *ibid*, at 60.

⁴²⁷ Lin Yunhui, *ibid*, at 71.

⁴²⁸ Lin Yunhui, *ibid*, at 72. The decision was issued within the CPC on June 16th, 1958.

⁴²⁹ Zhou Jian, *supra* note 379, at 453-454.

above the rest of his CPC colleagues.

Chairman Liu Shaoqi in Office from 1959 to 1966 and Afterwards

The CPC's nomination of Liu Shaoqi as the candidate

As it became clear that Mao Zedong did not pursue a second term, two other CCP leaders, Zhu De and Liu Shaoqi had been considered as the candidates of the next chairman.⁴³⁰ Zhu De did not want to take this job and recommended Liu Shaoqi instead.⁴³¹ In reply to a letter written by Dong Biwu, Mao Zedong confirmed that Liu Shaoqi had been agreed to be the candidate of the chairmanship and his nomination would be turned to the CPC's Central Committee for final confirmation.⁴³²

On April 5, 1959, the seventh Central Committee meeting entered its third day, discussing candidates for state positions.⁴³³ In the meeting, the CPC's GS Deng Xiaoping, instead of the chairman Mao Zedong, proposed Liu Shaoqi as the candidate of the next state chairman. Deng Xiaoping's suggestion was widely accepted and Liu Shaoqi's candidature was thus endorsed.⁴³⁴

On behalf of the CPC Politburo, Deng Xiaoping also explained for Liu Shaoqi's nomination as following:

⁴³⁰ Gao Jimin, *supra* note 413.

⁴³¹ Jin Chongji (ed.), *supra* note 284, at 837; Gao Jimin, *ibid*; Ma Yunfei, *supra* note 407, at 29.

⁴³² "Dong Biwu Zhuan" Zhuanxie Zu, *Dong Biwu Zhuan* [Biography of Dong Biwu] (Beijing: Zhongyang Wenxian Chubanshe 2006), vol. 2, at 997.

⁴³³ Zhonggong Zhongyang Wenxian Yanjiu Shi (ed.), *Liu Shaoqi Nianpu* [Chronicle of Liu Shaoqi] (Beijing: Zhongyang Wenxian Chubanshe, 1996), vol. 2, at 453.

⁴³⁴ Gao Jimin, *supra* note 413. Feng Zhijun, *Mao Zedong yu Lin Biao* [Mao Zedong and Lin Biao] (Xianggang: Huangcheng Tushu Youxian Gongsi, 1998), 4th ed, at 540.

“Several comrades are suitable for this position, for example, comrade Zhu De and a few other old comrades in our party. However, after our consideration, it is better for comrade Liu Shaoqi to take this position because the state chairman is not only an honorable position, but also has to fulfill considerable specific and troublesome work, like overseas visits, talks and receptions, etc. Therefore, it is a better choice for him to take the position of state chairman concurrently for his ability, experience, prestige and his responsibility in our party.⁴³⁵

On April 15, 1959, Mao Zedong explained the CPC’s nomination of Liu Shaoqi to non-CPC people in the sixteenth Supreme State Conference. He said:

“Why was comrade Liu Shaoqi nominated for the state chairman, not comrade Zhu De? Comrade Zhu De is highly prestigious, and comrade Liu Shaoqi is also so. Then why did we choose the latter instead of the former? Because in our party, I am one of those who are in charge, but I do not take care of daily business. Sometimes I do, sometimes I do not. Who is often in charge? It is comrade Liu Shaoqi. Whenever I left Beijing, Liu Shaoqi took charge on my behalf. It has been this for

⁴³⁵ Jin Chongji (ed.), *supra* note 284, at 837; Gao Jimin, *supra* note 413; Ma Yunfei, *supra* note 407, at 29.

years ever since Yan'an period. Ten years have gone since we come to Beijing. Therefore he is more suitable for the position. In the meantime, comrade Zhu De recommended him strongly.”⁴³⁶

Chairman Liu Shaoqi became a titular head of state

His performance of constitutional functions

Liu Shaoqi was duly elected as the second chairman of the PRC by the second NPC held several weeks later.⁴³⁷ In practice, he appeared to be greatly weakened in terms of his substantive constitutional powers, but was active in the foreign affairs.

During the period of about seven years from 1959 when Liu Shaoqi took office till 1966 when he was purged out of the office, the Supreme State Conference had been minimized substantially no matter in terms of its frequency, durations, participants and scope of issues. In sum, Liu Shaoqi was reported to convene far less Supreme State Conference, with only five ones, all of which lasted only one or two day and the attendance was also reduced sharply from the maximum 1600 persons to about 60 persons.⁴³⁸

Issues discussed in these five conferences were also much limited to the general discussion on national situation and preparations for the NPC. For example, after being elected, he convened his first SSC on August 24, 1959,

⁴³⁶ Jin Chongji (ed.), *supra* note 284, at 837-838; Gao Jimin, *supra* note 413; Ma Yunfei, *supra* note 407, at 30.

⁴³⁷ *Renmin Ribao*, April 28, 1959.

⁴³⁸ *Renmin Ribao*, August 25, 1959; March 22, 1962; November 17, 1963; December 19, 1964; January 1, 1965.

discussing overall situation and national economy⁴³⁹. Then the SSC was interrupted for more than two years and was not held again until March, 1962 for the second one and November, 1963 for the third one, both of which were also discussing domestic and international affairs.⁴⁴⁰ In December, 1964, he convened his last two conferences to discuss preparations for the forthcoming third NPC, including the CPC's suggestions about candidates for government posts.⁴⁴¹

Therefore, to a large extent, the SSC was reduced to a formality during Liu Shaoqi's terms of office. This is understandable. As he was only one member of the CPC collective decision-making and subject to Mao Zedong's final decision, he could declare policies and conduct political consultations when all had been settled by Mao Zedong in advance, but he could not act like Mao Zedong, using the SSC as a forum where he could independently solicit ideas from his participants and give ideological orientations to them. Besides, after the Anti-Rightist movement, the CPC's relationship with those democratic people reached its lowest; as the national economy became worsening since 1959, disagreements were also arising within the CPC⁴⁴², all of these could have made impossible to convene the SSC as usual.

Besides, according to the constitution, he should concurrently hold the

⁴³⁹ *Renmin Ribao*, August 25, 1959.

⁴⁴⁰ *Renmin Ribao*, March 22, 1962; November 17, 1963.

⁴⁴¹ *Renmin Ribao*, December 19, 1964; January 1, 1965. Yang Shangkun, *Yangshangkun Riji* [Diary of Yang Shangkun] (Beijing: Zhongyang Wenxian Chubanshe, 2001), vol. 2, at 483.

⁴⁴² Qian Yangli, *Lishi De Bianju: Cong Wanjiu Weiji Dao Fanxiu Fangxiu* [Historical Change: from Saving the Crisis to the Anti-Revisionism and Prevent Revisionism] (Hong Kong: the Chinese University Press, 2008), at 213.

office of the chairman of the Council of National Defence and command the armed forces. However, in practice, he could not exercise such a function because Mao Zedong remained control on the armed force as the chairman of the CPC's Central Military Committee.⁴⁴³

On the other hand, with the developing Chinese diplomacy, he remained to serve as a head of state, by engaging in China's foreign affairs. In May 1960, Liu Shaoqi was invited by the former Soviet Union to attend the twentieth congress of the CPSU and pay a state visit, which had been his first overseas visit in the capacity of Chinese head of state since he succeeded Mao Zedong.⁴⁴⁴ Since then, he witnessed China's expansion in international affairs and had done his own service. His state visits covered not only those former socialist countries like North Korea, Vietnam, but also some third world countries, such as Indonesia, Baume, Cambodia, Afghanistan and Pakistan.⁴⁴⁵ Without knowing the coming storm of the Cultural Revolution, Liu Shaoqi went on his last state visit to Pakistan, Afghanistan and Myanmar in March and April, 1966.⁴⁴⁶ On August 5, 1966, Liu Shaoqi received a delegation from Zambia and it was his last performance as the state chairman.⁴⁴⁷ On the same day, he was informed by Zhou Enlai not to continue to appear in public

⁴⁴³ Xu Chongde, *supra* note 171, at 206.

⁴⁴⁴ Jin Chongji (ed.), *supar* note 284, at 921.

⁴⁴⁵ Wang Taiping (ed.), *Zhonghua Renmin Gongheguo Waijiao Shi* [History of Diplomacy of the People's Republic of China] (Beijing: Shijie Zhishi Chubanshe, 1998), vol. 2, at 7.

⁴⁴⁶ Gu Baozi, "Shangyu Yu Lai Shi Jiedao Chufang Renwu: Liu Shaoqi Zuihou Yici Chufang" [Receiving the Task of Foreign Visit when the Storm is Coming: the Last Foreign Visit of Liu Shaoqi], *Xiang Chao*, no. 1 (2008).

⁴⁴⁷ See <http://CPC.people.com.cn/GB/69112/73583/73597/5008514.html>, last visited on May 5, 2008.

and meet foreign visitors officially.⁴⁴⁸

His rise and fall as the CPC's "first front" leader

It could be concluded that in office, Liu Shaoqi mainly serve as a figure head of state. However, this can only be applied to one side of the party-state and should not be taken for granted. The other side of the party-state was Liu Shaoqi's rise and fall within the CPC's collective leadership as the first front leader and Mao Zedong's successor.

As Mao Zedong's policies became growingly radical, oppositions from his CPC colleagues continued to develop in the meantime, and Liu Shaoqi also turned to be distinct as "the first front leader" accordingly. To settle their dispute about the agricultural work, Mao Zedong proposed convening two meetings successively in Southern and Northern China. On March 10, 1961, Mao Zedong personally presided the first meeting in Guang Zhou, attended by Zhou Enlai, Zhu De, Deng Xiaoping, etc, whereas Liu Shaoqi held the second meeting in Beijing on the next day. When the Guang Zhou meeting was completed and Mao Zedong was going to send a participant, i.e., the "correspondent", to inform Beijing the results, Zhou Enlai and Deng Xiaoping suggested that it could be better to combine these two meetings together to avoid any misinformation. Hence, the four PSC members in Beijing, i.e., Liu Shaoqi, Zhou Enlai, Chen Yun, Deng Xiaoping, flied to Guang Zhou to join

⁴⁴⁸ Zhonggong Zhongyang Wenxian Yanjiushi Erbu (ed.), *Liu Shaoqi Zishu* (Beijing: Jiefangjun Wenyi Chubanshe, 2003), at 220.

Mao Zedong, who set the topics for the new meeting.⁴⁴⁹ This was the typical operation of the two fronts. By that time, Mao Zedong was still in the first front, whereas Liu Shaoqi was in the second front, like 1947. The participant sent by Mao Zedong to Beijing was the one who Mao Zedong called as the correspondent.

Seemingly the Guang Zhou meeting did not solve their disputes. So all the PSC members except Lin Biao, went to the countryside to investigate the true situation. Based on their findings, they met again in Beijing on May 21. During this new meeting, Liu Shaoqi delivered severe critics on Mao Zedong's policies.⁴⁵⁰

Since then, modification to Mao Zedong's great leap-forward policies that had been undertaken by the first front leaders expanded from agriculture to other areas⁴⁵¹, during which process Mao Zedong started to retreat to the second front, whereas the younger PSC members used to work in the second front went to the first front. Accordingly, Liu Shaoqi began to ascend, with Mao Zedong's silence. For example, Mao Zedong did not attend the Politburo meeting held in July, which changed his policy concerning scientific work, but he gave his permission to this change.⁴⁵² Also he did not preside the meeting held in August in Lu Shan, Jiangxi province, modifying the industrial policies; instead, it was presided by Liu Shaoqi, Zhou Enlai and Deng

⁴⁴⁹ Lin Yunhui, *supra* note 424, at 658-661.

⁴⁵⁰ Lin Yunhui, *ibid*, at 684-687.

⁴⁵¹ Lin Yunhui, *ibid*, at 730.

⁴⁵² Lin Yunhui, *ibid*, at 745-746.

Xiaoping.⁴⁵³ War criminals were also pardoned.⁴⁵⁴ On September 24, 1961, during the talk with British General Bernard Law Montgomery, Mao Zedong even confirmed that Liu Shaoqi was his successor.⁴⁵⁵

As adjustments to Mao Zedong's policies continued, disputes between Mao Zedong and Liu Shaoqi started to emerge. Their disagreement first appeared in the "Meeting of Seven Thousand People" held from January 11 to February 7 of 1962.⁴⁵⁶ After the meeting, Mao Zedong went on another Northern expedition, leaving the first front leaders in Beijing in charge. Disputes continued to develop. On July 6, 1962, Mao Zedong returned to Beijing. A debate broke out between these two chairmen.

"Mao Zedong questioned Liu Shaoqi: 'what are you anxious for? Can't you hold on more? Why did you not resist?' Liu Shaoqi replied that: 'so many people died, both of us will be recorded in the history; people have started to eat each other, and this will be written in books!' But Mao Zedong did not back down and still stick to the political issues: 'now three red-flags have been denied and land been distributed, if you do not resist to them, what will happen after I die?' In the end, Liu Shaoqi gave up debate and offered his suggestion: three red-flags will not be given up, the People's Commune will not be

⁴⁵³ Lin Yunhui, *ibid*, at 726-727.

⁴⁵⁴ Lin Yunhui, *ibid*, at 758-760.

⁴⁵⁵ Ma Yunfei, *supra* note 407, at 31-33, 42.

⁴⁵⁶ Qian Yangli, *supra* note 442, at 124.

dissolved, whereas the high quotas will not be pursued and the public canteen will be closed.’⁴⁵⁷

Facing Mao Zedong’s fighting back, Liu Shaoqi and other CPC leaders had to make self critics and try to compromise their adjustments with Mao Zedong’s new policy of class struggle.⁴⁵⁸ But this did not last long. By the end of 1964, their disputes gradually turned into open conflict.⁴⁵⁹ When Liu Shaoqi was elected for a second term on January 3, 1965⁴⁶⁰, an enlarged PSC meeting was held on the same day. In this meeting, an open conflict finally broke out between the two chairmen, which led to the party chairman Mao Zedong determined to pull the state chairman Liu Shaoqi down, directly resulting in the breakout of the Cultural Revolution.⁴⁶¹

In the storm of Cultural Revolution, Liu Shaoqi made several attempts to resign from the office of the state chairman, but failed.⁴⁶² He might not know that at that time, the highest state organ had been ordered to stop function by Kang Sheng.⁴⁶³ Therefore, the NPC had been unable to convene to consider any of his requests to resign. His chairmanship was not removed until in the

⁴⁵⁷ Qian Yangli, *supra* note 442, at 110-111.

⁴⁵⁸ Qian Yangli, *ibid*, at 284.

⁴⁵⁹ Qian Yangli, *ibid*, at 399-406.

⁴⁶⁰ *Renmin Ribao*, January 4, 1965.

⁴⁶¹ Jin Chongji (ed.), *supra* 284, at 971-974.

⁴⁶² Jin chongji (ed.), *ibid*, at 1049, 1055, 1068-1069.

⁴⁶³ Mu Zhaoyong, *supra* note 10, at 226-227. It was said that a military group had been sent by Mao Zedong to the NPC and NPCSC to stop their work. See John Wilson Lewis and Xue Litai, *Zhongguo Junshi Juece Jizhi Ji Taiwan Chongtu* [China’s Military Decision-Making Mechanism and Taiwan Conflict] (Carle Place, N.Y.: Mingjing Chubanshe, 2007), at 145.

enlarged twelfth conference of the eighth CPCCC held in 1968⁴⁶⁴.

Deputy Chairman Dong Biwu

With Liu Shaoqi's downfall, the office of chairman was left vacant. This became an issue when the new Pakistan ambassador started his term of office in China and had to deliver his letter of credence to the Chinese head of state. With the permission of Mao Zedong, the vice chairman Dong Biwu was recommended by Zhou Enlai to fulfill these formalities of receiving foreign ambassadors and sending out Chinese diplomats.⁴⁶⁵

This could do for a while when China's diplomacy went to its lowest as the Cultural Revolution developed. The honeymoon between China and the former Soviet Union ended and a border war broke out in 1969. China's relations with other countries also dropped severely. During the period from May, 1966 to April, 1969, only one overseas visit was made by Premier Zhou Enlai, whereas foreign guests reduced sharply with only six foreign heads of state and government visiting China.⁴⁶⁶ This saved the need for a formal head of state for the time being.

However, when it came to the 1970s, the vice chairman could not suffice as

⁴⁶⁴ Jin Chongji (ed.), *supra* note 284, at 1072.

⁴⁶⁵ Ma Jiseng, *Waijiaobu Wenge Jishi* [Documentary of the Ministry of Foreign Affairs in the Cultural Revolution] (Hong Kong: the Chinese University Press, 2003), at 289; Zhonggong Zhongyang Wenxian Yanjiushi (ed.), *Zhou Enlai Nianpu (1949-1976)* [Chronicle of Zhou Enlai (1949-1976)] (Beijing: Zhongyang Wenxian Chubanshe, 1997), at 265; "Dong Biwu Zhuan" Zhuanxie Zu, *supra* note 173, at 1054.

⁴⁶⁶ Shi Zhifu (ed.), *Zhonghua Renmin Gongheguo Duiwai Guanxi Shi (1949.10-1989.10)* [History of Foreign Relations of the People's Republic of China (1949.10-1989.10)] (Beijing: Beijing Daxue Chubanshe, 1994), at 193-194.

China's diplomacy reversed its going down and made a third wave of "diplomatic leap-forward". From 1970 to 1971, 25 countries newly established diplomatic relations with China, 18 out of which were in the third world.⁴⁶⁷ In November, 1971, the PRC finally replaced the ROC in the United Nation.

In view of all these new diplomatic developments, Dong Biwu was further decided by the CPC in the capacity of the deputy chairman to invite heads of state of Somalia, Sri Lanka, Zambia, Mexico, Mali, Cambodia, France, Tanzania and Mauritania to pay state visits to China.⁴⁶⁸ Surely this decision could not have been made without Mao Zedong's endorsement. By far it has been unknown when such a decision was made. But it could be in the February of 1972⁴⁶⁹, because according to Chinese official report, Dong Biwu's first appearance with this new title was on February 24, sending a telegram to Kuwait in celebration of the Kuwait's sixteenth National Holiday⁴⁷⁰, whereas on the third of that month, he was still the vice chairman, making a phone call to Nepal together with Premier Zhou Enlai. Coincidentally, in the same month, the United States president Nixon paid the historical

⁴⁶⁷ Wang Taiping (ed.), *Zhonghua Renmin Gongheguo Waijiaoshi* [History of Diplomacy of the People's Republic of China] (Beijing: Shijie Zhishi Chubanshe 1999), vol. 3, at 8.

⁴⁶⁸ "Dong Biwu Zhuan" Zhuanxie Zu, *supra* note 173, at 1071.

⁴⁶⁹ Another source suggests that it could be possibly in the latter half of 1971 when Dong Biwu started to act as the deputy chairman in foreign exchanges because "on November 11th, the Pakistan President paid a state visit to China 'on the invitation of the Deputy Chairman Dong Biwu'. See "Dong Biwu Zhuan" Zhuanxie Zu, *supra* note 173, at 1066-1067. But this could be a mistake, because such a state visit is not found in the *Renmin Ribao*, which also reports Dong Biwu, in the capacity of the vice chairman, sending telegram to Cambodia on the 7th and receiving credentials from foreign ambassadors to China on 25th of that month. See *Renmin Ribao*, November 8 and 26, 1971.

⁴⁷⁰ *Renmin Ribao*, February 25, 1972.

pioneering visit to China starting from 21 to 28.

Since then, Dong Biwu had served in this new capacity until his death three years later⁴⁷¹ when the constitution was revised and the office of the chairman was abolished by Mao Zedong. His last official appearance as the deputy chairman was on January 16, 1975 when he received the first Malaysian ambassador to China.⁴⁷²

The abolishment of chairmanship from the constitution

In 1970, Mao Zedong sent a letter to Zhou Enlai, requesting: “revise the constitution but do not set up the chairmanship.” On August 23, 1970, the ninth congress of the CPC convened its second session. When it came to the constitutional revision, most participants, including Mao Zedong’s designated successor Lin Biao and Premier Zhou Enlai, all suggested that the office of chairmanship be kept in the new constitution and Mao Zedong take this position. However, Mao Zedong repeatedly rejected.⁴⁷³

Why did Mao Zedong insisted on removing the chairmanship from the constitution all against others opinions? He might personally dislike it⁴⁷⁴; or he might not want Lin Biao to take this position⁴⁷⁵; or he might not want to

⁴⁷¹ *Renmin Ribao*, April 4, 1975.

⁴⁷² “Dong Biwu Zhuan” Zhuanxie Zu, *supra* note 173, at 1072.

⁴⁷³ Pang Xianzhi and Jin Chongji (ed.), *supra* note 226, vol.2, at 1565-1576.

⁴⁷⁴ Wang Nianyi and He Shu, “She Guojia Zhuxi Wenti Lunxi” [Study on the Issue of Establishing the State Chairmanship] in *Chongsheng Lin Biao Zuian* [Restatement of Lin Biao Case], ed. Ding Kaiwen (Hong Kong: Mirror Press, 2004), at 159.

⁴⁷⁵ Feng Zhijun, *Mao Zedong Yu Lin Biao* [Mao Zedong and Lin Biao] (Hong Kong: Huangfu Tushu Youxian Gongs, 1998), at 542.

take the ceremonial burden⁴⁷⁶; or he might not want to be thought by the people that it had been for this position that he pull down Liu Shaoqi;⁴⁷⁷ or he might not want to repeat the disastrous history⁴⁷⁸.

The 1954 constitution was not meant everlasting; instead, it was just transitory. As introduced in previous parts, the 1954 constitution had been regarded not a socialist one. While China achieved its socialist transformation in 1956, as remarked by Mao Zedong, this constitution had become outdated. In time, a new constitution would surely have to be adopted when Mao Zedong finally had his socialist utopia in place. Then the chairmanship provided by the 1954 constitution had to be reconsidered.

On one hand, such a constitutional chairmanship was both theoretically controversial and practically problematic. It was controversial in constitutional theory. Although the NPC was the highest state organ with the power to elect and recall the state chairman, the state chairman could convene the Supreme State Conference, to which the chairman of the NPCSC should be a participant. What if these two chairmen were in conflict? Such an uncertainty had been exposed by the debate during the constitutional making on the issue whether the chairman was the head of state. The 1954 constitution had provided a half-way answer that the chairman only represented the PRC in foreign affairs, but not domestically. For this constitutional ambiguity, no

⁴⁷⁶ Ding Kaiwen, "She Guojia Zhuxi He Mao Zedong De Kunjing" [Establishment of the State Chairmanship and the Dilemma of Mao Zedong], in Ding Kaiwen (ed.), *Chongsheng Lin Biao Zuian* [Restatement of Lin Biao Case] (Hong Kong: Mirror Press, 2004), at 176.

⁴⁷⁷ *Ibid.*

⁴⁷⁸ *Ibid.*

solutions had been provided.

Politically, as illustrated by the above studies, the chairmanship was highly uncertain. The constitutional provisions of this office had never been a true description of China's political reality under increasing impact of the changing international climate: for Mao Zedong, the paramount leader of the party and state, the chairmanship was incomparable to his ultimate decision-making power; for Liu Shaoqi, Mao Zedong's heir, the office did not agree with his tortuous political ups and downs. In a word, the fate of the state chairman had been decided by the CPC, and ultimately by the CPC's chairman Mao Zedong.

In particular, more than this uncertainty, the chairmanship was much potentially risky to the party-state. As a precaution against Moscow's failure to solve the succession problem, Mao Zedong conceived the "two-front" arrangement, in which the chairmanship was a starting step of overall succession plan. However, such a way of succession had ambiguities in responsibility between the holder and his successor in each step of this plan. As Mao Zedong tried to maintain a final decision-making power, there would always be tensions between him and his successors, as proved by the case of Liu Shaoqi and Lin Biao. In absence of some adjudication system with final authority, all these ambiguities and disputes, even conflicts, had to be resolved by politics. Since the idea of two fronts had been proved to fail, the succession plan had to be reconsidered and the chairmanship could also be useless.

Mao Zedong must have been fully aware of the great political potential

provided by the flexible constitutional office of the chairmanship. On one hand, Mao Zedong had proved by his own experience what the chairman could bring about if fully equipped. During his conflict with Liu Shaoqi, it had also been proved that the chairmanship could be a true threat to his leadership. On the other hand, as a master of Chinese traditional culture, he must have been alert by the earlier Gao-Rao incident about the tragic blood-shed facts that had happened repeatedly among the warlords for the supreme emperorship in various dynasties after the founding emperor died throughout China's ancient history. Therefore it would be better to abolish this office and put the state under direct control of the collective leadership of the CPC.

Virtually, such an uncertain chairmanship was personal, made for no one other than Mao Zedong. When commenting on Gao Gang's failed challenge to Liu Shaoqi, Mao Zedong once said that:

“Gao Gang wanted to be the state chairman, but he was not suitable because the chairman has to bear great responsibility and should be taken by an more authoritative person.”⁴⁷⁹

In the CPC, there could no other person more authoritative than Mao Zedong himself. If Mao Zedong could not manage such a chairmanship, who else could be expected to do with it?

⁴⁷⁹ Ye Zilong, *supra* note 407, at 255. Besides, it should be noted that Mao Zedong only made this comment afterwards and not be regarded as evidence that the chairmanship had been envisioned by Mao Zedong before the constitutional making.

Ideologically, there might be no place for a chairmanship in Mao Zedong's concept of socialism to be endorsed by the new constitution. Mao Zedong had always put the party before the state; while the chairmanship had so much uncertain potentials, it would be better to have none than one, even a figure head of state. Besides, the chairman was abnormal to the Stalinist government, and the new Chinese socialist constitution could be at least close to the Stalinist constitution that had no chairman, if not surpassing it.

Conclusion

Mao Zedong not only established the PRC, but also left two constitutions with and without the office of chairman respectively. Intentionally designed in the 1954 constitution, the chairmanship had become a transitory point along the way of succession from the CPC to the constitutional state with its great political potential provided by its constitutional uncertainty and political ambiguities. As Mao Zedong split with his CPC partners over how to build a so-called socialist state along their utopia march, the chairmanship was first destroyed personally, and then abolished officially from the 1975 constitution decisively, yet mysteriously, despite that the chairmanship could serve in China's diplomacy as a figure head of state, thus leaving a unfinished legacy about how to make a chairmanship to sever the party-state, if to have one for China.

Constitutional making of the Presidency in 1982

Controversies over the restoration of the chairmanship

Decision to revise constitution

On August 8, 1980, an enlarged Politburo meeting was held and Deng Xiaoping delivered a speech on the system of the party and the state. In the speech, he suggested that the CPC would advise the NPC to revise the constitution and the new constitution should provide that the state power not be concentrated excessively.⁴⁸⁰

Then a proposal was sent by the CPC to the Presidium of the third Session of the fifth NPC, claiming that the constitution adopted in 1978 had not been compatible with the new situation in China, and a comprehensive revision had to be made; therefore, it was advised that a revising committee, whose members was also suggested by the CPC in the meantime, be established to take charge of the constitutional revision, and a draft constitution be published for national discussion in the first half of 1981, which would then be passed by the fourth Session of this Congress so that the new NPC could be elected to function based on this new constitution.⁴⁸¹ This proposal was accepted by the

⁴⁸⁰ Deng Xiaoping, "Dang He Guojia Lingdao Zhidu De Gaige" [Reform of the Party and State's Leadership] in *Selection of Deng Xiaoping* (Beijing, Renmin Chubanshe, 1994), 2nd ed, at 339.

⁴⁸¹ Wang Peiyong (ed.), *Zhongguo Xianfa Wenxian Tongbian* [Selection of Constitutional Documents of China] (Beijing: Zhongguo Minzhu Fazhi Chubanshe, 2007), revised ed, at 75.

NPC accordingly.⁴⁸²

Controversies concerning the chairmanship

No sooner than the revising committee started to work, the office of the chairmanship became an issue of different opinions among the committee members and scholars who were invited to offer their ideas.⁴⁸³ Some people opposed to reestablishing such an office because it had been vacant for many years and Mao Zedong had been against such an idea; the abolishment of it could help to prevent personal cult and tyranny, promote democracy in state affairs; if this office were set up, it would require extra administrative staff for this new institution and go against the task of downsizing government manpower which was undertaking then.⁴⁸⁴ Besides, the chairmanship in 1954 constitution had been made for no one other than Mao Zedong and had exerted little function in reality;⁴⁸⁵ since the chairmanship had been abolished for quite a long time, people started to accept the new situation without a chairman.⁴⁸⁶ Therefore, those functions fulfilled by the chairmanship in the past could be performed by the chairman of the NPCSC or by the Premier.⁴⁸⁷

However, others argued that the chairmanship could not necessarily lead to personal tyranny⁴⁸⁸; Stalin's theory of collective head of state had not been

⁴⁸² *Standing Comm. Nat'l People's Cong. Gaz*, no. 5 (1980).

⁴⁸³ Xu Chongde, *supra* note 367, at 356.

⁴⁸⁴ Xu Chongde, *ibid*, at 367; Cai Dingjian, *supra* note 3, at 96.

⁴⁸⁵ Xu Chongde, *supra* note 483, at 373.

⁴⁸⁶ Xu Chongde, *ibid*, at 367.

⁴⁸⁷ Xu Chongde, *ibid*, at 367, 369, 371, 373, 378.

⁴⁸⁸ Xu Chongde, *ibid*, at 366.

well reasoned⁴⁸⁹; the chairmanship had been an institution with Chinese characteristics and in agreement with the custom and wishes of Chinese people⁴⁹⁰; since it had been abolished in an abnormal situation, its reestablishment could be helpful to normalize the state political life.⁴⁹¹ Furthermore, they also suggested that the chairmanship could be useful for both internal and external purposes. Internally, the chairmanship could help to separate the ruling party from the government,⁴⁹² prevent the concentration of power into one hand⁴⁹³, achieve a reasonable division of functions among different state organs⁴⁹⁴; act as a buff between the NPCSC and the State Council⁴⁹⁵, fulfill certain functions that other state organ could not do, such as the nomination of the premier⁴⁹⁶, the promulgation of legislations and orders⁴⁹⁷, the commanding of the armed forces⁴⁹⁸. Externally, as China was a big country and had conducted frequent international exchanges, the chairmanship could also play a role in this regard. The chairman could serve as the head of state, without which some foreign heads of state could think unequal when being invited by other Chinese officials, like the Chairman of

⁴⁸⁹ Xu Chongde, *ibid*, at 371.

⁴⁹⁰ Cai Dingjian, *supra* note 3, at 96.

⁴⁹¹ Cai Dingjian, *ibid*.

⁴⁹² Xu Chongde, *supra* note 483, at 369, 373, 378.

⁴⁹³ Xu Chongde, *supra* note 483, at 373.

⁴⁹⁴ Cai Dingjian, *supra* note 3, at 96.

⁴⁹⁵ Xu Chongde, *supra* note 483, at 373.

⁴⁹⁶ Xiao Weiyun, "Woguo Guojia Zhuxi Zhidu De Huifu He Fazhan" [Reestablishment and Development of Our Country's State Chairmanship], *Renmin Ribao*, December 28, 1982.

⁴⁹⁷ Zhang Youyu and Xu Chongde, "Xin Xianfa Caoan De Jiben Jingshen"[Basic Spirits of the New Draft Constitution], *Renmin Ribao*, May 17, 1982; Xu Chongde, *supra* note 483, at 378.

⁴⁹⁸ Xiao Weiyun, *supra* note 496.

the NPCSC;⁴⁹⁹ by sharing some duties in foreign affairs, the chairman could help to relieve the workload of the Premier and the Chairman of the NPCSC in foreign exchanges so that they could more focus on their own business.⁵⁰⁰ Therefore, the chairman could serve as the head of state at home and abroad⁵⁰¹.

During this process, five different drafts were produced.⁵⁰² Although these drafts have not been disclosed, it seemed that the first three of them had proposed a chairmanship⁵⁰³. The proposed chairmanship could be similar to that of 1954 constitution because it was provided with the power to convene the Supreme State Conference⁵⁰⁴. However, it was also different from the previous one by having the power to return the NPCSC's decisions for reconsideration⁵⁰⁵, thus transformed that uncertain political practice of check and balance into a constitutional requirement. This could be a reflection to the fact that in these discussions, some people suggested that the new constitution should be made based on the principal of separation of powers, instead of the previous people's congress system.⁵⁰⁶

⁴⁹⁹ Wang Hanbin, *supra* note 9.

⁵⁰⁰ Zhang Youyu and Xu Chongde, *supra* note 497; Xu Chongde, *supra* note 483, at 367; Cai Dingjian, *supra* note 3, at 96.

⁵⁰¹ Xu Chongde, *ibid*, at 378.

⁵⁰² Xu Chongde, *ibid*, at 381-382. But there is a different opinion concerning these drafts. See Chao Ying and Guo Hong, "Zhonghua Renmin Gongheguo De Sibü Xianfa: Fang Quanguo Renda Falv Weiyuanhui Zhuren Weiyuan Yang Jingyu" [Four Constitutions of the People's Republic of China: An Interview with the Directing Member of the Legal Committee of the National People's Congress Yang Jingyu], *Bainian Chao*, no. 7 (2004): 7-8.

⁵⁰³ Xu Chongde, *supra* note 483, at 382-383.

⁵⁰⁴ Xu chongde, *supra* note 483, at 383.

⁵⁰⁵ Xu Chongde, *ibid*, at 384.

⁵⁰⁶ Peng Zhen, *Lun Xin Zhongguo De Zhengfa Gongzuo* [Discussion on the Political and Legal Work of the New China] (Beijing: Zhongyang Wenxian Chubanshe, 1992), at 271; Chaoying and Guo Hong, *supra* note 502.

Deng Xiaoping's support for the chairmanship

The CPC had overseen the constitutional revision throughout the whole process⁵⁰⁷, but its central leaders were also divided over the chairmanship. In the PSC, Deng Xiaoping had been repeatedly spoken in favor of the chairmanship. As early as on March 18, 1981, he showed his support for the chairmanship: “we had better to restore the chairmanship. China is a great country and it will be beneficial for the country to have a chairman.”⁵⁰⁸

Deng Xiaoping also took action. In July, he personally put Peng Zhen in charge of the constitutional making, who had been familiar with the legal affairs and chosen as the vice director of the revising committee, but had not been available for this new task previously because he been occupied with the case of “the Gang of Four”.⁵⁰⁹ More importantly, he was politically close to Deng Xiaoping⁵¹⁰. To him, Deng Xiaoping explained why the chairmanship should be reestablished:

⁵⁰⁷ “The constitutional draft has been deliberated by the central secretariat of the cpccc for eight times, and the Politburo three times”, see Li Haiwen and Wang Yanling, “Pengzhen Dui Xianxing Xianfa De Gongxian: Fang Renmin Daxue Jaoshou Xu Chongde” [Peng Zhen's Contribution to the Current Constitution: an Interview with Professor Xu Chongde in Renmin University], in Li Haiwen and Wang Yanling (ed.), *Shiji Duihua-Yi Xin Zhongguo Fazhi Dianji Ren Pengzhen* [Century Dialogue: Memory of the Founer of the Legal System of the New China Peng Zhen] (Beijing: Qunzhong Chubanshe, 2002), at 138. Author opinion holds that “the CPCCC Politburo deliberated the revised constitutional draft for eight times”, see Peng Zhen Zhuan Bianxie Zu and Tian Youru, *Peng Zhen Zhuanlue* [A Brief Biography of Peng Zhen] (Beijing: Renmin Chubanshe, 2007), at 322. The third opinion is that “the CPCCC Politburo and Secretariat held eight meetings specially to deliberate (the draft)”, see Wang Hanbin, *supra* note 9.

⁵⁰⁸ Len Rong and Wang Zouling (ed.), *Deng Xiaoping Nianpu (1975-1979)* [Chronicle of Deng Xiaoping (1975-1979)] (Beijing: Zhongyang Wenxian Chubanshe, 2004), vol. 2, at 721.

⁵⁰⁹ Cai Dingjian, *supra* note 3, at 81.

⁵¹⁰ Cai Dingjian, *ibid*, at 81, footnote 2.

“The title of ‘Chairman Mao’ started in the period of Jiangxi Revolutionary Base, when he (Mao Zedong) was the chairman of the Provisional Central People’s Government of the China Soviet Republic. Since then, such a title has been used by the people to show their respect and love for him.”⁵¹¹

Responding to the controversies arising in the constitution-making process, Deng Xiaoping also instructed that the new chairmanship should be less substantive, not taking charge of or interfering with any government affairs and making no specific decisions⁵¹², possibly because Deng Xiaoping personally did not want to take this new office. On July 18, Deng Xiaoping told Jing Yong, the famous Hong Kong writer, that:

“Your Mingpao proposed that I take the post of the state chairman. Certainly I am qualified for it. However, I do want to live longer and server more for the country and people. If I take the chairmanship, I am afraid that my life would be shortened. With respect to the state chairmanship, we are still considering and no decision has been made as yet.”⁵¹³

⁵¹¹ Len Rong and Wang Zuoling (eds.), *supra* note 508, at 760-761.

⁵¹² Wang Hanbin, *supra* note 9.

⁵¹³ “Zhonggong Zhongyang Fu Zhuxi Deng Xiaoping De Tanhua Jilu” [Record of Talk with the CPCCC Vice Chairman Deng Xiaoping], *Mingbao Yuekan*, no. 9 (1981): 4.

Besides, Deng Xiaoping specifically stressed to Peng Zhen that the four cardinal principals, people's democratic dictatorship and democratic centralism should also be written into the constitution.⁵¹⁴

Taking Deng Xiaoping's ideas into consideration, Peng Zhen suggested that the 1954 constitution should be the model for the new constitution, and this was accepted.⁵¹⁵ Then another draft was made out in about December, 1981.⁵¹⁶ According to Peng Zhen's report about this draft filed in December, Deng Xiaoping's ideas were mostly incorporated. In particular, the new chairmanship could be a combination of the 1954 model and Deng Xiaoping's requirement. On one hand, it was provided to represent the country at home and abroad, command the armed force; on the other hand, it could not interfere with the government work and take any administrative responsibility.⁵¹⁷ Although it did not describe how the chairman commanded the armed force, the power to convene Supreme State Conference seemed to be deleted in this draft.

However, the constitutional making was postponed, "as some major issues are still in search for solution amid the reform on government system and it

⁵¹⁴ Peng Zhen, *supra* note 506, at 271.

⁵¹⁵ Xu Chongde, "Peng Zhen Yu 1982 Nian Xianfa De Xiugai Gongzuo" [Peng Zhen and the Constitutional Making in 1982], *Zhonggong Dangshi Ziliao*, (Beijing: Zhonggong Dangshi Chubanshe, 2001), vol. 80, at 59; Peng Zhen Zhuan Bianxie Zu and Tian Youru, *supra* note 507, at 371; Wang Hanbin, *supra* note 9.

⁵¹⁶ Liu Ronggang, "1982 Nian Xianfa De Zhiding Guocheng Jiqi Lishi Jingyan" [Process and Historical Experience of the Constitutional Making in 1982], *Dangdai Zhongguo Shi Yanjiu*, no. 1 (2005): 44; Cai Dingjian, *supra* note 3, at 82.

⁵¹⁷ See Quanguo Renda Changweihui Bangongting 1982 Xianfa Xiugai Dangan Di 32 Juan, in Liu Ronggang, 1982 Xianfa De Zhiding Guocheng Jiqi Lishi Jingyan, *Dangdai Zhongguo Shi Yanjiu*, no. 1 (2005): 44-45. It is suggested that the introduction about the chairmanship was newly added to his report written on 19 December, 1982 because peng zhen did not mention it in his speech to his draft team made on 16th of that month. See Peng Zhen Zhuan Bianxie Zu and Tian Youru, *supra* note 507, at 318.

could not be completed as scheduled”⁵¹⁸. The chairmanship can be among those “major issues”, because the controversy over it had not been settled as then. Deng Xiaoping’ speech in July indicated the uncertainty about the chairmanship, which was manifested once again in September when he told the Japanese visitors that: “establishment of the chairmanship is an important issue in our current constitutional revision, together with others, which are all easy to deal with”⁵¹⁹, suggesting the controversy was not over. Several months later, it was also reported that the controversy was the cause for the postponement of constitutional-making.⁵²⁰

Deng Xiaoping personally review Peng Zhen’s report twice and gave more instructions on related issues concerning the constitutional draft, including the chairmanship.⁵²¹ Although no details had been disclosed about his instructions in these circumstances, his support for the chairmanship could still be discerned. By February, 1982, a revised draft was completed, and provided a Council of National Defense headed by a chairman, intended to strengthen the collective leadership in the military affairs and promote democracy by including some non-CPC people.⁵²²

⁵¹⁸ *Renmin Ribao*, December 14, 1982.

⁵¹⁹ Len Rong and Wang Zuoling (eds.), *supra* note 508, at 768.

⁵²⁰ Mou Runsun, “Lun Zhonggong Yanci Xiuxian Yu Jianli Xingxian Jichu” [the Postponement of the Constitutional Making by the CPC and Establishment of the Basis for Implementation of the Constitution], *Mingbao Yuekan*, no. 1 (1982): 19; Zhao Cong, “Yuan Wei Sheli Guojia Zhuxi Wenti Jin Yi Yan” [A Piece of Advice for the Issue of the Establishment of the State Chairman], *Mingbao Yuekan*, no. 1 (1982): 22; Wang Dezhao, “Yuanze Yu Renshi” [“Principal” and “Personnel”], *Mingbao Yuekan*, no. 1 (1982): 24.

⁵²¹ Len Rong and Wang Zuoling (eds.), *supra* note 508, at 792-793.

⁵²² Chen Sixi and Liu Songshan, “Xianfa Queli Guojia Zhongyang Junshi Weiyuanhui De Jingguo” [the Process of Establishing the Central Military Commission in the Constitution], *Renda Yanjiu*, no. 3 (2001): 12-13.

When this draft was submitted to the CPC for approval, a Politburo member claimed that Deng Xiaoping was the only one who would be fit for the new office of chairman if to have one, but this could increase his workload and damage his health⁵²³; if Deng Xiaoping was unwilling to take, then there would be no one else and the office should not be established.⁵²⁴ Deng defended by replying that: “someone else can also take the office, except me”; “it should be set up as long as the country demands, we should not decide the state system for sake of one particular person.”⁵²⁵

In the end, Deng Xiaoping won.⁵²⁶ The CPC approved the draft with some further revisions, and then turned it to the revising committee for deliberation. In the second meeting of the committee, the chairman in the CPC’s final draft was introduced as the national representative at home and abroad; he would not interfere with the government affairs and take administrative responsibility; both the Council of National Defense and the Supreme State Conference were abolished⁵²⁷, but the chairman could also command the armed force.⁵²⁸

“A titular head of state”

The chairmanship being separated from the military command

⁵²³ Len Rong and Wang Zuoping (eds.), *supra* note 508, at 801.

⁵²⁴ Wang Hanbin, *supra* note 9.

⁵²⁵ Len Rong and Wang Zuoping (eds.), *supra* note 508, at 801.

⁵²⁶ On April 15, 1982, when receiving Romania president, Hu Yaobang, then chairman of the CPC, confirmed the establishment of the Chinese president. See Jiang Benliang, *Gei Gongheguo Lingdao Ren Zuo Fanyi* [Interpreting for the National Leaders] (Shanghai: Shanghai Cishu Chubanshe, 2007), at 201-207, 262.

⁵²⁷ Xu Chongde, *supra* note 483, at 392-393.

⁵²⁸ Xu Chongde, *supra* note 483, at 405.

Why was the Council of National Defense abolished by the CPC in the last minute? Well in the early stage of constitutional-making process, in spite of those supporting opinions, there were also certain people who opposed to maintaining such an organ, arguing that it had never had a meeting ever since its establishment in 1954.⁵²⁹ Their argument told the truth. In fact, the real commander of the armed forces had been the CPC's Central Military Commission. Possibly this opinion was accepted by the CPC. Besides, as the armed forces which was mostly created by the CPC, it was understandable to exclude those non-CPC members when China was claimed to have achieved the socialism and the CPC's control over the state apparatus was supposed as tight as possible, as in the case of the former Soviet Union, especially for the armed forces which had mostly been controlled by the CPC.

However, the arrangement in the CPC's final draft was questioned by the revising committee in its second meeting. As Cheng Siyuan, a non-CPC member of the revising committee, asked:

“How will the chairman command the military? According to the 1954 constitution, the chairman concurrently chaired the Council of National Defense. But the Council of National Defense had no substance, and the CPC's Central Military Commission was in power in fact and commanded the military. I suggest making the CPC's

⁵²⁹ Xu Chongde, *ibid*, at 381.

Central Military Commission a state organ and the state chairman chair it concurrently, thus commanding the military through this Commission. We should make a decision on this issue when our old revolutionaries are still alive so as to lay the foundation for long-time safety and good governance of the nation. The relationship between the National Defense Ministry and Military Commission is the relationship between military administration and military order, which should be divided. While the National Defense Ministry takes charge of the military administration, including the military budget, defense constructions, military ranking, appointment and removal of military officials, military awards, punishment and exercises, etc, the Military Commission should have the power to issue military orders, i.e., exercise of the power to command military, direction of wars, etc.”⁵³⁰

He was not alone. Similar idea had already been raised during the constitutional making process before⁵³¹, and a group of Chinese legal scholars was also reported to support the reestablishment of the state chairman to command the armed forces⁵³².

However, while Deng Xiaoping had already insisted not taking the state chairmanship and decided to retire to the second front, there also had been

⁵³⁰ Xu Chongde, *ibid*, at 405.

⁵³¹ Xu Chongde, *ibid*, at 381.

⁵³² “Zhonggong Jueding She Guojia Zhuxi, Tongshuai Quanguo Wuzhuang Budui” [the CPC Decided to Establish the Chairman to Command the Armed Forces], *Pai Shing*, no. 20 (1982): 5.

demand within the CPC for him to command the army⁵³³. Therefore, the state chairmanship had to be separated with the army, and another chairmanship of military affairs had to be established. In other words, the state chairman and the chairman of the Central Military Commission had to be taken by different individuals.⁵³⁴ Once again, the constitution has to be tailored for a specific person.⁵³⁵

After taking all these opinions and suggestions into consideration, possibly on April 5, 1982⁵³⁶, Deng Xiaoping decided that the constitution should provide the chairmanship of the Central Military Commission; both the state chairman and the CMC chairman would be elected by the NPC. In other words, a new chairmanship and a separate state organ, i.e., the Central Military Commission would be set up.

Hence, the constitutional draft was further revised. In the draft submitted to the third meeting of the revising committee for discussion, a new section creating the new state organ, i.e., the Central Military Commission, was included, whereas the state chairman no long commanded the armed forces.⁵³⁷ According to the constitutional draft published for national discussion afterwards, this new section had four articles, providing that the CMC direct the armed forces; its chairman assume overall responsibility for its work; the term of office of its chairman be five years and he serve no more than two

⁵³³ Cai Dingjian, *supra* note 3, at 314, footnote 1.

⁵³⁴ Chen Sixi and Liu Songshan, *supra* note 522, at 14; Wang Hanbin, *supra* note 9.

⁵³⁵ Cai Dingjian, *supra* note 3, at 314, foot note 1; at 316, footnote 2.

⁵³⁶ On that day, Deng Xiaoping had a conversation with Peng Zhen about the constitutional making. See Len Rong and Wang Zuoling (eds.), *supra* note 508, at 811.

⁵³⁷ Chen Sixi and Liu Songshan, *supra* note 522, at 14; Xu Chongde, *supra* note 483, at 419.

consecutive terms; it be accountable to the NPC and NPCSC⁵³⁸. Besides, the State Council was also provided to “direct the building of national defence”⁵³⁹, thus sharing responsibility for the military affairs with the Central Military Commission.

Being published, such an arrangement raised various concerns with the relationship among the CPC, the CMC and the State Council.⁵⁴⁰ Particularly, some people in the military were worried that it could change the CPC’s leadership over the military. To clarify, a notice, drafted by Peng Zhen, was issued by the CPC to the armed forces, declaring that the CMC would not only be a state organ, but also belong to the party; it was the same organ with two official titles and would not jeopardize the CPC’s leading role in the army; the Defence Department of the State Council would be under the direct supervision of the CPC’s Central Military Commission; the State Council would take charge of the national defence construction, including defence budget, expenses, staffing, equipment, supply, exercises and institutional building etc.⁵⁴¹

More suggestions were put forward to improve relevant stipulations in this regard. For example, some advised that the Constitution should make clearer stipulation on the CPC’s leadership over the army, in particular, the chairman of the CPC’s Central Military Commission should take the post of the

⁵³⁸ Zhonghua Renmin Gongheguo Xianfa Caoan [the Constitutional Draft of the People’s Republic of China], *Renmin Ribao*, April 26, 1982, chapter 3, section 4.

⁵³⁹ *Ibid*, art 89, paragraph 11.

⁵⁴⁰ Xu Chongde, *supra* note 483, at 455-456, 465.

⁵⁴¹ Wang Hanbin, *supra* note 9.

chairman of the CMC; the organization of the CMC should be defined by the constitution or specific law; the CMC should be under the supervision of the NPC and report to it.⁵⁴² Some others held that the division of powers and functions between the CMC and the Defence Department should be made clear in the constitution so that the Defence Department could take charge of military administration, including the budget and building, whereas the state CMC could command and lead the army in war.⁵⁴³

After considering these suggestions, the revising committee made further amendments to relevant stipulations. Taking into consideration of attentions from home and abroad, the section titled as the Central Military Commission was still maintained in the constitutional text, to avoid any negative ideas about China by foreign governments. As a response to the concern with the organization of the CMC, two provisions were made, one of which provided that the commission be composed by the chairman, vice chairman, general-secretary and ordinary members, and the other of which said that the organization of the NPC, NPCSC, and other state organs was prescribed by laws. On the other side, the limitation of two consecutive terms on the chairman was abolished on the ground that the military was different from other state affairs and it would be better for the constitution not make specific limitation on his terms. The idea that the CPC's leadership over the army should be provided in the text was rejected, as the CPC's leading role in the

⁵⁴² Chen Sixi and Liu Songshan, *supra* note 522, at 15.

⁵⁴³ Cai Dingjian, *supra* note 3, at 397.

state, including in the army, was stipulated in the foreword of the constitution; since the military operation was concerned with state secrets, it would better not report its work to the NPC and NPCSC.⁵⁴⁴ Besides, no division was provided for the CMC and Defence Department.⁵⁴⁵

Then a new draft was produced and presented to Deng Xiaoping. He was said to consider it for two days and personally rewrote the section of the Central Military Commission, after consulting some of his CPC colleagues, including Peng Zhen and Yang Shangkun, the future President, which provided that the commission directed the armed forces and its chairman took overall responsibility for the work; the chairman was responsible to the NPC and NPCSC.⁵⁴⁶ As a result, this section was reduced from four articles to two⁵⁴⁷, which was later adopted by the NPC⁵⁴⁸.

Abolishment of the Supreme State Conference

The second change made in the CPC's final draft concerning the state chairmanship was the abolishment of the Supreme State Conference. Why was it abolished? In the era of the 1954 constitution, the Supreme State Conference had not only been a way by which Mao Zedong intervened with the administration, but also a forum where Mao Zedong consulted his new policies with other people, especially with non-CPC people. It was explained

⁵⁴⁴ Chen Sixi and Liu Songshan, *supra* note 522, at 15-16.

⁵⁴⁵ Cai Dingjian, *supra* note 3, at 397.

⁵⁴⁶ Wang Hanbin, *supra* note 9.

⁵⁴⁷ Cai Dingjian, *supra* note 3, at 397.

⁵⁴⁸ Xianfa [constitution] (1982) (P.R.C.), art 93, 94.

by some Chinese scholars that such an arrangement had put the government under multiple leaderships, divided the supreme state power and involved the chairman with the administrative affairs;⁵⁴⁹ by abolishing it, the chairman could get rid of administrative affairs completely and concentrate on his own business; the distinction between the power and function of the chairmanship and the State Council could be better distinguished.⁵⁵⁰ Besides, since there were more channels of political consultation with non-CPC people, it was no need to maintain the Supreme State Conference.⁵⁵¹ Therefore, the new chairmanship became less democratic, but more professional.

Term of office

The third difference between the new state chairmanship and its predecessor was about terms of office. Whereas the 1954 constitution had no provisions in this regard, the new constitution stipulated that the term of office of the chairman and vice chairman was the same as that of the NPC, and both of them serve no more than two consecutive terms.⁵⁵² The age requirement for the state chairmanship was also increased from the previous 35-years-old to 45-years-old.⁵⁵³

The idea of restricting the chairmanship by two terms had been suggested in

⁵⁴⁹ Wang Dexiang, "Shilun Woguo Guojia Zhuxi Zhidu" [Discussion about Our Country's State Chairmanship], *Renmin Ribao*, June 3, 1982.

⁵⁵⁰ *Ibid.*

⁵⁵¹ Xiao Weiyun, *supra* note 496.

⁵⁵² Zhonghua Renmin Gongheguo Xianfa Caoan [the Constitutional Draft of the People's Republic of China], *Renmin Ribao*, April 26, 1982, art 79, paragraph 2.

⁵⁵³ *Ibid.*, art 79, paragraph 1.

1953 and 1956, and the 1954 constitution had been intended to revise, but ended mysteriously without any result. The first state chairman Mao Zedong had only taken this office for one term, but been holding the office of the CPC's chairmanship and the chairmanship of the CPC's Central Military Commission to the end of his life, which became the power base to for him to launch the disastrous Cultural Revolution from the second front. Now by adopting this new constitutional device, it was expected to help to curtail personality cult and individual tyranny, select new and younger leaders, rejuvenate the national leadership, improve working efficiency, and better solve the issue of leadership's succession and maintain the stability of governmental polices.⁵⁵⁴

Undoubtedly, this was a great progress to limit the term of office. With such a limitation, no one can take the position for more than ten years, thus putting an end to Chinese thousands-years tradition of life-long personal tyranny. However, as commented, in spite of such an improvement, if those leaders would take major government posts in turn, the life-long service could possibly not be terminated.⁵⁵⁵ Besides, the failure to put this limitation on the military chairmanship also indicated that the Chinese leaders had not been ready to accept this new constitutional idea unreservedly.

The succession to the chairmanship

⁵⁵⁴ Zhang Qifu and Li Buyun, "Yixiang Yiyi Shengyuan De Gaige" [A Reform with Great Significance], *Renmin Ribao*, July 9, 1982.

⁵⁵⁵ Xu Chongde, *supra* note 483, at 467.

The fourth improvement made to the chairmanship was the new provisions regarding the succession to it. According to the 1954 constitution, the vice chairman should succeed the chairmanship when it fell vacant. In 1955, a decision was made by the NPCSC that its chairman could receive foreign ambassadors when the chairman and vice chairman were on vocation or out of office.⁵⁵⁶ When making the new constitution in 1982, such a way of succession was accepted by the drafters⁵⁵⁷ and adopted by the NPC, as following:

“In case the office of the vice-President of the People's Republic of China falls vacant, the National People's Congress shall elect a new Vice-President to fill the vacancy. In the event that the offices of both the President and the Vice-President of the People's Republic of China fall vacant, the National People's Congress shall elect a new President and a new Vice-President. Prior to such election, the Chairman of the Standing Committee of the National People's Congress shall temporarily act as the President of the People's Republic of China.”⁵⁵⁸

⁵⁵⁶ Cai Dingjian, *supra* note 3, at 370-371; Guanyu Zhonghua Renmin Gongheguo Zhuxi He Fu Zhuxi Xiujia Huo Waichu Qijian You Quanguo Renmin Daibiao Dahui Changwu Weiyuanhui Weiyuan Zhang Jieshou Waiguo Shijie De Jueding [Decision Concerning the Receipt of Foreign Diplomatic Representatives by the Chairman of the Standing Committee of the National People's Congress when the Chairman and Vice Chairman of the People's Republic of China is on Vacation or absent from Office], *Standing Comm. Nat'l People's Cong. Gaz* (December, 1955).

⁵⁵⁷ Zhonghua Renmin Gongheguo Xianfa Caoan [the Constitutional Draft of the People's Republic of China], *Renmin Ribao*, April 26, 1982, art 79, paragraph 1.

⁵⁵⁸ Xainfa [constitution] (1982) (P.R.C.), art 84.

Hence the succession to the chairmanship was further improved constitutionally, by which the vice chairman was the first successor to the chairmanship, and the chairman of the NPCSC was the second one.

Undefined responsibility of the chairmanship

In spite of these improvements to the chairmanship, there were still issues that remained unanswered. One such undefined issue was the responsibility of the chairman. Originally, based on Deng Xiaoping's instruction, the chairman was provided in the CPC's early drafts not to interfere with the operation of the government and share any administrative responsibility.⁵⁵⁹ But this provision was questioned by the revising committee. It was argued that when receiving foreign guests and visits foreign countries, the chairman could not avoid talking about state affairs⁵⁶⁰; the chairman's power to nominate the premier was also in contradict with this.⁵⁶¹ More importantly,

“Since our country has been governed by the collective leadership and the chairman is one representative of such a collective leading group, how can we say that the chairman not interfering with the governmental work and not taking administrative responsibility?”⁵⁶²

⁵⁵⁹ Xu Chongde, *supra* note 483, at 392-393.

⁵⁶⁰ Xu Chongde, *ibid*, at 397.

⁵⁶¹ Xu Chongde, *ibid*, at 408.

⁵⁶² Xu Chongde, *ibid*, at 408.

As a result, such stipulations were deleted from the published draft⁵⁶³, which was then accepted by the NPC.

Is the chairman the head of state?

Another issue that was not settled was the legal status of the new chairmanship in the constitution. During the constitutional making in 1954, whether the chairman was the head of the state had been a major controversy. It had been confirmed, but overruled by Mao Zedong in the last minute before the constitutional draft was published, and in the end the chairman was only provided by the constitution to “represents the People’s Republic of China externally”⁵⁶⁴. In this new round of constitutional-making, it seemed that the makers reached new consensus over this issue and the new chairmanship was provided as to “represents the People’s Republic of China internally and externally” in several drafts, including the CPC’s several drafts⁵⁶⁵ and the draft that was published for national discussion⁵⁶⁶.

However, when the constitution was ratified, such a provision was revised as to “receive foreign diplomatic representatives on behalf of the People’s Republic of China”⁵⁶⁷. Why did such a change occur? It was explained that not only the chairman acted as the head of state jointly with NPCSC, as

⁵⁶³ Zhonghua Renmin Gongheguo Xianfa Caoan [The Constitutional Draft of the People’s Republic of China], *Renmin Ribao*, April 26, 1982, art 79, paragraph 1.

⁵⁶⁴ Xianfa [constitution] (1954) (P.R.C.), art 41.

⁵⁶⁵ Xu Chongde, *supra* note 483, at 392;

⁵⁶⁶ Zhonghua Renmin Gongheguo Xianfa Caoan [The Constitutional Draft of the People’s Republic of China], *Renmin Ribao*, April 26, 1982, art 78.

⁵⁶⁷ Xian fa [constitution] (1982) (P.R.C.), art 81.

defined by Liu Shaoqi in his report on the making of 1954 constitution, but also other state organs, such as the NPCSC and the State Council could represent the state in different situations when dealing with different state affairs.⁵⁶⁸ In other words, the chairman was just a member of the leading collective that represents the country. Therefore, Mao Zedong's idea about the relationship between the chairmanship and the NPC, and the collective leadership emphasized by the new leaders seemed to prevail again.

Nomination, voting and removal of the chairmanship

Similar to the 1954 one, the 1982 constitution only provides that the chairman be elected and removed by the NPC, it does not articulate about how the election and removal should be conducted. However, a new Organic Law of the NPC had also been ratified by the same Session of the fifth NPC, which not only outlines the nomination and voting methods of the chairman, but also provides a way to remove the chairman.

In this law, three steps are provided for the nomination of chairman candidate. Firstly, a preliminary list of candidates for top government posts, including that for chairman, chairman and vice-chairman of the Central Military Commission, will be submitted by the NPC Presidium to the delegations; then consultations are conducted among these delegations concerning these candidates, after which a formal list should be produced in

568 Xiao Weiyun, *supra* note 496; Wu Jie, Lian Xisheng and Wei Dingren (eds.), *Zhonghua Renmin Gongheguo Xianfa Shiyi* [Explanation of the Constitution of the People's Republic of China] (Beijing: Falv Chubanshe, 1984), at 131.

the end by the Presidium “based on the opinion of the majority of deputies”.⁵⁶⁹ When the NPC is convened to elect on this formal list, the secret ballot, show of hands, or other methods of voting can be decided by the Presidium to use in the election.⁵⁷⁰ If to remove the chairman from office, three or more delegations or at least one-tenth of the number of the deputies can submit such a proposal of removal to the NPC. The Presidium then should turn it to the congress for deliberation.⁵⁷¹

Conclusion

On December 4, 1982, the constitution was adopted by the NPC by 3040 deputies, with only three abstentions.⁵⁷² It not only declared the establishment of socialism, but also reinstated the controversial chairmanship with new appearance. Officially, the new chairman was translated in English as “president” instead of “chairman” as it had used to, thus giving it a Western appearance and also distinguishing it from the rest “chairmen” provided by the constitution, such as the chairman of the NPCSC and the chairman of the CMC. In terms of institutionalization, the new presidency also adopts more Western practices. However, when it comes to the relationship of the

⁵⁶⁹ Zhonghua Renmin Gongheguo Quanguo Renmin Daibiao Dahui Zuzhi Fa [Organic Law of the National People’s Congress] (adopted by the fifth NPC on December 10, 1982) (P.R.C.), art 9.

⁵⁷⁰ Zhonghua Renmin Gongheguo Quanguo Renmin Daibiao Dahui Zuzhi Fa [Organic Law of the National People’s Congress] (adopted by the fifth NPC on December 10, 1982) (P.R.C.), art 18.

⁵⁷¹ Zhonghua Renmin Gongheguo Quanguo Renmin Daibiao Dahui Zuzhi Fa [Organic Law of the National People’s Congress] (adopted by the fifth NPC on December 10, 1982) (P.R.C.), art 15.

⁵⁷² Yang Jingyu, “Xianfa De Wending He Yushi Jujin” [the Constitution’s Stability and Development with the Time], *Guangming Ribao*, December 17, 2003.

presidency to other governmental organs, it is further away from its Western counterpart and more close to the Stanlist model. By abolishing the Supreme State Conference and separating the presidency from military command, elements of checks and balance characterized the Western constitutions in Mao Zedong's model have been given up, thus making the presidency more orthodox, which was based on the Marxist principals of "combination of the deliberation and execution" and "democratic centralism", and transformed into a mere component of the execution branch serving certain functions in China's external affairs. In a sense, the presidency became more professional and less democratic than its predecessor.

On the other hand, the succession to the presidency is improved. With the declaration of the completion of socialism in China, the CPC's control over the state apparatus was further tightened, taking all major government posts provided by the constitution, accordingly the succession also extended from the presidency to include other top government positions. As a result, succession to the presidency which used to be the utmost important one became only a part of the overall succession plan, and the presidency could be less important.

One may argue that the new office seems to be a figure head, suggesting there is no need to place checks on it. However, as raised by some revising committee members, the president would have a say in foreign affairs and the nomination of the premiership, with no clear constitutional endorsement, there

is no guarantee that the president would not interfere with the premier's administration, at least on diplomacy. More importantly, the new Chinese president would belong to the CPC's collective leadership. Therefore, the real political substance of such a presidency could have to be decided in practice by the holder's relative strength in this collective, rather than the constitutional definitions.

President Li Xiannian and Yang Shangkun in office from 1983 to 1993**“Politician” Li Xiannian elected to the presidency**

His nomination as the candidate by the CPC

As provided by the Organic Law, the NPC Presidium was crucial to the presidential election because it nominated and determined the candidate for the congress to vote. But no measures had been made with regards to its decision-making process. Then how had been Li Xiannian nominated by the presidium? Practically, he was recommended by the CPC. As a part of its leadership, CPC proposed a list of candidates for top government offices to the Presidium, which was explained by Peng Zhen in its second meeting on June 13.

It was reported that, when the constitution was being drafted, informal consideration had been made with regard to the candidate for the presidency within the CPC. As introduced in the previous chapter, the CPC had related the establishment of this office with the person who would hold it. If the presidency and chairmanship of the Central Military Commission could be taken by one person, Deng Xiaoping would be the only one choice. If Deng Xiaoping would not take it, then these two offices had to be occupied by two different persons, and a number of CPC leaders had been suggested for the

presidential candidate, including Li Xiannian.⁵⁷³

Although Deng Xiaoping had got the most support and been the most popular one,⁵⁷⁴ he had insisted on not taking the presidency.⁵⁷⁵ Instead he recommended Li Xiannian.⁵⁷⁶ His recommendation had been accepted by the CPC Politburo and Li Xiannian had been included in the proposed list of candidates.

Before the convening of the sixth National People's Congress, the CPC had held a so-called "Democratic Consultative Meeting"⁵⁷⁷ on May 31 and June 1 to consult on the proposed list with the NPCSC, the National Committee of the CPPCC, and leaders of democratic parties.⁵⁷⁸

His election into office by the NPC

On June 4, 1983, the first Session of the sixth NPC, the first NPC after the new constitution came into force, held a preparatory meeting, presided by Peng Zhen, the vice chairman of the fifth NPCSC. The meeting elected a Presidium of 164 members. Then the Presidium held its first meeting and decided 16 members as the standing chairmen, Peng Zhen being ranked as the

⁵⁷³ Ke Ge, "Guojia Zhuxi Renxuan Huzhi Yuchu" [the Presidential Candidate is Ready], *Zhengming*, no. 5 (1982): 15.

⁵⁷⁴ Luo Bing, "Xinge Yong Deng Dang Guojia Zhuxi" [the New Cabinet Supports Deng Xiaoping to Take the Presidency], *Zhengming*, no. 6 (1982): 10.

⁵⁷⁵ Zhou Nianhua, "Deng Xiaoping Dang "Guojia Zhuxi"? [Will Deng Xiaoping Be the "President"?,] *Jingbao Yuekan*, no. 10 (1983): 34.

⁵⁷⁶ Luo Bing, "Deng Xiaoping Tui Li Xiannian Churen Guojia Zhuxi" [Deng Xiaoping Recommends Li Xiannian as the Presidential Candidate], *Zheng Ming*, no. 6 (1983): 6.

⁵⁷⁷ It is a meeting held by the CPC with other prominent national figures to discuss important state issues, such as the major national policy, nomination of main governmental officials, etc. China's eight other political parties normally are major participants in such meetings.

⁵⁷⁸ *Renmin Ribao*, June 2, 1983; Luo Bing, "Guojia Lingdaoren De Chansheng" [the Selection of National Leaders], *Zhengming*, no. 7 (1983): 12.

first one of them.⁵⁷⁹

Based on the constitution and Organic Law, the first Session of the sixth NPC passed a “Measure on the Voting and Passage of Bills” on June 7, deciding that the presidential voting should be conducted by secret ballot⁵⁸⁰; deputies could agree, disagree on the nominated candidate, or choose any other person, even abstain⁵⁸¹; to be elected into office, the candidate should win more than half of votes⁵⁸².

In the morning of June 11, the Presidium held its second meeting. Peng Zhen made some explanation on the proposed list of candidates for major governmental offices. Then members discussed and agreed that it be the formal list and submit it to the delegations for consideration. Resumes of candidates were also dispersed after the meeting.⁵⁸³ From June 13 till 18, the NPC was divided into 113 groups to deliberate on the formal list of candidates.⁵⁸⁴ On June 17, the Presidium held the third meeting. It finalized a list of candidates and submitted to the NPC for election.⁵⁸⁵

The election was conducted in the afternoon of June 18. Two rounds of

⁵⁷⁹ *Renmin Ribao*, June 5, 1983.

⁵⁸⁰ *Zhonghua Renmin Gongheguo Diliujie Quanguo Renmin Daibiao Dahui Diyici Huiyi Xuanju Biaoju He Tongguo Yi'an Banfa* [Measures for Election, Voting and Adoption of Bills for the Sixth National People's Congress] (adopted by the first Session of the sixth NPC on June 7, 1982) (P.R.C.), art 3.

⁵⁸¹ *Zhonghua Renmin Gongheguo Diliujie Quanguo Renmin Daibiao Dahui Diyici Huiyi Xuanju Biaoju He Tongguo Yi'an Banfa* [Measures for Election, Voting and Adoption of Bills for the Sixth National People's Congress] (adopted by the first Session of the sixth NPC on June 7, 1982) (P.R.C.), art 6.

⁵⁸² *Zhonghua Renmin Gongheguo Diliujie Quanguo Renmin Daibiao Dahui Diyici Huiyi Xuanju Biaoju He Tongguo Yi'an Banfa* [Measures for Election, Voting and Adoption of Bills for the Sixth National People's Congress] (adopted by the first Session of the sixth NPC on June 7, 1982) (P.R.C.), art 6.

⁵⁸³ *Renmin Ribao*, June 12, 1983.

⁵⁸⁴ *Renmin Ribao*, June 14, 15, 1983.

⁵⁸⁵ *Renmin Ribao*, June 18, 1983.

voting were made. At the first round of voting, Li Xiannian was elected as the third President of the PRC. After hearing of his election into office, Li Xiannian submitted a letter to the NPC immediately, nominating Zhao Ziyang as the candidate for premiership, who was elected into office at the second round of voting, together with Deng Xiaoping elected as the chairman of China's Central Military Commission.⁵⁸⁶ On the same day, the sixth NPC announced Li Xiannian as the president to the public in its first notice.⁵⁸⁷

President Li Xiannian in Office from 1983 to 1988

His services in domestic affairs

(1) Issuing Presidential Orders

According to the constitution, the president has several constitutional duties to perform relating to China's domestic affairs, including promulgating statutes, to appoint or remove senior officials in the State Council, to make honorary conferment, to issue special pardons and mobilization orders, to proclaim martial law and a state of war⁵⁸⁸. However, President Li Xiannian had only performed the first two items while in office.

Since the time of Mao Zedong, the presidential orders has been used as an official document recording the president's performance of his constitutional duties to appoint or remove officials at the ministerial level in the State Council, promulgate statutes, ratify or abrogate foreign treaties and

⁵⁸⁶ *Renmin Ribao*, June 19, 1983.

⁵⁸⁷ *Ibid.*

⁵⁸⁸ Xianfa [constitution] (1982) (P.R.C.), art 80.

agreements. During his five years of term in office, President Li Xiannian had issued 65 Presidential orders all together⁵⁸⁹, out of which 45 was about the promulgation of laws, 18 was about the appointment and removal of governmental officials.

(2) The appointment of deputy premier

On June 18, 1983, President Li Xiannian issued his first presidential order, appointing Zhao Ziyang as the new premier⁵⁹⁰. Since then, Zhao Ziyang had been serving as the premier until he was elected as the CPC's General Secretary in the first Plenary Session of the thirteenth CPCCC held on November 2, 1987 after Hu Yaobang resigned from that post. As required by Deng Xiaoping's idea of separating the government from the party, Zhao Ziyang could not take both positions at the same time, and had to give up one of them.

On November 14, he wrote to President Li Xiannian, asking to resign from the premiership and proposing Li Peng, then vice premier, to act as the deputy premier before the forthcoming seventh NPC decided a new premier.⁵⁹¹ This was new to the constitution, which made no provision concerning the resignation of the premier and the post of the deputy premier. However, the constitution did stipulate that the premier candidate should be nominated by the president, not the former premier. But this stipulation seemed to be

⁵⁸⁹ His last Presidential order was numbered as the 65th. See *Standing Comm. Nat'l People's Cong. Gaz*, No. 2 (1988), at 44.

⁵⁹⁰ *Standing Comm. Nat'l People's Cong. Gaz*, No. 3 (1983), at 90.

⁵⁹¹ *Renmin Ribao*, November 25, 1987.

ignored. On the following day, President Li Xiannian referred this issue to the NPCSC for consideration⁵⁹², which accepted Zhao's resignation and his proposal. Hence Li Peng was decided as the deputy premier⁵⁹³, and had acted since then to April of 1988 when he was elected as the new premier by the new NPC⁵⁹⁴. As an evidence for the president's appointment of Li Peng as the deputy premier based on the decision of the NPCSC, a presidential order should have been issued by President Li Xiannian, but in fact he did not.

(3) His expanded civil services

In spite of these partial fulfillments of his constitutional duties, President Li Xiannian had practically been involved with Chinese internal affairs in the capacity of the president by other ways. For example, he made a nationwide speech through television and radio broadcasting in 1984⁵⁹⁵; he made inspections to local governments and regions, such as Guizhou, a Chinese province, after he returned from state visits to Thailand and Cambodia in 1985⁵⁹⁶. He also met people, took part into different activities, conduct communications by letters, phone calls and telegrams, and even offer personal inscriptions, etc.

⁵⁹² *Renmin Ribao*, November 18, 1987. And also see Li Xiannian Zhuxi Gei Quanguo Renda Daibiao Changwu Weiyuanhui De Laiwen [Letter from President Li Xiannian to the Standing Committee of the National People's Congress], *Standing Comm. Nat'l People's Cong. Gaz.*, No. 6 (1987), at 3.

⁵⁹³ *Renmin Ribao*, November 25, 1987.

⁵⁹⁴ See http://www.gov.cn/test/2007-11/21/content_811863.htm. This is in the official website of the Chinese government, last visited on July 22nd, 2008.

⁵⁹⁵ *Renmin Riba*, 1984.

⁵⁹⁶ *Renmin Ribao*, March 16, 1985.

His services as the head of state in China's diplomacy

(1) His three constitutional duties in China's external affairs

Except for those fulfillments in internal affairs, President Li Xiannian also had to perform three other constitutional duties with respect to China's diplomacy. Firstly, he had to receive foreign diplomatic representatives on behalf of China. Secondly, he should also appoint or recall Chinese diplomats to other countries, which were irregular in time and recorded in the Gazettes of the NPCSC by relevant announcements. Lastly, he was required to ratify or abrogate treaties and important agreements. Although Chinese government had joined or approved 25 international treaties or bilateral agreements⁵⁹⁷, only two of them were ratified by President Li Xiannian in his orders, which were the joint declarations on the issues of Hong Kong and Macao between China with UK and Portugal respectively.

(2) Serving as the head of state in foreign receptions

In practice, President Li Xiannian had acted far beyond those three constitutional duties and completed those services that were usually performed by the head of state. For instance, at home, foreign visitors he received had outnumbered the constitutional definition, expanding from foreign diplomats to other governmental officials, private organizations and

⁵⁹⁷ The number is calculated based on the Standing Comm. Nat'l People's Cong. Gaz.

individual persons. Apart from receiving guests, he also invited other countries' heads of state to visit China, held welcome ceremony and state banquet for them, talked with visitors, appeared at the signing ceremonies, attended thanks feast given by foreign guests, made phone calls to pay regards to visitors when they were traveling within China, said farewell at the hotel, or even the train station when foreign visitors were returning home, etc.

(3) Appointing special envoys

Noticeably, during his term of office, several officials had been dispatched abroad as the President's special envoys to conduct some diplomatic tasks. The first one was in March, 1986, when a governmental minister was sent to Portugal on behalf of President Li Xiannian to attend new Portugese President's inauguration ceremony.⁵⁹⁸ After that, the same minister acted as the special envoy of Chinese government and went to Stockholm to attend the funeral of Sweden Prime Minister.⁵⁹⁹ In 1988, two more special envoys on his behalf were also sent to Suriname in February⁶⁰⁰ and Saudi Arabia in April⁶⁰¹ respectively.

Seemingly, the practice of deploying special envoys had been adopted by the PRC far before. As early as 1962, a Chinese vice Minister of Foreign Affairs was sent to several developing countries on behalf of Chinese

⁵⁹⁸ *Renmin Ribao*, March 7, 9, 10, 11, 13, 16, 20, 1986.

⁵⁹⁹ *Renmin Ribao*, March 13, 16, 20, 1986.

⁶⁰⁰ *Renmin Ribao*, February 1, 1988.

⁶⁰¹ *Renmin Ribao*, April 4, 11, 1988.

government, a vice chairman of the NPCSC fled to Egypt as “the special envoy of the PRC” to attend the funeral of the Egyptian president in 1970, and a Chinese vice premier went to Nepal on behalf of Chinese government in 1975. But those were very limited occasions.⁶⁰² Since President Li Xiannian took office, it had been used more frequently. Apart from those three presidential representatives, a dozens of special envoys had also been dispatched, mostly on behalf of Chinese government, to various foreign countries and regions.⁶⁰³ Besides, in a few particular cases, several envoys were titled either in the capacity of China⁶⁰⁴, China and the CPC⁶⁰⁵, or Chinese government and the CPC⁶⁰⁶.

Most of all these special envoys had been for ceremonial purposes, such as attending inaugural ceremonies, funerals, National Day celebrations, etc. However, there were also a few special envoys who conducted substantial diplomatic tasks. For example, Qian Qichen, who became the Chinese Foreign Minister later, had served as the special envoy delegated to negotiate with the former Soviet Union for the normalization of bilateral relations.⁶⁰⁷ Another special envoy concerning the Middle-East affairs was also sent to the Arabian

⁶⁰² *Renmin Ribao*, February 7, 1993; May 30, 1996; Li Bin, *Guoji Yiyi Yu Jiaoji Lijie* [International Etiquette and Social Courtesy] (Beijing: Shijie Zhishi Chubanshe, 1985), 2nd ed., at 139.

⁶⁰³ *Renmin Ribao*, November 13, 14, 18, 1983; March 1, 12, 24, 27, 28, November 4, December 5, 7, 1984; February 14, 28, March 10, 16, 17, April 8, 14, 23, 24, June 7, July 18, 23, 27, 30, 31, August 26, September 26, 1985; April 7, 15, 16, September 25, October 6, 16, 1986; January 8, 13, 24, March 7, April 14, 24, 27, July 29, 30, August 26, 28, September 3, 24, 1987.

⁶⁰⁴ *Renmin Ribao*, November 3, 4, 5, 6, 1984; August 6, 8, 10, November 21, 27, 1985.

⁶⁰⁵ *Renmin Ribao*, March 29, 30, 31, April 1, 2, 3, 7, 1984.

⁶⁰⁶ *Renmin Ribao*, October 28, 29, 30, 1986.

⁶⁰⁷ *Renmin Ribao*, March 1, 12, 24, 27, 28, November 4, 1984; April 8, 23, 24, September 26, 1985; April 7, 15, 16, September 25, October 6, 16, 1986; April 14, 24, 24, September 24, 1987.

region amid the war between Iraq and Iran in 1987.⁶⁰⁸

Different from the presidents of the United States who initiated the practice of sending special envoys abroad and had full power in deciding their special envoys⁶⁰⁹, President Li Xiannian's role in dispatching Chinese special envoys had been unknown. On one side, China had no law defining the scope of "plenipotentiary representatives abroad", thus whether the special envoys could be regulated by the constitution was unclear. On the other side, the Gazettes of the NPCSC had never reported any relevant appointments of special envoys, including those special envoys acted on behalf of President Li Xiannian. Therefore, whether all of these special envoys should be appointed by the president after being decided by the NPCSC, as in the case of Chinese ambassadors, is still uncertain legally.

(4) Paying state visits to other countries

Literally, the President has no constitutional obligation to visit foreign countries. However, once elected, President Li Xiannian had paid state visits to 22 countries all together during his five-year term of office. His first state visits were made to Pakistan, Jordan, Turkey, and Nepal in the capacity of PRC President in 1984, after which he also visited Romania, the former Yugoslavia, Spain, Portugal, and Malta in the same year. Since then, President Li Xiannian visited more countries, including Myanmar (1985), Thailand

⁶⁰⁸ *Renmin Ribao*, July 29, 30, August 26, 28, September 3, 1987.

⁶⁰⁹ Martin L. Fausold and Alan Shank, *the Constitution and the American Presidency* (Albany: State University of New York Press, 1991), at p180.

(1985), Canada (1985), the United States (1985), North Korea, Bangladesh (1986), Sri Lanka (1986), Egypt (1986), Somalia (1986), Madagascar (1986), France(1987), Italy(1987), Luxembourg (1987), Belgium (1987).

Some of his visits were of historical significance because they had been the first time paid in the host country, even in that region by the Chinese head of state since the founding of PRC. For example, his visit to Jordan was the first one to Jordan and the Arabian world⁶¹⁰, his visit to the United States had been the first one paid by the Chinese head of state since the establishment of diplomatic relationship between both countries in 150 years⁶¹¹ and also been the first diplomacy by the head of states between these two countries.

Talks with the host had been the major part of the president's visits to other countries. For example, during his visit to Turkey, President Li Xiannian had individual talk with Turkish president.⁶¹² Besides, he could give a speech on his arrival or in the state banquet given by the host country, meet and talk with other concerned organization and person, attend signing ceremonies of agreements concluded between both countries, hold thanks feast, speak to the press, visit local facilities, send flowers, and enjoy various entertainments, such as concert, etc.

Above all these forms of participation in China's foreign affairs, President Li Xianian had also made communications on behalf of Chinese government

⁶¹⁰ *Renmin Ribao*, March 9, 1984.

⁶¹¹ Sun Muna, "Liangwei Gaoling Yuanshou Zhi Lishixing Huiwu: Zhongguo Guojia Zhuxi Lixiannian Fangmei Jiyao" [Historical Meeting of Two Old Heads of State: A Brief Account of Chinese President Li Xiannian's Visit to the United States], *Jingbao*, no. 8 (1985): 36-37.

⁶¹² *Renmin Ribao*, March 15, 1984.

and Chinese people to other governments and officials, by sending message of celebration, sympathy, condolence, tribute, thanks, etc, through telegram or telephone. In a few occasions, he had also received honorary titles and conferment from foreign governments.

His real political influence as an experienced politician

(1) His membership in the CPC's PSC and domestic influence

While serving as the Chinese president, Li Xiannian had been also a member of the CPC's Politburo Standing Committee, together with Deng Xiaoping, Chen Yun, Hu Yaobang, and Zhao Ziyang. Born in 1909, Li Xiannian was a long-time revolutionary cadre experienced in military, economic and foreign affairs.⁶¹³ During the era of Mao Zedong, Li Xiannian had remained stable in high government positions relating to economic and foreign affairs as a major assistant to Premier Zhou Enlai, when Deng Xiaoping and Chen Yun had suffered political ups and downs. However, by the time when elected into the presidency in 1983, his influence had been in decline. By then he had reached the senior age of 74 years old and was one of those old carders who had been intended by Deng Xiaoping to retire soon. In the PSC, while the younger

⁶¹³ For Li Xiannian's experience as a CPC cadre and senior governmental official, see "Huainian Li Xiannian Tongzhi" Bianji Zu (ed.), *Weida De Renmin Gongpu: Huainian Li Xiannian Tongzhi* [A Great People's Servant: in Memory of Comarade Li Xiannian] (Beijing: Zhongyang Wenxian Chubanshe, 1993); Zhu Yu, Cheng Zhensheng and He Guangyao, *Li Xiannian De Feichang Zhilu* [Extrodinary Road of Li Xiannian] (Beijing: Renmin Chubanshe, 2001); Li Xiannian Zhuan Bianxie Zu (ed.), *Li Xiannian Zhuan(1909-1949)* [Biography of Li Xiannian (1909-1949)] (Beijing: Zhongyang Wenxian Chubanshe, 1999); Zhao Lingyun, *Li Xiannian Zai 1946* [Li Xiannian in 1946] (Beijing: Jiefangjun Chubanshe, 2004); Li Xiannian Zhuan Bianxie Zu (ed.), *Li Xiannian Zhuan(1949-1992)* [Biography of Li Xiannian (1949-1992)] (Beijing: Zhongyang Wenxian Chubanshe, 2009).

members, i.e., Hu Yaobang and Zhao Ziyang, were in the first front directly handling party and state affairs to carry out Deng Xiaoping's reform and open-door policy, Li Xiannian belonged to the second front, together with Deng Xiaoping and Chen Yun, which made decisions collectively on major issues, with Deng Xiaoping as the chief one setting the keynote policy and making major decisions. Hence, his political decision-making power could be rather limited, possibly only to major issues and important personal appointments or removals, and he could only be able to exert indirect influence on domestic affairs, which had been operated by the younger first front leaders. His adherence to the past planned-economy experience had also prevented him from getting much involvement with Deng Xiaoping's policy-making and relevant implementations, for which he was said to be one of the most conservative and opposed person among the oldest CPC cadres⁶¹⁴.

(2) His substantial involvement with China's diplomacy

As much as the collective decision-making was emphasized for the PSC, the division of work was also stressed among its members. Approximately at the same time when Li Xiannian was elected as the president, he was decide to take charge of affairs concerning Hong Kong and Macau and continued to head the Central Leading Group of Foreign Affairs (CLGFA).⁶¹⁵ Thus he

⁶¹⁴ Zhao Ziyang, *Gaige Licheng* [The Reform History] (Hong Kong: Xin Shiji Chubanshe, 2009), at 261, 267-268.

⁶¹⁵ Cheng Zhensheng, "Li Xiannian Yu Xianggang, and Aomen Huigui" [Li Xiannian and the Return of Hong Kong and Macou], *Dang De Wenxian*, no. 6 (1999): 38-39.

enjoyed direct impact on China's foreign affairs and could exert certain substantial power in China's diplomacy in those areas that were directly under his control, like affairs concerning Hong Kong and Macau⁶¹⁶, or he had been familiar with, such the relations with the former Soviet Union and some other former socialist countries, possible with Deng Xiaoping's final endorsement.

For example, 1984 was the fortieth anniversary of Romania's National Day and Romania had invited China to send a high-level official delegation to attend its ceremony. Since Romania had been a special friend to China and Li Xiannian had paid two visits to attend its twentieth and thirtieth anniversaries in 1964 and 1974 respectively, he was decided by China to pay a third visit to Romania, a state visit in the capacity of president.

To make the visit successful, President Li Xiannian personally met with the director of the Foreign Affairs of the State Council, vice minister of the Ministry of Foreign Affairs and other Chinese officials. In the meeting, he not only set guiding principals for his speech and talk that were going to make during his visit, but also paid attention to the members of Chinese delegation and other etiquette details.

On August 20, 1984, President Li Xiannian started his state visit to Romania. During his nine-days visit, he had three talks with Romania leader Ceausescu, in which he took the opportunity to announce China's new foreign policy that were taking shape under the direction of Deng Xiaoping. Referring

⁶¹⁶ For his influence on Hong Kong and Macau affairs, see Cheng Zhensheng, *ibid.*

to China's relationship between the USSR, he not only asked Ceausescu to pass his message to the USSR that China would not go against the USSR together with the United States, implying China would pursue an independent foreign policy, but also pointed out that the essential obstacle to the normalization of the Sino-USSR relation was the withdrawal of military force from Cambodia by Vietnam and the USSR.⁶¹⁷

This policy was further endorsed by Deng Xiaoping in the next year when Deng Xiaoping met Ceausescu in Beijing. Deng Xiaoping asked Ceausescu to help to deliver his message that if the USSR could make Vietnam withdraw military force from Cambodia, he or Hu Yaobang, the CPC's GS, would be willing to meet the USSR leader Gorbachev.⁶¹⁸

“General” Yang Shangkun’s succession to the presidency

The CPC’s nomination

On March 15, 1988, the thirteenth CPCCC convened its second plenary meeting. The Politburo introduced to the meeting a list of people, which previously had been prepared by the Politburo and consulted with non-CPC personals by democratic consultative meetings. After discussion by groups, the meeting accepted this list and decided to submit it to the NPC.⁶¹⁹

Aspiration for democracy within the NPC

⁶¹⁷ Jiang Benliang, *supra* note 526, at 175-200.

⁶¹⁸ Jiang Benliang, *ibid*, at 140-144.

⁶¹⁹ *Renmin Ribao*, March 15, 16, 20, 23, 1988.

On March 24, the First Session of the Seventh NPC convened. It seemed to be undermined by an aspiration for more democracy. According to the Organic Law, a preparatory meeting was held first. As recommended by the Council of the Chairmen of the sixth NPCSC, a Presidium of 162 members was elected by the deputies in the meeting by hand voting⁶²⁰. However, when it came to discuss about the candidates for the NPC committees, deputies started to dissatisfy with the old age of some candidates, some against vote and abstentions were cast.⁶²¹

Dissatisfaction continued to develop. When the draft of 'Measures for Election' was given to deputies for deliberation after being approved by the Presidium in its second meeting held on March 28, some deputies had different opinions and put forward several pieces of suggestion. They suggested that joint nomination by deputies adopted in the election of local government leaders should also be used in the election of top governmental officials, such as the president; the election of officials should be separated from the NPC's decision on government officials at different times and by different procedures; it should be provided that when the nominated candidates win votes less than half of all deputies, new candidate should be nominated. In the Presidium's following meeting, the Presidium accepted the latter two suggestions, but rejected the first one on the ground that the Organic

⁶²⁰ *Renmin Ribao*, March 25th, 1988. However, an abstention had been missed during the vote counting, see Wu Kangmin, *Renda Huiyi Lu* [Memory of the People's Congress] (Hong Kong: Mingbao Chubanshe, 1990), at 180-181.

⁶²¹ Wu Kangmin, *ibid*, at 188.

Law did not provide that way of joint nomination.⁶²²

On April 5, the Presidium held its fourth meeting, in which a CPC Politburo member introduced the CPC's proposed list of names for top governmental positions to be elected by the NPC on behalf of the CPC. The Presidium accepted and turned it to the delegations for deliberation.⁶²³ Brief resumes of those candidates were also dispersed to deputies for reference. Although deputies could only know about the candidates by those few hundreds words in their resumes, they had been growingly complained about the old age of candidates of governmental leaders. To ensure satisfactory results, deputies were persuaded, and even disciplined, to cast accordingly.⁶²⁴

While deputies were deliberating inside the Great Hall, democracy was also voiced outside. The People's Daily published a letter from a Chinese citizen, complaining his dissatisfaction of the simple notification of election results and suggesting the NPC to announce the list of candidates to the public after being decided by the Presidium.⁶²⁵ However, such an appeal had not been accepted.

The NPC's election

On August 8, 2883 deputies gathered together in the morning and started to vote. According to the "Measures for Election", the presidential election was a

⁶²² *Renmin Ribao*, April 2, 1988.

⁶²³ *Renmin Ribao*, April 16th, 1988.

⁶²⁴ Wu Kangmin, *supra* note 620, at 141-142.

⁶²⁵ *Renmin Ribao*, April 6, 1988.

matching one.⁶²⁶ Voting was completed at about one hour later and the NPC adjourned, waiting for counting. Counting was delayed. Although abstention was allowed to cast in this election, but had to be counted by hand because it had not been programmed in the electronic calculator that were used to count votes for and against.⁶²⁷

When it came to announce the results, reporters and foreign diplomats were asked to step out⁶²⁸, and then the executive chairman of the Presidium declared the results. 2725 deputies voted for the only candidate, Yang Shangkun, with 124 against and 34 abstentions.⁶²⁹ Noticeably, the CPC's former General Secretary Hu Yaobang was also voted by 26 deputies as the president⁶³⁰.

According to the explanation made by the NPCSC's Committee of Legal Affairs on March 30, 1988, the candidate should win more than half votes from all deputies, if to be elected into office.⁶³¹ So Yang Shangkun was declared to win the election.⁶³² He would succeed Li Xiannian and be the fourth president.

⁶²⁶ Zhonghua Renmin Gongheguo Diqijie Quanguo Renmin Daibiao Dahui Diyici Huiyi Xuanju Banfa [Measures for Election for the First Session of the Seventh National People's Congress] (adopted at the First Session of the Seventh National People's Congress on April 2, 1988), art 4.

⁶²⁷ *Renmin Ribao*, April 9, 1988; Wu Kangmin, *supra* note 620, at 193.

⁶²⁸ Hu Yaobang also won 23 votes in the election of vice president, 9 and 18 votes respectively in the election of the NPC's chairman and vice-chairmen, 1 vote in election of chairman of Central Military Commission. See Wu Kangmin, *supra* note 620, at 194.

⁶²⁹ Yiu-Chung Wong, *From Deng Xiaoping to Jiang Zemin: Two Decades of Political Reform in the People's Republic of China* (Lanham, MD : University Press of America, 2005), at 102; Kevin J. O'Brien, *Reform Without Liberalization: China's National People's Congress and the Politics of Institutional Change* (New York : Cambridge University Press, 1990), at 142.

⁶³⁰ Wu Kangmin, *supra* note 620, at 195.

⁶³¹ Quanguo Renmin Daibiao Dahui Changwu Weiyuanhui Bangongting Yanjiu Shi (ed.), *supra* note 404, at 344-345.

⁶³² *Renmin Ribao*, April 9, 1988.

On the following day, President Yang Shangkun was also decided by the NPC as the vice-chairman of Central Military Commission, upon the nomination of Deng Xiaoping, who had been elected as the CMC chairman by the NPC on the previous day.⁶³³

On the closing day of the NPC, President Yang Shangkun delivered a speech, swearing that he would perform his constitutional power and function properly.⁶³⁴ This was the first time that the Chinese president had ever related himself to the constitution and made such announcement when being elected into office.

President Yang Shangkun in office from 1988 to 1993

His performances

In office, President Yang Shangkun had generally followed examples set by his predecessor and performed both his constitutional duties and those expanded services. In five years, he had issued 72 presidential orders, seven more than his predecessor, and in which 59 were to promulgate laws and 13 about official appointment and removal. He also received foreign guests, appointed or recalled Chinese representatives. Besides, he had paid state visits to a number of foreign countries⁶³⁵. About a dozen of special envoys had also

⁶³³ *Renmin Ribao*, April 9 and 10, 1988.

⁶³⁴ Yang Shangkun, "Zai Qijie Renda Yici Huiyi Shang Yang Shangkun Zhuxi De Jianghua" [Speech of President Yang Shangkun in the First Session of the Seventh National People's Congress], *Renmin Ribao*, April 14, 1988.

⁶³⁵ During his term of office, President Yang Shangkun had visited North Korea (1989 and 1992), Mexico(1989), Brazil(1989), Egypt (1989), Uruguay(1989), Argentina(1989), United Arab Emirates (1989), Kuwait (1989), Oman (1989), Chile(1989), Indonesia (1991), Thailand (1991), Mongolia (1991), Pakistan(1991), Iran(1991), Singapore (1992), Malaysia (1992),

been dispatched around the world⁶³⁶, etc.

However, if examined in details, new features can be found in President Yang Shangkun's performances. For example, the commitment to the constitution announced by him in his speech to the NPC was the first one. Such an emphasis paid to law was also evidenced by the presidential orders, which recorded an increase of 14 pieces of legislations promulgated. His state visits were limited to the third world countries. None of those special envoys had been deployed on his behalf; instead, all of them were either in the capacity of Chinese government or China. For the first time in Chinese history, President Yang Shangkun delivered New Year speeches through China International Broadcasting Station to its overseas audience in 1990 and 1991.⁶³⁷

Most notably, some practices can have substantial constitutional significance. The first one was concerned with the president's constitutional role in nominating the premier. On November 15, 1989, Premier Li Peng declared in a press conference that the vice premier Yao Yilin would act on his deputy when he went on overseas visit.⁶³⁸ Seemingly his arrangement had been accepted without any involvement of the president and even the NPC.⁶³⁹

Morocco(1992), Tunisia(1992), Côte d'Ivoire(1992).

⁶³⁶ *Renmin Ribao*, June 14, 22, July 9, September 15, 1988; July 1, 9, 1989; February 16, March 2, 13, 16, 17, 18, 22, 23, April 20, 30, July 20, 30, August 11, 1990; February 12, 15, 16, 17, 18, 19, 20, 23, 25, May 23, 25, 26, 27, August 20, 21, 1991; January 6, 7, 8, April 23, 26, November 27, 28, 29, 1992; May 7, 26, 27, July 30, November 9, 1993.

⁶³⁷ *Zhonghua Renmin Gongheguo Guowuyuan Gongbao* [Gazette of the State Council of the People's Republic of China, St. Council Gaz.], no. 1 (1991); no. 1 (1992).

⁶³⁸ *Renmin Ribao*, November 15, 1989.

⁶³⁹ *Renmin Ribao*, November 17, 1989.

This practice abbreviated that of the former case, in which the NPC accepted Zhao Ziyang's resignation from the premiership and his proposal of Li Peng as the deputy premier, both submitted to the NPC by President Li Xiannian. As a result, the president was further excluded in the appointment of deputy premier, which might conflict with the president's constitutional provision to nominate the premier.

Another issue was about the president's role in the conclusion of treaties and important agreements with other countries. Whereas President Li Xiannian had ratified the joint declarations between China and UK, Portugal respectively, President Yang Shangkun did not ratify any treaties during his term, despite that China had joined or approved a number of international or bilateral treaties in the same period of time⁶⁴⁰. On the other hand, President Yang Shangkun broke the long-time tradition established by Mao Zedong that no chairman or president had ever personally signed a treaty or important agreement concluded with a foreign country when he signed a joint declaration together with the visiting Turkmenistan president⁶⁴¹. But such a new practice of the president in foreign affairs by signing international document had no explicit constitutional authorization.

His political influence declined as the "house keeper"

In the CPC's thirteenth party congress held in 1982, in which Yang Shangkun

⁶⁴⁰ See *Standing Comm. Nat'l People's Cong. Gaz* during 1988 and 1993.

⁶⁴¹ *Renmin Ribao*, November 22, 24, 1992.

was elected into the Politburo, Deng Xiaoping's plan to rejuvenate the CPC had been further implemented. In the PSC, the second front, i.e., Deng Xiaoping, Chen Yun and Li Xiannian, had all retired, thus leaving the highest decision-making organ full of younger generations headed by the GS Zhao Ziyang, who was intended by Deng Xiaoping as his successor⁶⁴². As a result, President Yang Shangkun was different from his predecessor President Li Xiannian. Only being a Politburo member and not a part of the new highest decision-making organ, President Yang Shangkun could understandably have less involvement with the CPC's decision-making process. In particular, the Central Leading Group of Foreign Affairs was transferred from the hand of Li Xiannian to the new Premier Li Peng. For the first time in PRC history, the president lost control of the CPC's foreign policy formulation.

Compared with Li Xiannian, President Yang Shangkun's experience had also been rather limited to the party and military affairs, without taking any position in the government. Yang Shangkun joined the CPC as early as 1925 and had studied in the former Soviet Union. After returning to China in 1930, he became a leader in the Red Army. He went through the famous Long March, participated in 'Zunyi meeting' as one of the army leaders, among which others included Lin Biao and Peng Dehuai. Since 1945, Yang Shangkun had been put in charge of the office of CPCCC for twenty years, known as the "General House-keeper" of the CPCCC, until he was purged from office by

⁶⁴² Zhao Ziyang, *supra* note 620, at 74, 265-266.

Mao Zedong in 1965 well on eve of the Cultural Revolution.⁶⁴³

But President Yang Shangkun also had his own uniqueness. Although Deng Xiaoping retired from the PSC, he continued to take command of the military as the chairman of the CMC, whereas Zhao Ziyang, his chosen successor and the CPC's GS, served as the first vice chairman and President Yang Shangkun as the standing vice chairman. This was a deliberate arrangement. On the one hand, as Yang Shangkun was loyal to Deng Xiaoping, Deng Xiaoping could be assured with his guardian. On the other hand, Zhao Ziyang had no experience in the military, Yang Shangkun could give a hand to him to succeed Deng Xiaoping and take control of the military gradually. Therefore, while performing those ceremonial duties and not interfering with state affairs, President Yang Shangkun was commented to be influential in the military.⁶⁴⁴

Such a role of being “the house keeper” of President Yang Shangkun became much more apparent in the decision-making of the CPC when Zhao Ziyang was removed from office and Jiang Zeming took his place amid the political turbulence of June 4 movement. Since Jiang Zeming was decided as a result of the compromise between Deng Xiaoping and other old cadres, Deng Xiaoping could not give full trust to this new General Secretary. Before being picked up by those old cadres, Jiang Zeming had little working experience in the CPC's highest decision-making level. In view of this new

⁶⁴³ Yang Shangkun Tan Zai Zhongban Ershi Nian: Rang Wo Gan Shenme Jiu Gan Shenme [Yang Shangkun Talks about His Twenty Years Life in the Office of the CPCCC: Do What I am Told to Do], in <http://cpc.people.com.cn/GB/85037/85038/7656817.html>, last visited on November 28, 2009.

⁶⁴⁴ Gao Xin, *Jiang Zemin De Quanli Zhilu* [Jiang Zemin's Road to Power] (Hong Kong: Mingjing Chubanshe, 1997), at 181.

situation, the much more experienced President Yang Shangkun could be given new task, not only to help, but also to supervise Jiang Zeming on behalf of Deng Xiaoping. It was speculated that a secret consensus had been reached when Jiang Zeming's appointment as the GS was approved by the fourth Session of the thirteenth CPCCC, giving Yang Shangkun the privilege to attend all meeting of the new Politburo Standing Committee, which he had not belonged to.⁶⁴⁵ Such a prominence of President Yang Shangkun could also be sensed from the official reportages.⁶⁴⁶ Therefore, after Jiang Zeming replaced Zhao Ziyang, President Yang Shangkun earned extra influence in the new PSC.

But such implicit political influence of President Yang Shangkun did not last long as Jiang Zeming gradually took command. Power conflicts were rumored to break out between them.⁶⁴⁷ In the end, President Yang Shangkun lost his position in the Polibruo and military in the CPC's fourteenth congress held in 1993, thus being completely retired from the politics.

Conclusion

Constitutionally, the office of presidency enjoys a number of specified

⁶⁴⁵ Gao Xin, *ibid*, at 178.

⁶⁴⁶ Song Lijun, Yang Shangkun Yu Jinri Zhongguo: Yingxaing San Baiwan Dajun De Guojia Zhuxi" [Yang Shangkun and Today's China: A President Who Influences Three Million Soldiers], *Guangjiaojing Yuekan*, (September 1989): 14; Chen Xufei, "Junzhong Qiangren Yang Shangkun" [Strong Man in the Military Yang Shangkun], *Guangjiaojing Yuekan*, (September 1989): 21; Liang Dazhi, "Liangdao Paiming De Beihou" [Behind the Ranking of Leaders], *Guangjiaojing Yuekan*, (October 1989): 14.

⁶⁴⁷ See, for example, Gao Xin, *supra* 644, and Du Liln, *Jiang Zemin Zhuan* [Biography of Jiang Zemin] (Hong Kong: Mingjing Chubanshe, 1993).

ceremonial functions in China's domestic and foreign affairs. However, in practice, both presidents had expanded their activities far beyond those constitutional provisions and played a role of the head of state in Chinese diplomacy mostly by paying outbound and inviting inbound state visits.

But all these ceremonial activities could have political substance, depending on the holder's political power basically determined by his rank in the CPC's decision-making organs. Under special circumstance, such as President Yang Shangkun, he could exert extra influence in politics. As the presidency is not the focus of the CPC's decision-making, which had been taken place by the office of the CPC's GS, under Deng Xiaoping's theory of separating the party from the state, the presidency had been much more secure and stable, no matter compared with the two GS, i.e., Hu Yaobang and Zhao Ziyang, or the previous tragic chairman Liu Shaoqi.

President Jiang Zemin in Two Terms from 1993 to 2003

Institutional development of the presidency before 1993

Presidential election

Since the adoption of the constitution and the Organic Law of the NPC in 1982, a few more laws have been made regarding the presidential election, removal, resignation, ratification of foreign treaties and agreements before 1993, and the division of military power between the CMC and SC after 1993.

In 1989, the “Rules of Procedure for the National People Congress of the PRC” was adopted, which made several improvements to the presidential election required by the constitution and the Organic Law. First of all, a new requirement of information disclosure was newly provided, by which the nominator of candidates, i.e., the Presidium in the case of the presidential election, should give the NPC basic information of the candidate and make necessary explanations to questions raised by deputies⁶⁴⁸. Although what was the “basic information” was not defined in the law, understandably, that of the presidential candidate should at least include his age, nationality, legal capacity to stand for election, because these were required by the constitution.⁶⁴⁹

⁶⁴⁸ Rules of Procedure for the NPC (adopted by the Second Session of the Seventh National People’s Congress on April 4, 1989, promulgated by the Presidential Decree No 17 on April 4, 1989 and effective as of the same day), article 35.

⁶⁴⁹ Xianfa [constitution] (1982) (P.R.C.), article 79, paragraph 2.

Furthermore, the secret ballot was limited as the only voting method in the NPC'S election; as such, the ballot-writing place was required to be installed for deputies. To be elected into office, the presidential candidate had to win a simple majority of vote of all deputies; the outcome of election should be announced on the spot and the number of votes received by the candidate also had to be announced.⁶⁵⁰

Besides, as the past sixth and seventh NPC had made special legislation on the elections by their Presidiums respectively, the law also provided that specific measures for elections could be adopted by the NPC at a plenary meeting of the Session⁶⁵¹, so that the future NPC could follow these examples.

Removal of the presidency

Presidential removal was also further provided in this 1989 legislation. According to the previous Organic Law, three or more delegations or at least one-tenth deputies of the NPC may submit a proposal to the Presidium to remove the president from office, and the Presidium shall then put it to the NPC for deliberation.⁶⁵² Apart from them, the Presidium was also given the power to propose such a removal.⁶⁵³ It was also further required that such a

⁶⁵⁰ Rules of Procedure for the NPC (adopted at the Second Session of the Seventh National People's Congress on April 4, 1989, promulgated by the Presidential Decree No 17 on April 4, 1989 and effective as of the same day), article 36.

⁶⁵¹ Rules of Procedure for the NPC (adopted at the Second Session of the Seventh National People's Congress on April 4, 1989, promulgated by the Presidential Decree No 17 on April 4, 1989 and effective as of the same day), article 37.

⁶⁵² Rules of Procedure for the NPC (adopted at the Second Session of the Seventh National People's Congress on April 4, 1989, promulgated by the Presidential Decree No 17 on April 4, 1989 and effective as of the same day), article 15.

⁶⁵³ Rules of Procedure for the NPC (adopted at the Second Session of the Seventh National

proposal should give reasons and relevant information, and the person proposed to remove from office, for instance, the president, had the right to defend themselves at the meeting of the Presidium or plenary meeting, or present a written statement, which should be printed by the Presidium for distribution at the Session.

When receiving the proposal to remove the president, the Presidium could take two different options. The proposal could be either referred to the delegations for deliberation and then put it to vote at a plenary meeting of the NPC Session, or the Presidium could propose to the NPC plenary meeting setting up a "Committee of Inquiry into specific questions" (Committee of Inquiry).⁶⁵⁴ Such a Committee of Inquiry had been provided in the constitution⁶⁵⁵, and was also further stipulated in this 1989 law.⁶⁵⁶ Once established, this committee should submit an investigatory report to the next Session of the NPC who could make a resolution accordingly.⁶⁵⁷ When the NPC was not in session, the NPCSC could also make relevant resolution based on the committee's report, if with prior delegation from the NPC.⁶⁵⁸

People's Congress on April 4, 1989, promulgated by the Presidential Decree No 17 on April 4, 1989 and effective as of the same day), article 39.

⁶⁵⁴ Rules of Procedure for the NPC (adopted at the Second Session of the Seventh National People's Congress on April 4, 1989, promulgated by the Presidential Decree No 17 on April 4, 1989 and effective as of the same day), article 39.

⁶⁵⁵ Xianfa [constitution] (1982) (P.R.C.), article 71.

⁶⁵⁶ Rules Of Procedure for the NPC (adopted at the Second Session of the Seventh National People's Congress on April 4, 1989, promulgated by the Presidential Decree No 17 on April 4, 1989 and effective as of the same day), chapter 6.

⁶⁵⁷ Rules of Procedure for the NPC (adopted at the Second Session of the Seventh National People's Congress on April 4, 1989, promulgated by the Presidential Decree No 17 on April 4, 1989 and effective as of the same day), article 48, paragraph 1.

⁶⁵⁸ Rules of Procedure for the NPC (adopted at the Second Session of the Seventh National People's Congress on April 4, 1989, promulgated by the Presidential Decree No 17 on April 4, 1989 and effective as of the same day), article 48, paragraph 2.

Such resolutions can be adopted by a simple majority vote of all the NPC deputies.⁶⁵⁹

Resignation of the presidency

Although the constitution does not mention the resignation of government officials, it did happen in 1987 when Zhao Ziyang resigned from the premiership to succeed Hu Yaobang as the CPC's GS. Possibly to make up, the NPC Rules of Procedure newly provided an exit for top government officials, including the president, vice-president and the chairman of the Central Military Commission. To resign from office, the president should submit his resignation to the Presidium if the NPC was in session, which then should turn it to the delegations and plenary meeting of the NPC for decision. If the NPC is not in session, the president's resignation should be given to the Council of the Chairman of the NPCSC, which then forwards it to the NPCSC for decision. If the NPCSC decides to accept his resignation, such a decision has to be confirmed by the next Session of the NPC afterwards.⁶⁶⁰

Compared with the removal stipulations, there is a difference implied by law. While the president can file his resignation anytime, no matter whether the NPC is in session or not, he can only be removed when the NPC was in session. According to the 1989 legislation, the Presidium is crucial to the

⁶⁵⁹ Xianfa [constitution] (1982) (P.R.C.), art 64, paragraph 2.

⁶⁶⁰ Rules of Procedure for the NPC (adopted at the Second Session of the Seventh National People's Congress on April 4, 1989, promulgated by the Presidential Decree No 17 on April 4, 1989 and effective as of the same day), article 38.

presidential removal. As it could only be formed in a plenary meeting of the NPC session, it is implied that the president could only be removed from office when the NPC is convened for a plenary meeting.

Presidential ratification of international treaties and agreements

The constitution provides that the president ratifies or abrogates “treaties and important agreements” concluded with foreign states, pursuant to the decisions of the NPCSC⁶⁶¹, but it does not specify what kind of treaties and agreements are important and have to be decided by the NPCSC and by what procedure the president can ratify them. In 1990, the Law on the Procedure of the Conclusion of Treaties was adopted, clarified uncertainties in these regard on one hand, and created new questions, on the other hand.

According to this law, it was enacted in accordance with the constitution and applicable to bilateral or multilateral treaties and agreements and other instruments of the nature of a treaty or agreement concluded between the PRC and foreign states.⁶⁶² “treaties and important agreements” to be decided by the NPCSC is defined to include mainly five categories, including those of a political nature, relating to territory and boundary lines, to judicial assistance and extradition, containing inconsistent stipulations with Chinese laws, and

⁶⁶¹ Xianfa [constitution] (1982) (P.R.C.), article 81.

⁶⁶² Zhonghua Renmin Gongheguo Dijie Tiaoyue Chengxu Fa [Law on the Procedure of the Conclusion of Treaties] (adopted at the 17th Meeting of the Standing Committee of the Seventh National People's Congress on December 28, 1990, promulgated by Order No. 37 of the President of the People's Republic of China on December 28, 1990, and effective as of the same date) (P.R.C.), art 1, 2.

those subject to ratification, etc.⁶⁶³ In particular, the term of “treaties” was defined by drafters as any written documents concluded between international law subjects about their rights and obligations based on international law, such as charter, statute, Memo of Understanding, joint statement and exchange of notes, etc, the nature of which was decided by its content rather than its form or name.⁶⁶⁴

To be signed by the president, the treaty or important agreement should first be examined and verified by the State Council, after which it should be referred to the NPCSC for decision on ratification. Upon such a decision, the president gives his ratification to it. Notably, the instrument of ratification signed by the president should be countersigned by the Minister of Foreign Affairs.⁶⁶⁵ However, if a multilateral treaty or important agreements falls into the scope of those five categories, the accession to it should be decided the NPCSC, and the instrument of accession for that treaty or important agreement would be signed by the Minister of the Foreign Affairs alone, without involving the president.⁶⁶⁶ Therefore, all those “treaties and important

⁶⁶³ Zhonghua Renmin Gongheguo Dijie Tiaoyue Chengxu Fa [Law on the Procedure of the Conclusion of Treaties] (adopted at the 17th Meeting of the Standing Committee of the Seventh National People's Congress on December 28, 1990, promulgated by Order No. 37 of the President of the People's Republic of China on December 28, 1990, and effective as of the same date) (P.R.C.), art 7, paragraph 2.

⁶⁶⁴ Qian Qichen, Guanyu Zhonghua Renmin Gongheguo Dijie Tiaoyue Chengxu Fa (Caoan) De Shuoming [Explanation to the Law on the Procedure of the Conclusion of Treaties of the People's Republic of China (draft)], *Standing Comm. Nat'l People's Cong. Gaz*, No. ? (1990).

⁶⁶⁵ Zhonghua Renmin Gongheguo Dijie Tiaoyue Chengxu Fa [Law on the Procedure of the Conclusion of Treaties] (adopted at the 17th Meeting of the Standing Committee of the Seventh National People's Congress on December 28, 1990, promulgated by Order No. 37 of the President of the People's Republic of China on December 28, 1990, and effective as of the same date) (P.R.C.), art 7.

⁶⁶⁶ Zhonghua Renmin Gongheguo Dijie Tiaoyue Chengxu Fa [Law on the Procedure of the Conclusion of Treaties] (adopted at the 17th Meeting of the Standing Committee of the Seventh National People's Congress on December 28, 1990, promulgated by Order No. 37 of

agreements” decided by the NPCSC and published in its Gazette are divided into two groups, i.e., those to ratify or to accede⁶⁶⁷, and the president only has to ratify and sign on those bilateral “treaties and important agreements”.

It was also intended by the drafter that the treaty and agreement could be concluded in the name of Chinese president; representatives for negotiating and signing treaties and agreements could be appointed by the president; the president could be dispensed with full power for negotiating and signing treaties and agreements.⁶⁶⁸ However, the new roles of the president given in the draft would be in conflict with the constitution, because the constitution mentions nothing else for the president in the conclusion of international treaties and agreements, except to ratify upon decision by the NPCSC. Besides, the constitution used the phrase of “treaties and agreements”, instead of the word “treaties”. Therefore, possibly to avoid these violations, relevant stipulations were revised when the law was adopted in 1990. Except for the role to ratify, the law mentions nothing else for the president in the conclusion of treaties and agreements. For example, he could not conclude any treaty or agreement in his own name;⁶⁶⁹ neither could he appoint any representative for

the President of the People's Republic of China on December 28, 1990, and effective as of the same date) (P.R.C.), art 11.

⁶⁶⁷ *Zhonghua Renmin Gongheguo Dijie Tiaoyue Chengxu Fa* [Law on the Procedure of the Conclusion of Treaties] (adopted at the 17th Meeting of the Standing Committee of the Seventh National People's Congress on December 28, 1990, promulgated by Order No. 37 of the President of the People's Republic of China on December 28, 1990, and effective as of the same date) (P.R.C.), art 15.

⁶⁶⁸ Qian Qichen, *Guanyu Zhonghua Renmin Gongheguo Dijie Tiaoyue Chengxu Fa (Caoan) De Shuoming* [Explanation to the Law on the Procedure of the Conclusion of Treaties of the People's Republic of China (draft)], *Standing Comm. Nat'l People's Cong. Gaz.*, No. 12 (1990).

⁶⁶⁹ *Zhonghua Renmin Gongheguo Dijie Tiaoyue Chengxu Fa* [Law on the Procedure of the Conclusion of Treaties] (adopted at the 17th Meeting of the Standing Committee of the

negotiating and signing treaties and agreements.⁶⁷⁰

However, there is also vagueness in this law. One is concerned with whether the president could negotiate and sign treaties and agreements. Seemingly the law finally adopted followed the model of the constitution and did not include clearly the president in the list of persons who had full powers to conduct negotiation and signing. But it was also provided that “the person, dispatched to an international conference or accredited to an international organization by the People’s Republic of China, who is at the same time the representative for negotiating treaties or agreements in that conference or organization, unless it is other wise agreed by the conference or otherwise provided for in the constitution of the organization” had the full power to negotiate and sign treaties and agreements⁶⁷¹. As a result, the president could be construed to be that person, if without regard to the constitution.

If to avoid the constitutional concern, there is another way for the president to negotiate and sign treaties and agreements. According to that law, for treaties and agreements concluded in the name of the PRC or the government of the PRC, representatives for negotiating and signing should be decided by

Seventh National People's Congress on December 28, 1990, promulgated by Order No. 37 of the President of the People's Republic of China on December 28, 1990, and effective as of the same date) (P.R.C.), art 4.

⁶⁷⁰ Zhonghua Renmin Gongheguo Dijie Tiaoyue Chengxu Fa [Law on the Procedure of the Conclusion of Treaties] (adopted at the 17th Meeting of the Standing Committee of the Seventh National People's Congress on December 28, 1990, promulgated by Order No. 37 of the President of the People's Republic of China on December 28, 1990, and effective as of the same date) (P.R.C.), art 6.

⁶⁷¹ Zhonghua Renmin Gongheguo Dijie Tiaoyue Chengxu Fa [Law on the Procedure of the Conclusion of Treaties] (adopted at the 17th Meeting of the Standing Committee of the Seventh National People's Congress on December 28, 1990, promulgated by Order No. 37 of the President of the People's Republic of China on December 28, 1990, and effective as of the same date) (P.R.C.), art 6, paragraph 2, subparagraph 4.

the State Council, and their full powers should be assigned by the premier or the Minister of Foreign Affairs. Hence, if the president was to negotiate or sign any treaties or agreements, the president had to obtain full powers from the premier or the Foreign Minister. In this case, the constitution could not be violated.

One more uncertainty in that law is related to documents that were not titled as “treaty” or “agreement”, such as joint statement, communiqué, manifesto, etc. Although it is scholarly recognized that they could be treaty or agreement⁶⁷², depending on the nature of their content, whether they should be decided by the NPCSC and ratified by the president still remains unclear. According to that law, if they were not concerned with political issues such as friendly relations with other countries, peace agreement, or boundary, judicial assistance, etc, they could be excluded from the NPCSC decision;⁶⁷³ but they could have to be included if they belonged to those “subject to ratification”⁶⁷⁴. In practice, only two joint statements that China had entered with Britain and Portugal respectively on Hong Kong and Macau issue had been decided by the NPCSC and ratified by President Li Xiannian.

⁶⁷² Ling Bing, *Zhongri Donghai Wenti Yuanze Gongshi De Guojifa Xiaoli* [the International Law Effect of Principal Consensus Between China and Japan on Issues concerning East China Sea], unpublished working paper.

⁶⁷³ *Zhonghua Renmin Gongheguo Dijie Tiaoyue Chengxu Fa* [Law on the Procedure of the Conclusion of Treaties] (adopted at the 17th Meeting of the Standing Committee of the Seventh National People's Congress on December 28, 1990, promulgated by Order No. 37 of the President of the People's Republic of China on December 28, 1990, and effective as of the same date) (P.R.C.), art 7, paragraph 2, subparagraph 1, 2, 3, 4, 5.

⁶⁷⁴ *Zhonghua Renmin Gongheguo Dijie Tiaoyue Chengxu Fa* [Law on the Procedure of the Conclusion of Treaties] (adopted at the 17th Meeting of the Standing Committee of the Seventh National People's Congress on December 28, 1990, promulgated by Order No. 37 of the President of the People's Republic of China on December 28, 1990, and effective as of the same date) (P.R.C.), art 7, paragraph 2, subparagraph 6.

The formation of President Jiang Zemin as “the core of leadership”

Jiang Zemin elected as the president and chairman of the CMC

With the old president Yang Shangkun retired from the Politburo in the CPC’s fourteenth congress, it became clear that the old “house keeper” could not take the second term in the office of the president. Then who would be the successor?

According to official reports, this issue had been considered by the CPC well before the fourteenth congress, and after the congress a preliminary plan was proposed for candidates for the top government posts and other high level officials after “repeated consideration and consultation by the PSC and discussion by the Politburo meeting”; on March 4, 1993, the CPC’s GS Jiang Zemin personally met with some **“well respected old comrades who had retired from the leading positions”** about the plan, and they “completely agreed with it”; several days’ later, the plan was further consulted by the CPC with non-CPC people and endorsed by the CPC’s Central Committee.⁶⁷⁵

On March 24, on behalf of the CPC, Hu Jjintao, then a PSC member and the standing chairman of the Presidium of the First Session of the Eighth NPC concurrently, filed this plan to the Presidium, who decided to accept and deliver it to the NPC delegations for consideration.⁶⁷⁶ After one day’s consideration by delegations, the Presidium adopted this plan as the final one

⁶⁷⁵ *Renmin Ribao*, April 1, 1993.

⁶⁷⁶ *Ibid.*

and decided to put it to vote.⁶⁷⁷ On the 27th, Jiang Zemin was elected by the Eighth NPC as the new president and the chairman of the CMC by 2858 and 2894 votes respectively out of all 2921 deputies present.⁶⁷⁸ Being elected into office, Jiang Zemin said he would perform those duties and responsibilities delegated by the constitution loyally.⁶⁷⁹

From “separating the party and the state” to “the core of leadership” According to the “Measures for Election and Decisions on Appointment” adopted by the Eighth NPC, in the presidential election, the number of the candidate should be equal to the number of person to be elected⁶⁸⁰, which meant that Jiang Zemin was the only candidate for the presidential election. Based on the official report, it seemed that the CPC’s PSC proposed Jiang Zemin as the only presidential candidate. The official report did not mention how the Politburo and its Standing Committee made such a decision, but a Hong Kong media outlet said that it was decided by the voting of the nineteen-member Politburo in a meeting held on February 11th, 1993, which 17 members attended and 15 were in favor of Jiang Zemin.⁶⁸¹

However, Jiang Zemin was said not to be the only one who had been interested in the presidency. Except him, several other people, such as Li

⁶⁷⁷ *Renmin Ribao*, March 27, 1993.

⁶⁷⁸ *Renmin Ribao*, March 28, 1993.

⁶⁷⁹ *Renmin Ribao*, April 1, 1993.

⁶⁸⁰ *Renmin Ribao*, March 21, 1993.

⁶⁸¹ Luo Bing, “Renda Qianxi De Renshi Dazhan” [Personnel War before the Eve of the People’s Congress], *Zhengming*, (March 1993): 6-8. However, the CPC’s Politburo elected by the 14th Central Committee had 20 members.

Peng⁶⁸², Qiao Shi⁶⁸³, Wang Zhen⁶⁸⁴, had been said to be competing for this post by some political biographers and reporters. Therefore, the “agreement” of those old cadres, especially Deng Xiaoping, must be very crucial. Without their approval, the Politburo’s proposal for Jiang Zemin could have met strong oppositions.

Such a choice meant a significant change of the CPC’s relation to the state apparatus. According to Deng Xiaoping’s theory of separating the party from the state⁶⁸⁵, the CPC should not take place of the state apparatus. Instead, divisions should be drawn between them. As an effort for this purpose, a series of measures had been taken⁶⁸⁶, including those important political positions had been put into different hands, such as the military chairman taken by Deng Xiaoping, the CPC’s GS taken by Hu Yaobang and Zhao Ziyang, the premiership by Zhao Ziyang and Li Peng, and the presidency by Li Xiannian and Yang Shangkun. But the election of Jiang Zemin into the presidency terminated these practices.⁶⁸⁷ By then, he had held three of them concurrently,

⁶⁸² Yang Bingzhang, *Xiaoping Dazhuan* [Biograph of Xiaoping] (Hong Kong: Shidai Guoji Chuban Youxian Gongsì, 2004), at 320.

⁶⁸³ Luo Bing, “Shisi Da Dengceng Renxuan Niding” [Candidates for Top Officials of the Cpc’s Fourteenth Congress Decided], *Zhengming*, (September 1992): 6-8.

⁶⁸⁴ Du Lin, Yang Mindi (trans.), *Jiang Zemin Zhuan* [Biograph of Jiang Zemin] (Hong Kong: Mingjing Chubanshe, 1999), at 279.

⁶⁸⁵ For study about Deng Xiaoping’s theory of separating the state from the party, see Chen Yizi, *The Decision Process behind the 1986-1989 Political Reforms*, in Carol Lee Hamrin and Suisheng Zhao (eds.), *Decision-Making in Deng’s China: Perspectives from Insiders* (Armonk,N.Y.: M.E. Sharpe, 1995), at 135-139; Hsiao Pen, *Separating the Party from the Government*, in Carol Lee Hamrin and Suisheng Zhao (eds.), *Decision-Making in Deng’s China: Perspectives from Insiders* (Armonk,N.Y.: M.E. Sharpe, 1995), at 153-163.

⁶⁸⁶ Yan Ying, *Zhongguo Gongchandang Lingdao Tizhi De Lishi Yanbian* [Evolution of the CPC’s Leadership System] (Beijing: Zhonggong Dangshi Chubanshe, 2007), at 252-254.

⁶⁸⁷ Kou Jianwen: *Zhonggong Jingying Zhengzhi De Yanbian: Zhidu Hua Yu Quanli Zhuanyi 1978-2004* [Evolution of the CPC’s Elite Politics: Institutionalization and Transfer of Power 1978-2004] (Taiwan: Wunan Tushu Gufen Youxian Gongsì, 2005), at 141.

i.e., the CPC's GS, the presidency and the chairman of the CMC.

Why would those old cadres, Deng Xiaoping in particular, favor such a new formula? As matter of fact, there had been signs moving toward this way as early as in the spring of 1989, when Deng Xiaoping had intended to take action to strengthen the power of the GS Zhao Ziyang. He had considered resigning the military chairmanship and letting Zhao Ziyang take it. By so doing, he wished he could set an example of complete retirement for other old cadres to follow and Zhao Ziyang could have more political authority in the CPC's decision-making by commanding the armed forces. But Zhao Ziyang opposed to it, Deng Xiaoping did not take his action.⁶⁸⁸

Deng Xiaoping's such an idea should have been reinforced by the June 4 movement taking place several months later. During the movement, there had been attempt to convene the NPCSC to overthrow Deng Xiaoping's decision to use military force against the students,⁶⁸⁹ but failed as the NPCSC chairman Wan Li, who was then a Politburo member and been in favor of the students⁶⁹⁰, had not returned from his visit to Canada in time to convene the NPCSC meeting. President Yang Shangkun, also a Politburo member, had also originally been against the use of force, and had not changed his position until Deng Xiaoping made up his mind.⁶⁹¹ For Deng Xiaoping and other CPC's old cadres, these could have suggested a challenge from the state apparatus that

⁶⁸⁸ Zhao Ziyang, *supra* note 620, at 74, 265-266.

⁶⁸⁹ Zhao Ziyang, *ibid*, at 52-53.

⁶⁹⁰ Zhao Ziyang, *ibid*, at 41.

⁶⁹¹ Zong Fengming (ed.), *Zhao Ziyang Ruanjing Zhong De Tanhua* [Zhao Ziyang: Captive Conversations] (Hong Kong: Kaifang Chubanshe, 2007), at 54-55.

had been separated from the party under the theory of separating the state from the party. While the state apparatus obtained certain autonomy from the CPC, it could seek to achieve greater independence from the CPC, which would ultimately conflict with the CPC's leadership over the state. Thus in their views, separation of the state from the party had to be ended and both the CPC and state had to be merged together once again. To concentrate the state power into the hands of the CPC, the CPC had to tighten its hold on the state apparatus, i.e., putting the state post directly into the hands of the PSC members instead of the Politburo members. As Jiang Zemin justified for such a new practice later after the June 4 movement, the CPC's leadership over the state would not be realized if without the CPC's political leadership over the state apparatus.⁶⁹²

But this could have not been enough for Deng Xiaoping, a strong man who preferred concentration of power into one hand⁶⁹³. He could have wanted a leader like himself. Just when Jiang Zemin was designated as the new GS in June, 1989, Deng Xiaoping lectured his new PSC members that:

“Our party has to establish the third generation leading group from now on. Any leading group needs to have a core (“hexin”, in Chinese),

⁶⁹² Jiang Zemin, *Jiang Zemin Wenxuan* [Selected Works of Jiang Zemin] (Beijing: Renmin Chubanshe, 2006), vol.1, at 112.

⁶⁹³ Zhao Ziyang thought Deng Xiaoping preferred the concentration of power so that things could be done effectively. In particular, he indicated that Deng Xiaoping had once told Chen Yun that there should only one “mother in law” (“Popo” in Chinese) within the CPC leadership, meaning that power should not be shared and Deng Xiaoping should be the one who made the final decisions. See Zong Fengming, *supra* note 687, at 74.

without which its leadership would be unreliable. The core of the first generation leading group had been Chairman Mao, and that of the second generation leading group is in fact me. The third generation leading group must also have one, which should be comrade Jiang Zemin who all of you have accepted.”⁶⁹⁴

Deng Xiaoping not just paid his lips. Five months later after Jiang Zemin took the office of the CPC’s GS, Deng Xiaoping also carried out his original plan to resign from the military chairmanship of the CPC and state that he had not had the opportunity to carry out and Jiang Zemin took both of them. In the fourteenth party congress held in 1992, not only Jiang Zemin was decided to continue in the offices of the GS and the CPC’s military chairman, his major political opponents were removed from power, such as Yang Shangkun, but also the Central Consultative Committee, the power base of the retired second front cadres, was abolished. As a result, before being elected as the president and the chairman of the state CMC, Jiang Zemin alone had held two most critical posts in the party and fairly erected his status within the CPC as Deng Xiaoping’s successor⁶⁹⁵.

However, both posts had their own limitations. When the CPC was separated from the state, the GS had been an awkward position for Hu

⁶⁹⁴ Zhonggong Zhongyang Wenxain Yanjiu Shi (ed.), *supra* note 508, at 1281.

⁶⁹⁵ Robert Lawrence Kuhn, Tan Zheng and Yu Haijiang et al (trans.), *Ta Gaibian Le Zhongguo Jiang Zemin Zhuan* [the Man Who Changed China: the Life and Legacy of Jiang Zemin] (Shanghai: Shanghai Yiwu Chubanshe, 2005), at 184-185.

Yaobang and Zhao Ziyang, both of who had been prevented from involving with the State Council's decision-making on economic affairs⁶⁹⁶. Although the state would no longer be separated from the CPC, the GS would still have difficulties in having his policies implemented by the government, if without a stake in the government. As the authority of the military commander was mainly in the armed forces, it could only facilitate the implementation in the military field of policies promoted by the GS. In other words, the General Secretary, who was supposed to be the main speaker of the CPC's ideologies and Deng Xiaoping's reform and open-door policy, still needed other ways to ensure better implementation of his policies in civil administration dominated by the State Council.

The presidency just could help with its political potentials and constitutional stipulations. By taking this office, the General Secretary would have a platform to voice his policies in the government, which surely would have an impact on domestic politics in an increasingly globalized country so that the GS could have a chance to interfere with the decision-making of the civil administration. More importantly, although the economic development would be the first priority for Jiang Zemin to strive for, the president had become increasingly active in China's foreign exchanges, as evidenced by performances of Li Xiannian and Yang Shangkun, and would become more and more important as China's going globally, as suggested by the American

⁶⁹⁶ About Deng Xiaoping's settling disputes within the CPC Politburo Standing Committee, see Zong Fengming, *supra* note 687, at 139-140; Zhao Ziyang, *supra* note 620, at 257-258.

presidency. In one word, the presidency would grow into some office with greater significance. Besides, according to the constitution, the president took no responsibility for at least any civil administration, which was in agreement with Chinese traditions that the family head and supreme leader of the nation should hold no responsibility for their actions and the supreme state power be exercised secretly.

Personally, Jiang Zemin surely wanted this post. Before putting into the position of the CPC's GS, neither Jiang Zemin had much experience in the CPC's highest decision-making level, not had he commanded any army and won any battles. He was completely different from his predecessors, like Mao Zedong and Deng Xiaoping. If without the support of those old cadres, he could not have been hold on in Beijing for long⁶⁹⁷. But with the gone of those old cadres, how could he manage if without enough political authority, which could only be supplied more by those institutions rather than his insufficient experiences? Therefore, supported by the old cadres and with his own efforts, Jiang Zemin, "the core of leadership", finally became the president.⁶⁹⁸

What powers could "the core" have?

Wearing four hats, what could "the core of leadership" mean to President Jiang Zemin? Constitutionally, whereas the presidency was considered as a figure one, the office of the military chairmanship had been substantial. As the

⁶⁹⁷ Jiang Zeming and his family had worried about this before deciding to go to Beijing. See Robert Lawrence Kuhn, *supra* note 695, at 143 – 144.

⁶⁹⁸ Zong Fengming, *supra* note 687, at 241.

military commander, he could have full power in the direction of the armed forces. Politically, he was both the GS and a PSC member of the CPC. As the GS, he could lead the working of the Central Secretariat, convene meetings of the Politburo and its Standing Committee, and set schedules for these meetings. As a PSC member, he would work jointly with his colleagues based on the principal of democratic centralism and take charge of those areas of works that were divided to him. Except these, neither the state constitution nor the CPC's constitution had ever mentioned "the core of leadership".

According to Deng Xiaoping's lecture, Jiang Zemin should be someone similar to Mao Zedong and him. Apart from the lecture of "the core of leadership", Deng Xiaoping was said to make another one to Jiang Zemin as following:

"When Chairman Mao was alive, his words were the final decision; when I was alive, my words were the final decision. I will feel assured when your words were the final decision."⁶⁹⁹

If this story was true, then in Deng Xiaoping's mind, the core of leadership could have meant someone who could make the final decision, and intended Jiang Zemin to be that person. However, in reality, Deng Xiaoping was different from Mao Zedong in their ways of making final decisions. After

⁶⁹⁹ Zong Fengming, *supra* note 687, at 75.

taking the CPC's chairmanship, Mao Zedong had held the offices of the CPC's chairman and chairman of the CMC for the rest of his life, even if he retired from the state chairmanship. As the CPC's chairman, Mao Zedong had enjoyed "the power of last say", a privilege to veto all decisions made by his colleagues, including the second state chairman Liu Shaoqi. Since 1958, his chairmanship had gone so far as to become personal tyranny.

Compared with Chairman Mao Zedong, Deng Xiaoping's authority had been discounted. On one hand, he could have wanted to follow the example of Mao Zedong, but had to make compromises with, even concessions to, other old cadres on major issues. On the other hand, after he completely retired from all political positions, Deng Xiaoping had still remained in control on major issues for a certain period of time.

According to the official reportage on the fourth Session of the fourteenth CPC Central Committee held on the latter half of September of that year, the CPC's central leadership had completed the transition from the second generation to the third one⁷⁰⁰. This was construed by outsiders that Deng Xiaoping had finally relieved the control to Jiang Zemin.⁷⁰¹ Since then and till to his death in February of 1997, Deng Xiaoping was said to restrain himself from interfering with the new leaders, except in rare occasions, such as the Sino-US relations⁷⁰². Therefore, Jiang Zemin and his young PSC

⁷⁰⁰ See <http://cpc.people.com.cn/GB/64162/64168/64567/65396/4441762.html>, last visited on September 25, 2009.

⁷⁰¹ Gao Xin, *supra* note 644, at 215-219; Du Llin, *supra* note 683, at 321-322; Robert Lawrence Kuhn, *supra* note 695, at 208-215.

⁷⁰² Robert Lawrence Kuhn, *supra* note 695, at 219.

colleagues had not obtained their autonomy from the control of Deng Xiaoping approximately until he could not be able to do so physically.

Then which example should Jiang Zemin follow as the core of leadership? Jiang Zemin could have thought about Mao Zedong. It was said that during that the preparation for the fifteenth party congress held in 1997, the CPC's chairmanship that had been established by Mao Zedong and abolished by Deng Xiaoping had been suggested to restore for Jiang Zemin⁷⁰³. This was a sign that President Jiang Zemin had fairly consolidated his position since he started to work independently as the core of leadership and his influence had developed to the extent that he could be able to follow the example of Mao Zedong if he succeeded. But this suggestion did not come true in the 15th party congress. The chairmanship was not restored and Jiang Zemin was only decided for the second time as the CPC's GS and the military chairman. It was said that it failed mainly due to oppositions from some old cadres who were still alive then and feared the chairmanship might put the collective leadership in risk.⁷⁰⁴ As a result, President Jiang Zemin had to maintain his status quo. In the next year, he was elected for a second term in the presidency and chairman of the CMC by the new NPC.⁷⁰⁵

As a result, Jiang Zemin had left with one example: Deng Xiaoping. Then it comes to three fundamental questions: when could Jiang Zemin become independent from the influence of the second front, i.e., those old carders

⁷⁰³ Zong Fengming, *supra* note 687, at 227; Du Lin, *supra* note 683, at 421.

⁷⁰⁴ Du Lin, *supra* note 683, at 422.

⁷⁰⁵ *Renmin Ribao*, March 17, 1993.

represented by Deng Xiaoping? Could Jiang Zemin have the power to veto decisions made by his PSC colleagues? And could Jiang Zemin still remain control after he retired from offices? Whereas the first question had been answered by Deng Xiaoping with his own self-restraint, answers to the second question remains unknown, and to the third has to wait for.

President Jiang Zemin's performance in ten years

His fulfillment of constitutional duties

During his two terms in office, President Jiang Zemin issued 181 orders, 94 in the first term and 87 in the second term respectively, all of which either promulgated laws or official appointments and removals. No other usages had been found in these presidential orders. Therefore, it seemed that the usage of the presidential order had been stabilized for these two purposes.

As provided by the constitution, the president also had to ratify the conclusion of international treaties and important agreements based on the NPCSC decision. Although China had entered many treaties and agreements during the time when Li Xiannian and Yang Shangkun took office, no instruments of ratification had ever been published. Jiang Zemin followed their practice and no instruments of ratification had been found in public, except one occasion. In 2002, a piece of instrument of ratification ratified by him was published.⁷⁰⁶ The instrument dated on November 1, 2001 was signed

⁷⁰⁶ *Standing Comm. Nat'l People's Cong. Gaz.*, special edition, 2002.

by him and countersigned by the Chinese Foreign Minister, ratifying the treaty of China's entry into the World Trade Organization, which was to be signed by Shi Guangsheng, Chinese plenary representative and then Chinese Minister of Foreign Trade and Economic Cooperation, on November 11, 2001. This was a rare case⁷⁰⁷, except which no other instrument of ratification had been published during Jiang Zemin's time.

“Diplomacy by the head of state” of President Jiang Zemin

(1) His unprecedented scale of “diplomacy by the head of state”

The practice of “diplomacy by the head of state”⁷⁰⁸ had not been new to China. Since the founding of the PRC, each Chinese chairman and president had conducted diplomacy, such as paying state visits to other countries. However, no one could compare with President Jiang Zemin no matter in terms of scale or influence.

Up till now, Jiang Zemin was the Chinese president who visited the most countries. Chairman Mao Zedong had gone abroad twice and both of them were to the former Soviet Union. The second chairman Liu Shaoqi had been visited more countries than his predecessor, but only limited to the third world countries. Since 1983, the amount of foreign countries visited by Chinese

⁷⁰⁷ For discussion about this case, see Professor Ling Bing's lecture at the Chinese University of Hong Kong.

⁷⁰⁸ For study on “diplomacy by the head of state”, see David H. Dunn (Ed.), *Diplomacy at the Highest Level: the Evolution of International Summitry* (London: macmillan, 1996), at 3-37; G. R. Berridge, *Diplomacy: Theory and Practice* (New York: Prentice Hall, 1995), at 78-96; Elmer Plischke, *Diplomat in Chief: the President at the Summit* (New York: Praeger Publishers, 1986), at 1-17.

presidents had been in steady rising. President Li Xiannian visited 22 countries and extended his diplomacy to the developed countries, including the United States and some Western European countries. Although China was boycotted by the developed countries as a result of June 4 movement, President Yang Shangkun still visited about 20 countries so that the scale of foreign exchange was largely maintained. But even if they were summed up, they could not compare with President Jiang Zemin.

During ten years in offices, he not only visited more than 70 countries, covering all continents on earth, but also attended some major international meetings held by important regional and international organizations. For example, he attended the UN Summit and initiated the first meeting by the five head of states of the UN Security Council member states⁷⁰⁹; he was the only head of state who attended those annual meetings of Asian and Arctic Cooperation Organization for ten consecutive years⁷¹⁰. In particular, during his time, a new regional organization was given birth, i.e., Shanghai Cooperation Organization, whose founding members included China, Russia, and three other countries in Central Asia.

(2) His substantial influence in “diplomacy by the head of state”

Being different from Li Xiannian and Yang Shangkun, President Jiang Zemin

⁷⁰⁹ Zhong Zhicheng, *Weile Shijie Geng Meihao: Jiang Zemin Chufang Jishi* [for a Better World: Documentary of Jiang Zemin's Foreign Visits] (Beijing: Shijie Zhishi Chubanshe, 2006), at 477-478.

⁷¹⁰ Zhong Zhicheng, *ibid*, at 652.

had been the core of the CPC's leadership; he also sole commanded the armed forces constitutionally. Therefore, he was the most politically important person in China, thus making his diplomacy much more decisive than his two predecessors. According to the CPC's principal of democratic centralism, every PSC member would normally take responsibility for certain areas of state affairs, normally by leading the CPC's Central Leading Groups. It was said that after the CPC's fourteenth congress, the CPC's Central Leading Group of Foreign Affairs (CLGFA) had been put under Jiang Zemin's charge⁷¹¹. Previously it had been led by Premier Li Peng. In this case, he could exercise direct control over the implementation of Chinese foreign policies, suggesting the dominance over Chinese foreign policy had transferred from the State Council to the presidency.

One example can best illustrate such a dominant influence exerted by President Jiang Zemin in his conduction of diplomacy. From December 12 to 13, 2001, President Jiang Zemin spent two days' visit to Myanmar. On the second day, news came that the United State would soon declare to withdraw from the anti-missile treaty it concluded with the former Soviet Union in 1972, for which both the United State President Bush and the Russian President Putin wanted to hold an emergent talk with President Jiang Zemin through

⁷¹¹ Robert Lawrence Kuhn, *supra* note 695, at 185. According to this author, Jiang Zemin also took charge of two other Central Leading Small Groups on economic affairs and Taiwan issue. However, there is another opinion that it was Li Peng who took charge of the Central Leading Small Group on Foreign Affairs and Jiang Zemin led other three groups, i.e., Taiwan issue, financial and economic affairs, and judicial affairs. See Du Lin, *supra* note 683, at 278. The third opinion held that Jjiang Zemin took charge of the Central Leading Small Groups on political and judicial Affairs, party disciplinary affairs, and propaganda affairs. See Gao Xin, *supra* note 644, at 198.

their hot lines.⁷¹² Understandably, some other PSC members would surely stand by in Beijing when Jiang Zemin had been out for visits. However, this emergency demonstrated that President Jiang Zemin was the final one to decide China's major foreign policy.

Another example of President Jiang Zemin's substantial influence on Chinese foreign affairs is concerned with Chinese special envoys. As discussed previously, since the founding of PRC, the American practice of deploying special envoys have been adopted by China and they have been constantly sent to the rest of the world either in the capacity of Chinese government, or the Chinese president, or jointly of Chinese government and the CPC since the 1980s. More than accepting this practice, President Jiang Zemin had made innovations to it by directly bring about the creation of the new office of Chinese Special Envoy on the Middle East issue⁷¹³. In April, 2000, President Jiang Zemin paid a visit to Palestine. During his talk with Arafat, the Palestinian leader advised that China appoint a special envoy especially for issues concerning the Middle East. His advice was accepted by President Jiang Zemin, who continued to press for relevant implementation. As a result, the Office of Special Envoy on the Middle East issues was established in 2002.⁷¹⁴ By now, China has appointed two Offices of Special Envoys for special purposes, i.e., issues concerning the Middle East and North

⁷¹² Zhong Zhicheng, *supra* note 706, at 584.

⁷¹³ Zhong Zhicheng, *ibid.*, at 426.

⁷¹⁴ Zhong Zhicheng, *ibid.*, at 433.

Korean nuclear development.⁷¹⁵

The third example of president Jiang Zemin's important influence on Chinese diplomacy could be found in China's so-called "partnership diplomacy". As well known, China has established various kinds of partnership relations with different countries. However, few could imagine that the first strategic partnership that China established with a foreign country had been given birth in conversation. In November, 1993, President Jiang Zemin paid a state visit to Brazil. In the morning of 23rd, the first day of his arrival, President Jiang Zemin held a talk with Brazilian President Itamar Franco. During their conversation, President Jiang Zemin suggested that both sides should set minds to the future, develop friendly cooperation from a strategic perspective and establish a long term, stable and mutually beneficial relationship. In response, President Franco said that relationship between Brazil and China was strategic partnership. Then in the afternoon, when Qian Qichen, the Chinese Foreign Minister, met Amorim, the Brazilian Foreign Minister, his Brazilian counterpart said that since both heads of state had agreed to establish a strategic partner relationship between China and Brazil, such a status should be recognized by the Chinese government. Hearing of this, Qian Qichen immediately gave his confirmation.⁷¹⁶

⁷¹⁵ For relevant discussion on Chinese special envoys, in particular those two special envoys see information in the website of the Chinese Ministry of Foreign Affairs.

⁷¹⁶ Zhong Zhicheng, *supra* note 706, at 50.

President Hu Jintao since 2003

Hu Jintao's succession to the presidency

The CPC's new General Secretary without "the core of leadership"

In 2002, the CPC convened its sixteenth party congress. As usual, this congress elected out a new Central Committee, a new Politburo, and the Standing Committee. Unsurprisingly, Hu Jintao became the CPC's new GS because he had been designated as the apparent heir to Jiang Zemin by Deng Xiaoping and stood by for this day for more than ten years. As early as in 1992, he entered the CPC's PSC in the fourteenth party congress for the first time as the youngest member. Five years later, he was kept in this highest decision-making body in the fifteenth party congress. According to Zhao Ziyang, his entry into the PSC was due to the recommendation of Deng Liqun⁷¹⁷, a conservative CPC senior cadre. It has been alleged by political writers that it was Deng Xiaoping who not only accepted this recommendation and promoted Hu Jintao to the PSC, but also designated him as the successor to Jiang Zemin.⁷¹⁸ Hu Jintao's status as the chosen successor became clear

⁷¹⁷ Zong Fengming, *supra* note 687, at 382.

⁷¹⁸ See, for example, Ren Zhichu, *Hu Jintao: China's First Man in the 21st Century* (Hong Kong: Mirror Books, 1998), 2nd ed, at 222-225; Ma Ling and Li Ming, *Hu Jintao* (Hong Kong: Mingbao Chubanshe Youxian Gongsi, 2002), at 238-239; Ren Zhichu and Wen Siyong, *Hu Jintao Zhuan* [Biography of Hu Jintao] (Hong Kong: Mingjing Chubanshe, 2002), at 271-273; Yang Zhongmei, *Zhonggong Xin Lingxiu Hu Jintao* [Hu Jintao: the CPC's New Leader] (Taipei: Taiwan Shibao Wenhua Chuban Qiye Gufen Youxian Gongsi, 2002), at 174-175; Ting

when he was elected into the office of the vice president and vice chairman of the CMC respectively in 1998 and 2000.

However, when the new PSC was made public, it was surprisingly announced that Hu Jintao was the “General Secretary”, not the “core of leadership”. This was an exception to the way how Jiang Zemin succeeded Deng Xiaoping. Almost the same time When Jiang Zemin was appointed as the GS, he was designated by Deng Xiaoping as “the core of the fourth generation leadership”. The GS was coupled with the title of “the core of leadership”. Since Hu Jintao was also designated by Deng Xiaoping to succeed Jiang Zemin, it could be presumed that Deng Xiaoping could have intended Hu Jintao as “the core of the fifth generation leadership”.

Hence, how could Hu Jintao succeed Jiang Zemin might be different. Although it had been widely held that Deng Xiaoping had chosen Hu Jintao as Jiang Zemin’ successor, no more details had ever been released about what kind of arrangements Deng Xiaoping had made regarding their succession, including the inheritability of the title of the core of leadership. With the death of Deng Xiaoping, their succession became more mysterious. Jiang Zemin’ succession to Deng Xiaoping had been set by Deng Xiaoping, by which Jiang Zemin firstly took the office of the GS together with the title “the core of leadership”, and then the military chairmanship of the CPC and state, then finally became the president. Will Hu Jintao follow the same order of

Wang, *the Leader of Beijing in the 21st Century* (Hong Kong: Celebrities Press, 2003), 5th enlarged ed., at 211-212.

succession as Jiang Zemin and inherit all these offices and title from him as well?

Among the four offices, only the presidency is subject to the constitutional limit of term of office. As required by the constitution, the president should not hold more than two consecutive terms. Because Jiang Zemin already had taken two terms in succession, the presidency would definitely have to change hand in due course. Hence, Hu Jintao might take this office first. In this case, he would follow the example of Liu Shaoqi. After taking the state chairmanship, Liu Shaoqi had been intended by Mao Zedong to take the CPC's chairmanship and possibly the military chairmanship at certain time. But such an old formula was overthrown by the sixteenth party congress, which changed the way by making Hu Jintao as the GS first.

It is said that there was an agreement among the Central Committee elected out by the sixteenth party congress that the new leadership headed by Hu Jintao would seek advice from Jiang Zemin, the core of leadership, on major issues, at least in two years from then on.⁷¹⁹ This was possibly true because there was a precedent previously in Deng Xiaoping's era when Deng Xiaoping had also been acknowledged to continue in command after he had retired from all political positions. Although in his late years, Deng Xiaoping remained silent on most issues, partly due to his physical disability, and also partial to his self-restraint. But he still had exerted a decisive influence on major issues

⁷¹⁹ Robert Lawrence Kuhn, *supra* note 695, at 425-428.

in a few critical occasions.

But that was an embarrassing situation because during that period of time, two cores of leadership had been co-existing, i.e., Deng Xiaoping as the core of the second generation and Jiang Zemin as the core of the third generation, to avoid which it could be better to pass the title of the core of leadership to Hu Jintao at a latter time when Jiang Zemin followed the example of Deng Xiaoping to maintain some prolonged control. After all, Hu Jintao just started his way of succession.

His election into the presidency by the NPC

Then understandably, the next office that Hu Jintao would succeed from Jiang Zemin would be the presidency. Several months later, the tenth NPC convened its first Session in March 2003. As normal practice, the congress elected its Presidium, made a measure regarding election and decision of government leaders, decided the candidates for those leading political offices. On March 15, Hu Jintao was elected as the fourth president by 2937 deputies in favor of him, with 4 others against and 3 more abstentions.⁷²⁰

President Hu Jintao not being “the core of leadership”

His succession to the military chairmanship

⁷²⁰ Wu Kangmin, *Huinei Huiwai: Shijie Renda Suibi* [Inside and outside the Session: Notes about the Tenth National People's Congress] (Hong Kong: Tiandi Tushu Youxian Gongsi, 2007), at 321. However, another opinion said that there were 2939 deputies voting in favor of Hu Jintao in the presidential election. See Robert Lawrence Kuhn, *supra* note 695, at 435.

In Deng Xiaoping's model, the military chairmanships should be the next targets for a complete transition of power from Jiang Zemin to Hu Jintao. Jiang Zemin did not want to give up⁷²¹, but had to let it go. As there is no constitutional limitation on the term of this office, the question would be: how soon would Jiang Zemin evacuate from both positions? Just about six months later after Jiang Zemin became the GS, Deng Xiaoping resigned from this position and Jiang Zemin succeeded him as the military chairmen both in the CPC and state.

However, it took Hu Jintao about two more years after taking the presidency to become the military commander, much longer than Jiang Zemin, who did not retire from the military chairmanship until the fourth Plenum of the 16th CPCCC held in September 2004, thus paving the way for Hu Jintao's succession to the state military chairmanship. On March 13, 2005, Hu Jintao was elected duly by the NPC as the new chairman of the CMC, with 2886 supporting votes, 6 against and 5 abstentions⁷²².

"The core of leadership" not inherited

By 2005, Hu Jintao had taken all those four political offices from his predecessor. Surely this was a great achievement, because it had been the most peaceful succession of the CPC had ever had in its history.⁷²³ By making

⁷²¹ Robert Lawrence Kuhn, *supra* note 695, at 436.

⁷²² Wu Kangming, *supra* note 715, at 342.

⁷²³ But it did not happen without surprises, such as performances of Hu Jintao and Wen Jiabao in fighting against SARS, and the unexpected pulldown of Shanghai Party Secretary Chen Liangyu, a key member of so-called "Shanghai Faction".

Jiang Zemin taking those offices, Deng Xiaoping successfully created a new core of leadership of the CPC. Hence, Hu Jintao should have become the core of the new leadership.

However, as a matter of fact, this did not happen and the title of the core of leadership has not been passed on to Hu Jintao, even when he became the GS and the CPC's military chairman for the second time in the seventeenth party congress, and was elected for a second term into the offices of presidency and military chairman in March 2008 by 2956 NPC deputies⁷²⁴.

On the contrary, it seems that the title of the core of leadership could still be held by the former president Jiang Zemin. On October 1, 2009, when the PRC celebrated its sixtieth anniversaries of founding, Jiang Zemin appeared together on the Tiananmen with the nine PSC members, being ranked as the second one only after Hu Jintao. While other CPC former leaders did not enjoy such a preferential treatment, Jiang Zemin's prominent appearance could suggest that he could still maintain certain influence as the core of the third generation leadership even after he has been in years' retirement, like Deng Xiaoping did in the past.

Political implication of "the core of leadership" not being inherited

What could the title mean to President Hu Jintao? Obviously, President Hu Jintao became different from Jiang Zemin and has to accept the prolonged

⁷²⁴ *Wenhuipo*, March 16, 2008.

influence of the second-front, i.e., the third generation of leadership, represented by Jiang Zemin.

Secondly, not being the core of leadership, Hu Jintao's weight in the PSC could not be comparable to that of his predecessor, resulting in a more equal relationship between Hu Jintao and his PSC colleagues. In other words, Hu Jintao could be in an equal relationship with his colleagues in the PSC, and could not be able to enjoy the advantages that Jiang Zemin could have as the core of leadership. While Jiang Zemin could overthrow decisions made by his colleagues, thus being supreme to his colleagues, Hu Jintao could have to follow the rule of "one person, one vote" and vote equally with his colleagues. As a result, Hu Jintao would only be able to control those areas of works that has been put under his charge and not interfere with other members' areas of works that they were assigned, except to vote collectively on major issues.

More questionable was concerned with the issue of the succession to Hu Jintao. As the core of the second generation leadership, Deng Xiaoping not only decided Jiang Zemin as the core of the third generation leadership, but also determined Jiang Zemin's successor, i.e., Hu Jintao. If such a power to appoint the future successor could be regarded as to belong to the core of leadership, Jiang Zemin would be able to decide who could succeed Hu Jintao. In 2008, while the eleventh NPC elected Hu Jintao again as the president, it also elected Xi Jinping as the vice president. According to the official report, before the election, Xi Jinping went through a process of "inner-party

democracy” (“dangnei minzhu”, in Chinese).⁷²⁵ However, it has been speculated that his promotion was contributed to Jiang Zemin. His intimacy with Jiang Zemin could also be found in his meeting with German Chancellor Angela Merkel during his visit to Germany in 2009 when the Chinese vice president not only presented to his German host two books written by Jiang Zemin, but also paid regards to her on behalf of Jiang Zemin.⁷²⁶

Reduced authority of President Hu Jintao

In conclusion, not being the core of leadership, President Hu Jintao has been reduced to a more equal member within the PSC than his predecessor. As such, while he could have some areas of works under his charge, he also has to rely on voting, as required by the principal of democratic centralism, and collaborate more with his PSC colleagues on major issues. It is alleged that in the PSC decision-making, not matter that of the sixteenth CPCCC, or the seventeenth CPCCC, Hu Jintao could not obtain a majority if voting was strictly put into practice because he and his men did amount to that extent. Hence, compared with his predecessor, President Hu Jintao seems to be less authoritative in the CPC’s decision-making.

⁷²⁵ *Renmin Ribao*, Oct 24, 2007.

⁷²⁶ See http://news.southcn.com/z/2009-10/13/content_5974595.htm, last visited on October 15th, 2009. However, his acts can give rise to the question of constitutionality. If his acts were a part of his official business, he could have obtained authorization from President Hu Jintao because the vice president “may exercise such functions and powers of the president as the president may entrust to him”, as provided by the second paragraph of article 82 of the Chinese constitution (1982). Otherwise, his acts would be unconstitutional. But if his acts was only a private affair, then no constitutional concerns would arise as he could seek to develop a personal relationship with his German host by such a presentation, even if his presentation was on behalf of Jiang Zemin.

On the other hand, even if Hu Jintao was less authoritative politically than his predecessor, he is still the president with substantial influence on China's diplomacy because the constitutional institutions could give Hu Jintao the legitimate authority to supplement his deficit within the CPC as the GS. As provided by the constitution, the chairman assumes overall responsibility for the work of the CMC.⁷²⁷ Hu Jintao could claim his personal responsibility to counter against intervention from other PSC members who could insist on the collective leadership over the army, especially when the military diplomacy is concerned. Furthermore, the constitutional amendment made in 2004 could also give him extra potentials to obtain substantial influence by way of "diplomacy of the head of state".

The constitutional amendment in 2004

Questions concerning "diplomacy by the head of state"

In diplomacy by the head of state, President Jiang Zemin not only had handled international emergencies, but also made innovations to China's diplomatic practices. One of these innovations was his new function of negotiating and signing international treaties and agreements. During his two terms, President Jiang Zemin had signed bilateral statements, agreements, treaties and conventions, communiqués and manifestos with other foreign heads of state, for instance, the Russian presidents. Irregarding the question how President

⁷²⁷ Xianfa [constitution] (1982) (P.R.C.), art 93, paragraph 3.

Jiang Zemin was authorized to sign these documents, his new practice of signing international treaties and agreements could still give rise to constitutional concerns for the role of the NPCSC.

It seems that the NPCSC has handled these documents signed by President Jiang Zemin in different ways. The NPCSC has made relevant decisions on those documents titled as “treaties”, “conventions” and “agreements”, which then have been ratified by the president. Up till now, no decisions have been found made by the NPCSC on other documents such as bilateral statements, communiqués, and manifestos. It could be argued that those documents would required no decision from the NPCSC if they had no substance as to be qualified as “treaties” or “agreements”, but it would also questionable as to what could constitute substance in an international documents, and different opinions have been proposed to some of those documents.⁷²⁸

— The 2004 constitutional amendment

In 2004, the constitution made in 1982 was suggested by the CPC once again to revise⁷²⁹, accordingly the tenth NPC adopted the fourth constitutional amendment in its second Session, by which a new function to “engage in activities involving state affairs” was written into article 81 of the constitution⁷³⁰. As such, this article now reads:

⁷²⁸ Ling Bing, *supra* note 672.

⁷²⁹ For the CPC’s suggestion to revise the constitution, see Wang Peiyong (ed.), *supra* note 481, at 124-126.

⁷³⁰ Zhonghua Renmin Gongheguo Xianfa Xiuzheng An [Amendment to the Constitution of the People’s Republic of China] (adopted at the Second Session of the Tenth National

“The president of the people’s republic of china, on behalf of the people’s republic of china, engages in activities involving state affairs and receives foreign diplomatic representatives, and, in pursuance of the decisions of the standing committee of the national people’s congress, appoints or recalls plenipotentiary representatives abroad, and ratifies or abrogates treaties and important agreements concluded with foreign states.”

According to the legislative explanation made by the NPCSC, such a revision was made because “diplomacy by the head of state has become an important way of international exchanges in today’s world, and the constitution has to provide for it”.⁷³¹

Ambiguous “activities involving state affairs”

The legislator’s explanation suggested that the president was the head of state of the PRC. This is the first time of such a clear statement made by legislators concerning the constitutional status of Chinese president and directly in conflict with previous official understanding and academic opinions. Let alone the negation of the chairman as the head of state by those founding leaders of

People’s Congress on March 14, 2004, and published for enforcement by the announcement of the National People’s Congress of the People’s Republic of China on March 14, 2004), art 28.

⁷³¹ Guanyu Zhonghua Renmin Gongheguo Xianfa Xiuzheng An (Caoan) De Shuoming [Explanation about the Amendment (Draft) to the Constitution of the People’s Republic of China], in Wang Peiying (ed.), *supra* note 481, at 137.

the PRC, such as Mao Zedong and Liu Shaoqi during the constitutional making of the 1954 constitution, makers of the 1982 constitution also acknowledged that the president was not the head of state. For example, when being asked about this issue, Peng Zhen, the chief leader in charge of the constitutional making in 1982, answered no because “Chairman Mao had said it”. By now, these official statements have also supported by some Chinese academics. Therefore, the explanation to the 2004 constitutional amendment broke that tradition. However, as it is just a legislative explanation, its legal validity still remains arguable.

More ambiguous is the term “activities involving state affairs”. As matter of fact, the idea is not new. Far back when the constitution was drafted in 1982, a NPCSC member had suggested that the power and function of the president should include to “pay state visit”⁷³² to foreign countries. But obviously, an examination of President Jiang Zemin’s performances has indicated that the term “activities involving state affairs” is much broader than “state visits”, all of which could give rise to questions such as what are “activities involving state affairs”, are they only concerned with foreign affairs, or they also refer to those relating to domestic affairs?

Besides, the nature of “activities involving state affairs” is also uncertain. According to the constitutional text, such a function is written before “in pursuance of the decisions of the Standing Committee of the National People’s

⁷³² Xu Chongde, *supra* note 483, at 446.

Congress', which means that it is just another function similar to the already existing function of "receiving foreign diplomatic representatives" which is just written after the new function in the constitutional text. As that function has been widely held as a ceremonial function without any substantial implication⁷³³, the new one "activities involving state affairs" could also be read as of that nature and the president can perform independently from the NPC and NPCSC. If so, this could suggest that the NPCSC does not have to supervise the president's "activities involving state affairs". But as explained previously, this literal understanding does not accord with President Jiang Zemin's practice, and even for Presidents Li Xiannian and Yang Shangkun who has practically considered as figure heads of state, the NPCSC still had received reports on their foreign visits submitted by those officials from the State Council who had accompanied presidents' overseas trips.

Power division between the president and premier changed

With such constitutional ambiguities, this amendment has some significant political implications. Firstly, it changes the constitutional division of power between the president and premier. Constitutionally, the president takes no responsibility for any administration of the government, except in the military field if the president concurrently serves as the military commander. In that

⁷³³ It is worth pointing out that in the United States, "In practice, the power to receive, or in particular cases, to refuse to receive ambassadors had made the president the sole official recipient of communications from foreign governments and the sole determiner of which governments the United States will recognize diplomatically." See Sidney M. Milkis and Michael Nelson, *The American Presidency: Origins and Developments, 1776-2002* (Washington, D.C.: CQ Press, 2003), 4th ed., at 48.

case, the president has to share certain military powers with the premier. While the president maintains the power to direct the armed forces⁷³⁴, the premier and his State Council exercise the power to “direct and administrate the building of national defence”⁷³⁵. Up till now, such a constitutional division of military power has been further strengthened by the NPC legislations, such as the Martial Law, National Defence Law, Emergency Law, and the most recent Law on the Armed Police. In terms of Chinese diplomacy, which used to be dominated by the premier and NPC, although the president serves a number of functions externally, the constitution mainly relies on the premier to conduct foreign affairs and conclude treaties and agreements with foreign states that do not have to be decided by the NPC. Now with his could-be-independent “activities involving state affairs”, the president takes a bite in the administration of China’s foreign affairs.

More importantly, this amendment strengthens the president’s role in the whole state apparatus and make such an office more secure and stable in its life cycle of political authority, which begins when the president takes office, start to rise after he concurrently takes the office of the chairman of the CMC, reach his peak of political power when he win a second term in office, and then start to go down when he begins to relieve his office as the CPC’s GS. In such an up-and-down circle, the president would be the most vulnerable to any political disturbances during the period between he takes office of the

⁷³⁴ Xianfa [constitution] (1982) (P.R.C.), art 93.

⁷³⁵ Xianfa [constitution] (1982) (P.R.C.), art 89.

presidency and is elected as the chairman of the CMC. During this period of time, he is only the CPC's GS, and has no position in the state apparatus. Although he can set new orientation and policies for the government in the capacity of the GS, he has to rely on the collective cooperation of his supporters in the PSC, especially those who are taking government posts, to implement his new policies. Personally he can only push the government forward, but is unable to not take any specific action on his own because he has no official authority in the government. Now with this constitutional amendment, such an inability could be changed. As soon as the president takes office, he can conduct "activities involving state affairs", thus exerting direct influence on Chinese diplomacy and making impact indirectly on the operation of the government. He could promote his new policies by "diplomacy of the head of the state" to the world. With China's growing globalization, his international activities surely will have impact at home. Even he could also pay inspections and visits to local governments and motivate them to stay in line with his policies. In a word, by "activities involving state affairs", the president has earned a constitutional weapon to carry out policies that are proposed by him as the CPC's GS.

More interestingly, this amendment could also change the relationship between the constitution and the real politics. As laid in previous chapters, the constitutional provisions of the presidency have never been the true description of the true political power of its holders. In the past, the president

loosely fulfills his certain ceremonial functions provided by the constitution, mainly as the head of state externally. On the other hand, his real political weight in China has been decided mainly by his status in the CPC's hierarchial decision-making structure, with which the constitutional provisions had no fixed relationship. By this amendment, the president enjoys a certain share in foreign affairs. Thus, if the constitution is to be abided by, any future presidents has to be a permanent member of the CPC's decision-making body concerning foreign affairs, for example, the CPC's Central Leading Small Group of Foreign Affairs. Thus, for the first time, the constitution has established a linkage to the true politics in terms of foreign affairs, which is similar to the Swiss presidents before that rule was changed.

Conclusion

Institutional similarities of Chinese presidency to Western presidency

To summarize, traditionally, the Chinese “chairman” had been a title to refer to the host of a banquet which used to be taken by the family head. With the introduction of Western ideas into China, it also referred to the committee member who chaired that committee and presided at its meetings. Under the increasing influence of the former Soviet Union, the chairman became a political position. When the CPC established the China Soviet Republic in the 1930s, it firstly was an independent government post, and then reduced to a title for a member of the presidium of the CEC by following the model of the former Soviet Union. Although the CSR did not last long, the Stalinist model of government was duplicated by the CPC in the People’s Republic of China with a few modifications, among which the chairman of the Central People’s Government was one. The CPG chairman seemed to be a combination of both chairmen of the CSR, working in the Central People’s Government Council on one hand, but exerting a superior role and functioning permanently on the other hand. As a leading member of the Council, he directed the Council’s works, such as policy making, and assumed final responsibility for all government works, including military, civil administration and judicial affairs. According to the drafters’ explanation, Stalin’s theory of collective head of

state had been followed and the chairman could be regarded as a member of the collective head of state. However, neither the chairman of Presidium in the former Soviet Union nor any modern Western presidency had ever enjoyed such a dominant authority.

The 1954 constitution made substantial changes to the chairmanship, which not only separated the chairman from the Council and provided it as an independent office taken by an individual, but also curtailed its powers and functions to a certain degree. The new chairman no longer directed all policy-making; instead, he could only make major policies in necessary circumstances. In terms of the administration, he could nominate the candidate for the premiership, continued to command military forces, perform certain allegedly nominal functions. Besides, he had no connection with the judiciary. Externally, he was provided to represent the PRC in its foreign relations and receive foreign diplomats; upon decision of the NPCSC, he could appoint or recall Chinese diplomats and ratify treaties. Officially, such a weakened chairmanship was construed as a partial head of state.

Among all chairmanship and presidency that the PRC has ever had, this chairmanship is the one most close to Western presidency. The separation of the chairman from the presidium is a clear departure from the Stalinist model of government. It was as late as in 1990 that the former Soviet Union had revised its constitution and installed an independent presidency separated from the Presidium of the Supreme Soviet. More importantly, the Chinese

chairmanship had incorporated certain elements of separation of powers characterized Western constitutions. By sharing policy-formulating power and commanding the armed forces, he could put “checks and balances” on the NPCSC and SC, thus serving as a “buff” as so-called by its designer Mao Zedong. In a certain ways, the Chinese chairmanship is much similar to the French presidency provided by the French constitution adopted in 1958, which also can nominate the premier, promulgate legislations, appoint government officials, deploy and receive diplomats, command the army and make policy statement.

Based on the 1954 constitution provisions, the 1982 constitution, the fourth constitution of the PRC, restored the chairmanship as a presidency which continues to enjoy the independence and be an office taken by an individual, but is weakened greatly in terms of its powers and functions. Internally, he can no longer set major policies; he can no longer command the armed forces, in spite that he continued to nominate the candidate for the premiership and perform those nominal functions. Externally, even though he continues to appoint or recall Chinese diplomats, ratify or abrogate treaties and important agreements, upon decision of the NPCSC, he can no longer represent the PRC in its foreign relations. Instead, he can only act “on behalf of the PRC” when receiving foreign diplomats. By the 2004 constitutional amendment, his lose in constitutional authority is partially compensated by the new function of engaging “activities involving state affairs”.

Compared with the former chairmanship, the presidency is deviating from Western presidency for being stripped of the major powers separated from the NPC, NPCSC and SC and can no longer serve as the “buff” in the government. On the other hand, the presidency has been much more institutionalized. Not only he is limited by two terms of office, the Western practice that had long been suggested to adopt, and has one more successor standing by, i.e., the chairman of the NPCSC, plus the vice president, but also is provided with mechanisms of election, removal, resignation decided by the NPC and NPCSC. As a result, the presidency is no more than a well-institutionalized executive body performing a few constitutional functions.

In summary, since the establishment of the China Soviet Republic in the 1930s, the Chinese presidency has been evolved from a traditional Chinese title, to a Stalinist political office, which was transplanted from the former Soviet Union and a member of the collective “deliberation” (“Yi” in Chinese) body, to a personal and independent executive (“Xing” in Chinese) state institution with delicately provided constitutional functions and mechanisms of election and succession within two terms of office, by adapting to the changing situations and taking in certain elements of Western presidency.

Political differences from Western presidency

Even though the Chinese presidency has certain Western constitutional devices, it is much more different from Western presidency in reality. Not only

is it based on different working principals, but also governed more by politics than law. Those constitutional provisions have only been a part of rules governing the real politics concerning the presidency and intermingled with those changing formal and informal political practices originated from the Chinese tradition of “rule of man” and the Stalinist government body of the party-state, namely, the CPC’s mechanisms of nomination, succession and decision-making at its highest level bureaucracy.

Although by law the president is nominated by the NPC Presidium and elected by the NPC deputies, such nomination and election has been a kind of formality at large and all presidential candidates have been accepted by the NPC without exception and competition, who have been determined beforehand by the CPC by way of three major political practices, i.e., firstly the CPC’s selection of presidential candidates by its paramount leaders, for example, Mao Zedong or Deng Xiaoping, then the CPC’s formulation of a list of candidates for top government positions, and lastly submission of this list — to the NPC presidium by its representative.

Similarly, the president’s true decision-making power has been determined by political factors rather than those seemingly ceremonial and procedural constitutional provisions, first of which is those decision-making mechanisms at the CPC’s supreme level, i.e., the CPC’s Politburo and PSC. Theoretically, the CPC should make its decision based on the principals of combining deliberation with execution and democratic centralism. However, in practice,

by far, the CPC's highest decision-making has been characterized by a dominant member titled first as "chairman" and later as "the core of leadership", which has been Mao Zedong, Deng Xiaoping, and Jiang Zemin successively. Depending on whether the president is or to succeed them, the Chinese presidents can be categorized into two different types, namely the "core type" in which the president is or to succeed the core of leadership and the "non-core type" in which he is not.

The "core type" consists of Chairman Mao Zedong, Chairman Liu Shaoqi and President Jiang Zemin. As the founding father for the presidency, Chairman Mao Zedong not only had the power to veto the PSC's collective decisions, but continued to hold power even after he evacuated the state chairmanship till to his death, and designated his successors time and again. To solve the succession problem suggested by the case of the Soviet "big brother", Mao Zedong conceived the "two fronts" arrangement, by which he was in "the second front", whereas other CS members headed by his designated successor Liu Shaoqi were in "the first front". As the first step to succeed Mao Zedong, Liu Shaoqi took the chairmanship from him in 1959. Liu Shaoqi had been supposed to take the CPC's chairmanship and even the proposed CPC's honorary chairmanship step by step after Mao Zedong retired from them at future times as conceived properly by Mao Zedong, if without the political "dilemma of successor" and constitutional conflict of responsibility undermined such a way of step-by-step succession. With the

worsening of “dilemma of successor”, constitutional conflicts between the overshadowed state Chairman Liu Shaoqi and the dominant CPC chairman Mao Zedong became critical and ended with the fall-down of the former personally and institutionally in the storm of Cultural Revolution.

The non-core model includes President Li Xiannian and Yang Shangkun. Taking lessons from his predecessors, Deng Xiaoping, “the core of the second generation leadership”, strived to rejuvenate the party-state with his ideas of “separating the party from the government” and “strengthening laws and democracy”, by which the CPC’s supreme chairmanship was abolished and political power was further divided and put into different hands. While Deng Xiaoping held the military power personally and his intended successors became the GS as the CPC’s nominal paramount leader, the presidency was taken successively by Li Xiannian and Yang Shangkun who were too old to succeed either the nominal GS or the substantial “core of leadership”. Being away from the focus of political decision-making and succession, the presidency had been much lenient for both of them. Although they participated in the political decision-making of the Politburo and PSC, their roles had been much more like executor than decision-maker. After they retired from the office, they were far less privileged than their predecessor. On the other side, their services as the head of state of China in its foreign affairs have become much more distinct with China’s growing involvement with globalization.

However, such a practice was finally reversed. Witnessing the sandwiched awkwardness of the GS cornering between the old cadres in the second front and the first front leaders in the state apparatus, and splits and controversies among the PSC members during the June 4 movement, Deng Xiaoping retreated from his early reforms. He not only made his successor, the CPC's GS Jiang Zemin, "the core of the third generation leadership" by taking the presidency and the chairmanship of CMC concurrently in 1993, but also designated Hu Jintao the youngest PSC member together with Jiang Zemin and Jiang Zemin's successor. This is virtually a return to Mao Zedong's example and an expansion of the arrangement of "two fronts".

As "the core of leadership", a term originally adopted by Deng Xiaoping⁷³⁶, President Jiang Zemin is similar to chairman Mao Zedong in several ways. For example, both of them hold concurrently four most important posts in China, i.e., the CPC's leading post, the state presidency and the double military chairmanships; whereas Mao Zedong dictates throughout his life, Jiang Zemin's political influence has seemingly not ended with his two terms of the presidency. However, they are different from each other in other aspects. Their source of political power is different. Mao Zedong obtained his political authority from his warring experience, personality, political tactics, to which Jiang Zemin could not possibly compare. The way by which they hold those

⁷³⁶ Gu Jianjian et al (eds.), *Minzhu Jizhong Zhi Jianshe Lunxi* [Discussion on the Construction of the System of the Democratic Centralism] (Shanghai: Shanghai Jiaotong Daxue Chubanshe, 2000), at 41. However, it should be noted that the concept of the "core" has long been used in the era of Mao Zedong.

posts is different. Mao Zedong held the state chairmanship and the military chairmanship concurrently by constitutional provision, while Jiang Zemin did it by the political arrangements. Their political decision-making powers are different, too. Mao Zedong had been the CPC's chairmanship for all his life and overthrown the state chairmanship from behind the scene, but Jiang Zemin's status as the core of leadership could be greatly impeded if without the presidency and the military chairmanship, and he had to rely on formal arrangements and informal politics to prolong his influence after his retirement from the presidency. Therefore, President Jiang Zemin as the core of leadership is much more limited politically and constitutionally than Chairman Mao Zedong.

As a result of step-by-step succession, political life of President Jiang Zemin have far exceeded the constitutional limitation of two terms of office and undergone a "life cycle" of gradually increasing and declining with the extension of his two terms of office. Since his elevation into the PSC as the CPC's new GS, he became the key successor and took part in political decision-making in the second front, but his political decision-making weight was greatly restricted by the "dilemma of successor" and the first front leaders. After he took the double military chairmanships, thus going from the second front to the first front, his power began to ascend. When he successfully took the presidency, his authority was further consolidated with the aid of those constitutional functions, especially the diplomacy of the head of state. His

status as the core of leadership was finally erected with Deng Xiaoping's death. His political power reached its peak when he won a second term of the presidency and military chairmanship, after which he had to gradually relieve those offices one by one to his successor Hu Jintao who had been served as a "second front" check ever since both of them were picked up to the PSC at the same time.

The current President Hu Jintao has followed his predecessor's example by taking all these four positions together, but in different way. He had been staying in the PSC as "the second front" successor much longer than Jiang Zemin, during which he had also held official positions such as the vice president and vice military chairman, which Jiang Zemin had not been undertaken. His order of succession was also different from that of Jiang Zemin. Due to the limitation of two terms of office, the state presidency had to become the second step instead of the last stop. As such, he took the General Secretary firstly, then the state presidency, and thirdly the double military chairmanships. Accordingly, his political decision-making power has been expanding along with the completion of each step.

Up till now, President Hu Jintao has not inherited the title "the core of leadership". Without a paramount leader, the principal of democratic centralism could take effective and decision-making in the PSC could become more democratic. In this case, the decision-making power of the president is decided both by the PSC's collective decision-making and the division of

work among its nine members. In other words, President Hu Jintao has the power to vote together with his PSC colleagues on certain major issues on one hand; on the other hand, he can be dominant in certain areas of state affairs, which he maintains control through the CPC's Central Leading Small Group (CLSG). In particular, when he takes charge of relevant CLSGs, such as the CLSGFA, the one concerning foreign affairs, he can be the major decision-maker of China's foreign affairs. Besides, he can also obtain extra authority by asserting his constitutional functions, especially after the constitution was amended in 2004. However, with the surprisingly elevation of Xi Jinping into the PSC who is widely regarded as the apparent heir, thus triggering another round of power transition, whether he could obtain such a title and continue to enjoy much political influence after his retirement from the presidency and military chairmanship like Jiang Zemin remains unknown.

In brief, by now, all Chinese presidents have been involved with the CPC's political decision-making on state affairs as a member of the Politburo and PSC before taking the presidency. While in office, they have always enjoyed certain substantive power when performing his constitutional functions, varying from mainly an implementer to a dominant, even sometimes ultimate decision-maker domestically and externally, depending generally on his status in the CPC's collective leadership. Hence, the president's services as the head of state have always been fluctuating abroad and incomplete at home. After retiring from the presidency, all previous presidents have enjoyed extra-tenure

political influence which also changes according to different political arrangements and informal politics. Apart from serving as the head of state externally, internally the president is also the bridge connecting the CPC and the state apparatus, facilitating the CPC's control over the state and maintaining balances among the CPC major leaders and of the party-state.

Evolving role of constitutional law in China

Therefore, the Chinese presidency has evolved from a Chinese title into a state institution which constitutionally looks like a Western presidency, but functioned in a Stalinist party-state organized by the principals of democratic centralism and combining deliberation with execution under influences of Chinese traditional way of "rule of man"; political authority of Chinese president is not only limited by the constitutional provisions of functions and terms of office, more defined by the changing political rule of "wearing hats", i.e., how many posts the president has taken among the CPC's GS, CMC chairman, "the core of leadership" and the state's CMC chairman, by his succession progress to these posts, and even by those unpredictable politics in China; depending on the holder's political authority within the CPC, those allegedly nominal constitutional function can be turned into real check and balance on other state offices.

In such decades of evolution, a nascent rule of law can be discerned regarding the office of Chinese presidency. Firstly, the division of the

executive power into the hands of the president, premier and military chairman can not only set the president and premier in check with each other, but also reduce the risk of monopoly and facilitate professionalization of these different powers according to their own nature. Especially, the president's constitutional function has been reduced from a dominant player to someone mainly specializing in diplomacy, thus narrowing the difference between legal provisions and the real politics.

Secondly, certain legal provisions have been able to define and modify the CPC's political practices. For example, the provision regarding the president's two terms in office has become an indispensable part of political practices, not only curtailing the influence of the strong leaders, forcing the CPC adjust its arrangements of succession, but also speeding the power transition between different generations of the CPC, and considerably reducing the political fluctuation. The establishment of the Central Military Commission in the constitution not only turns the armed forces from the control of the CPC to the state, at least literally, but also becomes a legal basis for further legalization of the military power that has been accelerated since President Hu Jintao took office⁷³⁷.

Thirdly, relevant legal stipulations have provided citizens a way of political participation. With the development of civil society in China, there is an increasing demand from the society to participate in the operation of the

⁷³⁷ Su Yongtong, "Zhongguo Junshi Lifa Da Tisu" [China Speeds up Its Military Legislations], *Nanfang Zhoumo*, October 9, 2009.

presidency. Some have suggested further institutionalization of the presidency, such as the constitutional confirmation of the status of the president as the head of state, establishment of the president's office, requiring the president to swear when taking his office⁷³⁸, etc. Even some others ask to be the presidential candidate⁷³⁹, discuss the delay in the promulgation of law by the presidential order⁷⁴⁰, question the power division between the president and premier⁷⁴¹, issue letter petitions to the president, etc, all of which surely push the president to respond.

All these indicate that, despite of major divergence existing between legal provisions and political practices, a few constitutional rules have taken root in the unpredicted Chinese politics and gone beyond the legitimate purpose to the effect of "check and balance" characterized Western constitutionalism. Besides, a sign towards democracy in terms of the CPC's succession and decision-making mechanism could also be discerned by facts that Xi Jinping, the new apparent successor, was reported officially to be elected by the CPCCC for the first time and President Hu Jintao has not been titled as the core of leadership as yet. Even the focus of the relationship between the CPC and the state has also shifted from the CPC to the state in spite that the CPC still maintains its control over the state.

⁷³⁸ Jiang Wei, *supra* note 41, at 58-62; Dai Jitao, *supra* note 41, at 15-18.

⁷³⁹ *Xinjing Bao*, March 24, 2009.

⁷⁴⁰ Su Junque, "Falv Gongbu Wu Xiaoshi" [Promulgation of Law is Not Trivial], *Nanfang Zhoumo*, December 14, 2008.

⁷⁴¹ See <http://chentieyuan.blshe.com/post/975/24141>, last visited on December 9, 2009. It holds that any news relating to the president should be announced by his office, instead of other institutions such as the Ministry of Foreign Affairs.

In such a tortuous, yet dynamic evolution, three factors have been underlining the office of Chinese presidency. The First factor is the influence of Western ideas on China, including different presidencies, international practices concerning “the head of state”, the relationship between the political party and state, etc, all of which had once been almost eliminated, but have revived after China adopts the open-door and reform policy. The development of Chinese president’s diplomacy from “ceremonial diplomacy” to “diplomacy by the head of state”, and to current “responsible diplomacy” suggests that Western influences on China have strengthened in the global context. The next factor underscoring the presidential evolution is the influence of the former Soviet Union, which has left China a heritage of the Stalinist party-state. Although such a structure of governance in China has been eroded fundamentally in many aspects, its decision-making model at the highest level has remained basically intact so far. The last factor is China’s traditions and local situations. On one hand, the traditions of “rule of man”, patriarchal authoritarianism and overlook for law have been far from distinguish, which have been evidenced by Mao Zedong’s favor for the Chinese title “chairman”, Deng Xiaoping’s idea of “the core of leadership”, the two-front arrangement, ambiguous legal wording, the application of political power in a secret, romantic and military style, no responsibility for the supreme power holder, etc. On the other hand, the heavy workload required by the developing and transitional situation in China on its leaders,

and the limited rationality and capacity of any individual demand certain division of power, thus giving rise to the possibility for the president to take some share in the governance. As suggested by President Jiang Zemin's "rule of law" (in Chinese "Yifa Zhiguo") and "rule of merits" (in Chinese "De zhi"), President Hu Jintao's "socialist rule of law" (in Chinese "Shehui Zhuyi Fazhi"), all these three factors have been intermingled together and will continue to shape the future of the Chinese presidency.

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