

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES**

In re CHEN SHUI-BIAN,)	
)	PETITION FOR
Petitioner)	EXTRAORDINARY RELIEF
)	IN THE NATURE OF
v.)	WRIT OF MANDAMUS
)	
UNITED STATES,)	USCA Dkt. No. _____
)	
Respondent.)	
)	

PREAMBLE

Petitioner respectfully prays that a Writ of Mandamus issue ordering the United States Military Government for Taiwan and its successors and agents and by such other Respondents as may be added to this Petition by Amendment, to intervene under the authority of the Principal Occupying Power of Taiwan as specified in the San Francisco Peace Treaty (SFPT) and seek the immediate release of Chen Shui-bian from captivity, confinement, and restoration of his civil and human rights under the United States Military Government in Taiwan (USMG). Petitioner also requests the appointment of a Special Master to safeguard all classified information and potentially sensitive matters of the type defined in 10 USC § 906(a) which must not be inadvertently revealed by Petitioner or Respondent in the course of these proceedings.

I. HISTORY OF THE CASE

This writ is based on the extraordinary jurisdiction of this Court pursuant to 28 USC § 1651(a) and Rule 4(b)(1) of this Court. This is a matter of first impression involving the status of the United States Military Government for Taiwan established by San Francisco Peace Treaty, Treaty of Peace with Japan (SFPT), Articles 2(b), 4(b), 23(a), Sept. 8, 1951, 3 U.S.T. 3169, 136 U.N.T.S. 45 and its relation and duties towards Petitioner who is the former President of the Republic of China. Petitioner invokes this Court's discretionary jurisdiction owing to the gravity of matter, the involvement of the United States Military Government for Taiwan and the duress and urgency caused by the illegal Life Sentence imposed on Petitioner by a corrupt Chinese court in Taiwan on September 11, 2009.

II. REASONS RELIEF NOT SOUGHT BELOW

Relief is not sought in the lower courts as they are specific to the branches of the military, that is, to the Army, Navy, and Air Force, none of which would have exclusive jurisdiction and because of the gravity of the relief requested.

III. RELIEF SOUGHT

Petitioner, who has been sentenced to life in prison for his actions as de facto Civil Administrator for Taiwan seeks an order from the Court as to the following:

(1) Order the United States Military Government for Taiwan to acknowledge its agent, Chen Shui-bian;

(2) Acknowledge that Chen Shui-bian's actions for which he has been sentenced to prison were undertaken while acting as United States Military Government de facto Civil Administrator;

(3) Order the United States Military Government to instruct the current de facto Civil Administrator for Taiwan, to cease the politically motivated prosecution of Chen Shui-bian and those associated with him, rescind the life sentence and restore his human and civil rights; and,

(4) Appoint a Special Master if required and any other relief this Court deems necessary to resolve the matter.

IV. ISSUES PRESENTED

(1) Is the president of the Republic of China (ROC) and commander in chief of the Armed Forces (ROC) also the de facto Civil Administrator of Taiwan (formerly known as Formosa and the Pescadores) on behalf of the United States Military Government (USMG) which is the instrument of the Principal Occupying Power pursuant to the San Francisco Peace Treaty, Treaty of Peace with Japan (SFPT), Articles 2(b), 4(b), 23(a), Sept. 8, 1951, 3 U.S.T. 3169, 136 U.N.T.S. 45?

(2) Can the de facto US Civil Administrator for Taiwan be subject to the jurisdiction of inferior and politically motivated Chinese courts acting on behalf of the current ROC president and commander in chief for acts undertaken on behalf of the United States Military Government which exercises jurisdiction over

Taiwan, a status which is further confirmed by the specification of the United States as the Principal Occupying Power for Article 2 and 3 territories under SFPT Articles 4(b) and 23(a)?

(3) Was the Petitioner deprived of his human rights under the Taiwan Relations Act (TRA), 22 U.S.C.S. § 3301(c) when the United States Military Government failed to intervene on his behalf to halt the politically motivated prosecution by the Kuomintang¹ controlled Republic of China (ROC) regime for actions taken while the de facto Civil Administrator of Taiwan on behalf of the United States Military Government (USMG) and does this constitute a breach of duty to petitioner by the USMG?

V. STATEMENT OF PARTIES, JURISDICTION, AND FACTS

A. Parties

Petitioner: Chen Shui-bian in his capacity as former president of the Republic of China (ROC) and commander in chief of its armed forces and de facto

¹ The Kuomintang of China abbreviated KMT; also known as the Chinese Nationalist Party, is a political party of the Republic of China (ROC). The KMT was founded by Song Jiaoren and Sun Yat-sen shortly after the Xinhai Revolution of 1911. Later led by Chiang Kai-shek, it ruled much of China from 1928 until its retreat to Taiwan in 1949 after defeat by the Communist Party of China (CPC) during the Chinese Civil War. There, the KMT controlled the government under a single party state until reforms in the late 1970s through the 1990s loosened its grip on power. The ROC on Taiwan was once referred to synonymously with the KMT and known simply as Nationalist China. This curious situation arose despite the fact that, legally speaking, Taiwan has never been incorporated into ROC national territory.

Civil Administrator for Taiwan on behalf of the United States Military Government which acts under the authority of the United States of America -- the Principal Occupying Power of Taiwan under the San Francisco Peace Treaty (SFPT).

Respondent: United States Military Government for Taiwan Arlington, Virginia.

B. Jurisdiction

This is a highly unusual case with no precedents. Petitioner, the former president of the Republic of China and commander in chief its armed forces, seeks this Court s extraordinary jurisdiction in a mandamus action against an inchoate United States Military Government of Taiwan to intervene against the current president and commander in chief of the Republic of China based on grounds of principal agent theory.

Petitioner was an agent of the USMG ostensibly based at the good offices of the American Institute in Taiwan (AIT) in Arlington, Virginia, but separate from the AIT. Petitioner as former commander in chief of the Republic of China Armed Forces and de facto Civil Administrator for the USMG for Taiwan was acting at all times in the matters described herein under the terms of the SFPT Articles 2(b), 4(b), 23(a) as the subordinate occupying power of Taiwan subject to the wishes of the Principal Occupying Power under the SFPT. Pursuant to 10 USC § 802(a)(11) and/or 10 USC § 802(a)(12) Petitioner s actions therefore are under the ambit of

military justice and within the discretionary jurisdiction of this Court to hear extraordinary writs.²

In *Johnson v. Eisentrager*, 339 U.S. 763; 70 S. Ct. 936 (1950), friendly aliens of friendly territory under civil affairs administration are inalienably granted an ascending scale of rights dependent upon their close degree of association with the USA. The de facto Civil Administrator therefore is immune to the jurisdiction of local courts under the Laws of Occupation because of the doctrine of *civis romanus sum*³ in *Eisentrager*. The American special interests in Chen Shui-bian as their de facto Civil Administrator cannot be contravened by judicial courts of the ROC, a subordinate occupational authority. Chen Shui-bian is a protected person of the USMG under SFPT and may be tried only by an appropriate military commission.

This Court has jurisdiction in mandamus through the All Writs Act 28 USC § 1651(a). The Court of Appeals for Armed Forces has authority to issue writs of habeas corpus and mandamus within its jurisdiction. *Levy v. Resor* 17 USCMA 135, 37 CMR 399 (1967). Further, this Court has authority to add parties in the

² See also The Law of Land Warfare: Army Field Manual 27-10, § 354. SFPT judicial administrative authority, convened by military authority as a US military commission, possesses rare territorial jurisdiction over civilians; especially with respect to any officers of the US occupational administration for Taiwan.

³ *Civis romanus sum* mean literally I am a Roman Citizen and that jurisdiction may be had only in Rome. See *Adams v. Lamar*, 8 Ga. 83; 1850 Ga. LEXIS 14, 26 (Supreme Ct. GA 1850).

interest of expeditious resolution of extraordinary writ cases. *U.S. Navy-Marine Corps Court of Military Review v. Carlucci*, 26 M.J. 328, 342, 16 MLR 2443 (C.M.A. 1988).

On September 11, 2009, Chen Shui-bian, the former president of Republic of China and commander in chief of its armed forces (2000-2008) was sentenced to life in prison and a heavy fine when he was found guilty on six counts involving corruption, money laundering, etc. by the Taipei District Court. His civil rights were also suspended by the court. Chen Shui-bian was charged with corruption, embezzlement, taking bribes, and money laundering while in office from 2000-2008, and fined NT\$200 million (US\$6.1 million), even though no monies were found to have entered his personal bank account(s), and the charges against him were primarily based on questionable deductions, assumptions, and suppositions. His wife, Wu Shu-jen was also sentenced to life in prison on charges of corruption, and heavily fined. Chen Shui-bian has declared his innocence and pronounced the prosecution retaliation by the Kuomintang and the current president of the ROC and commander in chief of its armed forces, Ma Ying-jeou.⁴

Taiwanese and independent observers have questioned the Chinese court process as politically motivated and corrupt. Petitioner refused to appear for

⁴ Ma Ying-jeou won the Presidential elections of March 22, 2008, running on the Kuomintang ticket. He was sworn into office as President of the ROC government in exile on May 20, 2008.

sentencing on Sept. 11, 2009, and has largely absented himself from court proceedings which he has labeled a political vendetta.

Regardless of the propriety of the proceedings, Petitioner asserts immunity due to his association with the United States Military Government for Taiwan.

The Petitioner also asserts immunity from the jurisdiction of the Chinese courts in Taiwan⁵ due to the fact that the recognition of native Taiwanese people (the people of Taiwan) as having ROC citizenship is without a legal basis. On August 5, 2009, Petitioner executed two affidavits attached as exhibits.

The ROC Nationality Law was originally promulgated in February 1929, when Taiwan was a part of Japan. Neither this law nor any other ROC law has ever been updated or promulgated to provide a legal basis for the mass naturalization of native Taiwanese persons as ROC citizens in the months following Japanese surrender ceremonies in Taipei, held Oct. 25, 1945, on which date the ROC government officials announced Taiwan Retrocession Day in violation of the customary laws of warfare. (Ex. 1, paragraph 4)

⁵ In dealing with other conquered territory in general, and acquired overseas territories in particular, the United States has always given the local populace the right to form their own civil government. However, the presence of the ROC government in exile on Taiwanese soil is preventing the local Taiwanese populace from exercising this right and forming their own Taiwan Civil Government. Indeed, from the coming into force of the SFPT on April 28, 1952, to the present, the United States of America, as the Principal Occupying Power, has never recognized a Taiwan Civil Government which has authority to conduct governmental affairs for Taiwan. Thus the Petitioner asserts that Taiwan has no Taiwanese courts, but only Chinese courts. These courts have been established on Taiwanese soil under the authority of the ROC Constitution, despite the fact that the ROC does not exercise sovereignty over Taiwan. The ROC in Taiwan is merely a subordinate occupying power and government in exile. (See Ex. 2, paragraph 10.)

The Petitioner described himself as follows:

I served as the President of the Republic of China on Taiwan (hereinafter ROC) from May 20, 2000, to May 20, 2008. My educational background was at National Taiwan University, where I was editor of the school's law review. I passed the bar examinations before the completion of my junior year. I graduated in 1974 with an LL.B. in Commercial Law, and worked as a lawyer in Taipei from 1976 to 1989. I later served as a Legislator in the Legislative Yuan from 1989 - 1994, and as Mayor of Taipei city from 1994 - 1998. (Ex. 2, paragraph. 1).

Based on his tenure as the President of the Republic of China and from his own personal experience he stated:

During the period of my Presidency, and according to the TRA [Taiwan Relations Act], it was my understanding that the United States government only considered me as the head of the Taiwan governing authorities, and did not recognize Taiwan or the ROC as sovereign states. According to the SFPT of 1952, the United States is the principal occupying power of Taiwan, and to my knowledge there has been no change in this status to date. Based on this rationale, during my term of office, I accepted the instructions of the Chairmen of the American Institute in Taiwan on many occasions, even when their instructions interfered with my Presidential decision making. (Ex 1, paragraph 8).

According to the customary laws of warfare, the SFPT, and the historical record, etc. the United States Military Government (USMG) administrative authority over Taiwan still active in the present day, hence it follows that native Taiwanese persons are being denied their rights under the US Constitution. (Ex 1, paragraph 11).

Petitioner was the first President of the ROC who was a native Taiwanese and not a member of the currently ruling Kuomintang. He had been imprisoned beginning in May 1986 for eight months by the Kuomintang previous to his tenure

as president of the ROC and both petitioner and his wife have been targeted by assassins. While president of the ROC in Taiwan, Petitioner sought to eradicate the pervasive influence and corruption of the Kuomintang from the government of the Republic of China, gave orders to remove pictures of Kuomintang Director-General Chiang Kai-shek from public offices, renamed Chiang Kai-shek International Airport to Taiwan Taoyuan International Airport, renamed the postal service from Chunghwa Post to Taiwan Post, replaced the name Republic of China with Taiwan on passports and promoted the eventual independence of Taiwan from China. These acts alone earned Petitioner the everlasting enmity of the Kuomintang political organization.

Thus the facts of Petitioner s case are really quite limited:

(1) Petitioner was the president and commander in chief of the armed forces of Republic of China (2000-2008).

(2) As president of the ROC, Petitioner was privy to certain information about the existence of the United States Military Government for Taiwan and his duty to accept orders from officials of the USMG in order to preserve the status quo under the SFPT and defend Taiwan from hostile powers.

(3) Petitioner was the de facto Civil Administrator for the USMG and the acts he is accused of took place during his tenure as Civil Administrator.

Petitioner has now revealed to this Court and the world, the existence of the

United States Military Government for Taiwan, and seeks a remedy consistent with United States military law.

VI. REASONS FOR GRANTING THE WRIT

A. Official Confirmation of USMG for Taiwan Requested

Until revealed by Petitioner, there has been no official confirmation of the existence of the USMG for Taiwan although its existence has been alleged. See *Lin v. United States*, 561 F.3d 502, 504 (DC Cir. 2009). Petitioner's statements in the Exhibits are credible and are based on personal knowledge and not inconsistent with the known facts about Taiwan.

The sovereign status of Taiwan has yet to be determined according to the Taiwan Relations Act. 22 USC § 3301(b)(4). Taiwan therefore is still under military occupation. See SFPT Art. 23(a). Under the SFPT which remains in force the United States is deemed the Principal Occupying Power. Military occupation is conducted under military government, and Petitioner asserts that the United States Military Government exercises jurisdiction over Taiwan and has continued in such a capacity up to today.

Military occupation is a question of fact. It presupposes a hostile invasion, resisted or unresisted, as a result of which the invader has rendered the invaded government incapable of publicly exercising its authority, and that the invader has successfully substituted its own authority for that of the legitimate government in the territory invaded. *The Law of Land Warfare* FM 27-10, Par 355.

Petitioner s assertions are not based on speculation but on his direct first hand knowledge as former president of the ROC and support a claim to relief that is far more than just plausible on its face. See *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949-1950 (2009).

The Allied Powers defeated Japan,⁶ and it surrendered on August 15 1945. The Japanese representatives signed the Instrument of Surrender aboard the battleship USS Missouri on Sept. 2, 1945. It is a matter of historical record that the ROC military commanders and troops were transported to Taiwan by United States ships and aircraft in October 1945. Thus, the era of the ROC in Taiwan began in Oct. 1945 with the full assistance and tutelage of the United States. The separate surrender ceremonies and later repatriation of the Japanese forces in Taiwan was carried out with substantial assistance of the United States armed forces.

On January 29, 1946, the General Headquarters of the Supreme Allied

⁶ Particularly noteworthy is the fact that during the period of WWII in the Pacific, all military attacks against (Japanese) Taiwan were conducted by United States military forces. The Republic of China military forces did not participate. At the most fundamental level, therefore, Taiwan is conquered territory of the United States of America, and the basic relationship between Taiwan and the United States can be deduced from numerous U.S. Supreme Court rulings: The Constitution confers absolutely on the government of the Union the powers of making war and of making treaties; consequently, that government possesses the power of acquiring territory, either by conquest or by treaty, *American Insurance Company v. Canter*, 26 U.S. 511 (1828); Power to acquire territory either by conquest or treaty is vested by the Constitution in the United States. Conquered territory, however, is usually held as a mere military occupation until the fate of the nation from which it is conquered is determined.... , *United States, Lyon v. Huckabee*, 83 U.S. 414 (1872).

Command in Tokyo confirmed its control over Taiwan by ordering the Imperial Japanese Government to cease from exerting control or attempting to communicate with officials in Formosa and the Pescadores. *Order of Supreme Commander, Allied Powers, entitled: 189. Memorandum concerning Governmental and Administrative Separation of Certain Outlying Areas from Japan*, dated 29 Jan. 1946.⁷

Following the surrender and pending a peace settlement, Taiwan remained *de jure* Japanese territory. General Douglas MacArthur stated at a congressional hearing in May 1951, &Legalistically Formosa is still a part of the Empire of Japan. ⁸ The Allied Powers led by the United States, the Principal Occupying Power, authorized Chiang Kai-shek's ROC government to accept the surrender of the Japanese forces in Taiwan and to undertake the post-surrender occupation of Taiwan on behalf of the Allied Powers. The ROC government occupied Taiwan on behalf of the Allied Powers (led by the United States) pending a peace treaty with Japan, which would change the legal status of Taiwan.

In 1952, Japan renounced all claim to Taiwan pursuant to the SFPT however no transfer of sovereignty was completed; Taiwan remained under occupation by

⁷ Available at <http://www.dokdo-takeshima.com/dokdo-ww2.html> and cited by *Cobb v. United States*, 191 F.2d 604, 605, fn3 (9th Cir. 1951).

⁸ The General Declines to Say That the U.S. Has Lost the Initiative in Foreign Policy Matters (Statement of General Douglas MacArthur before a Congressional hearing), N.Y. Times, May 5, 1951, at A7.

the Allied Powers, led by the United States as the Principal Occupying Power.

SFPT Article 23(a). The Allied Powers did not include the Republic of China.

SFPT Article 23(a). Nor was ROC a party to the SFPT. See SFPT.

The term Principal Occupying Power is used consistent with Article 42 of the Annex to the 1907 Hague Convention No. IV Respecting the Laws and Customs of War on Land: Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised.

Military occupation is conducted under military government. SFPT Article 4(b). Military government is the form of administration by which an occupying power exercises governmental authority over occupied territory, See US Army Field Manual FM 27-10, para. 362. Military government continues until legally supplanted,⁹ and Taiwan today remains under military government under the SFPT. Such a reading of the SFPT is consistent with the United States experience in the handling of other conquered territory such as California, Puerto Rico, the Philippines, Cuba, Guam, and the Ryukyus; the specifications of the respective peace treaties; and the historical record. (*See* Ex. 2, paragraph 12)

⁹ *See* Military Government and Martial Law, by William E. Birkhimer, Kansas City, Missouri, Franklin Hudson Publishing Co., third edition, revised (1914), p.26.

The ROC did however in 1952 conclude a separate peace treaty with Japan ending hostilities The Treaty of Taipei. However, this treaty only reconfirmed Article 2(b) of the SFPT and did not transfer sovereignty of Taiwan to the ROC. This result was confirmed by U.S. Secretary of State John Foster Dulles, who said:

The future title is not determined by the Japanese peace treaty, nor is it determined by the peace treaty which was concluded between the Republic of China and Japan. Sec'y John Foster Dulles, Statements at the Second Plenary Session (Sept. 5, 1951), in Dep't St. Bull., Sept. 1951, at 458.

The Treaty of Peace was signed between the ROC government and Japan on April 28, 1952. Treaty of Peace with Japan, Apr. 28, 1952, P.R.C.-Japan, 163 U.N.T.S. 38.

Thus Taiwan is still occupied by the United States of America through the USMG¹⁰ with civil affairs administration for the occupation delegated to the ROC, of which Petitioner was president 2000-2008.

¹⁰ On Aug. 30, 2007, Mr. Dennis Wilder, National Security Council Senior Director for Asian Affairs stated that: Taiwan, or the Republic of China, is not at this point a state in the international community. The position of the United States government is that the ROC -- Republic of China -- is an issue undecided, and it has been left undecided, as you know, for many, many years. It should be recognized that the Petitioner's assertion that Taiwan is still occupied territory of the United States of America does not contradict this long-standing U.S. policy position. This is explained by noting that with the end of USMG jurisdiction in California, Puerto Rico, Philippines, Guam, Cuba, and the Ryukyus, each has reached a final status to become either (a) a sovereign nation, or (b) part of another sovereign nation. Significantly, each area has its own fully functioning civil government. Taiwan is clearly the exception, and remains in a condition of undetermined status as occupied territory after peace treaty cession from Japan.

The US State Department has steadfastly maintained since the 1950s that Taiwan is occupied by the Republic of China (ROC) but that the ultimate sovereignty of Formosa has yet to be determined.

Formosa may be said to be a territory or an area occupied and administered by the Government of the Republic of China, but is not officially recognized as being a part of the Republic of China. *Cheng Fu Sheng v. Rogers*, 177 F. Supp. 281, 284 (DC Dist. 1959).

Following World War II, Japan surrendered all claims of sovereignty over Formosa. But in the view of our State Department, no agreement has purported to transfer the sovereignty of Formosa to (the Republic of) China. *Cheng Fu Sheng v. Rogers*, 280 F.2d 663, 665 fn2 (DC Cir. 1960)

See also: Although the United States recognizes the Government of the Republic of China, the provisional capital of which is Taipei, Formosa, it does not consider Formosa as part of China. *Chee Hock Chan v. Hurney*, 206 F. Supp. 894, 896 (ED PA 1962) citing to *Cheng Fu Sheng*.

Thus the United States courts recognized provisional ROC control over Taiwan but the issue of the actual sovereignty of Taiwan was reserved. See Mutual Defense Treaty Between the United States of America and the Republic of China, U.S.-R.O.C., Dec. 2, 1954, 6 U.S.T. 433, and U.S. Senate, Committee on Foreign Relations' report of Feb 8, 1955. The ensuing recognition of the Peoples Republic of China and the non-recognition of the Republic of China under the Taiwan

Relations Act did not alter the matter but instead reinforced the limbo status of Taiwanese sovereignty. See the Taiwan Relations Act 22 U.S.C. § 3301 et seq.

The recent case of *Lin v. United States*, though dismissed by the DC Circuit on grounds of political question, underscores Petitioner's position that the occupation status of Taiwan remains unresolved just as it was in 1959 when the initial ruling in *Cheng Fu Sheng* was made in the DC District Court.

On September 8, 1951, Japan signed the San Francisco Peace Treaty (SFPT) and officially renounced all right, title and claim to Formosa and the Pescadores. Treaty of Peace with Japan, art. 2(b), Sept. 8, 1951, 3 U.S.T. 3169, 136 U.N.T.S. 45. The SFPT does not declare which government exercises sovereignty over Taiwan. It does generally identify the United States as the principal occupying Power, but does not indicate over what. *Id.* [SFPT] at art. 23(a). *Lin v. United States*, 561 F.3d 502, 504 (DC Cir. 2009).

Addressing Appellants' claims would require identification of Taiwan's sovereign. The Executive Branch has deliberately remained silent on this issue and we cannot intrude on its decision. *Lin v. United States*, 561 F.3d 502, 508 (DC Cir. 2009).

Petitioner does not seek a determination of Taiwan's sovereignty because that of course is subject to the provisions of the Taiwan Relations Act (TRA) which maintains the future sovereign status of Taiwan is yet to be determined but is subject to certain guidelines:

It is the policy of the United States

(1) to preserve and promote extensive, close, and friendly commercial, cultural, and other relations between the people of the

United States and the people on Taiwan, as well as the people on the China mainland and all other peoples of the Western Pacific area;

(2) to declare that peace and stability in the area are in the political, security, and economic interests of the United States, and are matters of international concern;

3) to make clear that the United States decision to establish diplomatic relations with the People's Republic of China rests upon the expectation that the future of Taiwan will be determined by peaceful means;

(4) to consider any effort to determine the future of Taiwan by other than peaceful means, including by boycotts or embargoes, a threat to the peace and security of the Western Pacific area and of grave concern to the United States;

(5) to provide Taiwan with arms of a defensive character; and

(6) to maintain the capacity of the United States to resist any resort to force or other forms of coercion that would jeopardize the security, or the social or economic system, of the people on Taiwan.
22 USCS § 3301 (b).

Thus under 22 USCS § 3301(b) the future status of Taiwan is inextricably linked by statute to the United States as the guarantor of that process, a unique relationship.

Petitioner seeks only a determination of his own status as a former agent of the USMG, which acts under the authority of the Principal Occupying Power of the SFPT. Or more specifically recognition of his role as de facto Civil Administrator for Taiwan for the USMG and the consequent right to seek intervention by the United States Military to protect his civil and human rights from the current subordinate occupying power,¹¹ the Kuomintang controlled ROC government.

¹¹ The role of the Kuomintang controlled ROC government as a subordinate occupying power in Taiwan began with the surrender of Japanese troops on Oct. 25, 1945, and continued past the coming into force of the SFPT on April 28,

Petitioner is entitled to a hearing as he has broken the silence as to nature of the Principal Occupying Power on Taiwan under the SFPT, namely that the USMG on Taiwan exists and that the ROC of which Petitioner was president for eight years is the subordinate occupying power of Taiwan.

B. The Duties of the President of the ROC

The Republic of China on Taiwan (as opposed to the geographic entity of Taiwan itself) holds a singular status in international affairs. The United States and most countries do not recognize it as a legitimate government. Less than two-dozen small nations do recognize it. International Organizations like the United Nations do not accord it status. By moving its central government to occupied Taiwan in mid-December 1949, the ROC itself became the government in exile of China, but in the current era, according to the specifications of the ROC Constitution, it still lays claim to all of China, Mongolia, and even parts of Russia.

The Constitution of the Republic of China empowers the president as head of state and commander in chief of the military. The president is responsible for conducting foreign relations, such as concluding treaties, declaring war, and making peace. The president must promulgate all laws and has no right to veto. Other powers of the president include granting amnesty, pardon or clemency, declaring martial law, and conferring honors and decorations. Nonetheless, the

1952.

petitioner admits he was subordinate to the wishes of the USMG at all times in regards to Taiwan itself:

Based on this rationale, during my term of office, I accepted the instructions of the Chairmen of the American Institute in Taiwan on many occasions, even when their instructions interfered with my Presidential decision making. (Ex 1, paragraph 8)

Thus while the ROC president had many duties in regards to the government of the ROC, in matters of Taiwan, the USMG was paramount.

C. Chen Shui-bian was the Agent of the USMG

In *Madsen v. Kinsella*, the US Supreme Court established that:

Military government . . . is an exercise of sovereignty, and as such dominates the country which is its theatre in all the branches of administration. Whether administered by officers of the army of the belligerent, or by civilians left in office or appointed by him for the purpose, it is the government of and for all the inhabitants, native or foreign, wholly superseding the local law and civil authority except in so far as the same may be permitted by him to subsist. . . . *Madsen v. Kinsella*, 343 U.S. 341, 348, fn18 (1952).

Chen Shui-bian was an agent of the USMG for Taiwan. (Ex. 1) An agency relationship occurs when one person acts for or represents another by the latter's authority, either in the relationship of principal and agent or master and servant. See Blacks Law Dictionary, Fifth Edition.

As such Chen Shui-bian was in possession of various state secrets of the USMG. Only *in extremis* has he confirmed the existence of the USMG. Under

attack by the Kuomintang and its political courts, he has been placed in the position of requesting the USMG step in and takes responsibility for its agent.

D. No Political Question Is Presented

It can not be reasonably disputed that the United States is the Principal Occupying Power under the SFPT. Likewise it is a matter of common knowledge that Petitioner was president of the ROC 2000-2008. Petitioner asks only that this Court identify and order the USMG for Taiwan to provide aid to its former de facto Civil Administrator, the Petitioner. Thus the issue is not the current or even ultimate status of Taiwan but the duty of the USMG for Taiwan to intervene under extraordinary circumstances created by the current president of Taiwan and de facto Civil Administrator.

By analogy when necessary United States Courts have dealt with sorting out the sovereignty of various territories in order to determine applicable law to apply to collateral issues before them.

The Isle of Pines continues at least de facto under the jurisdiction of the government of the Republic of Cuba, and that settles the question before us, because, as the United States have never taken possession of the Isle of Pines as having been ceded by the treaty of peace & *Pearcy v. Stranhan*, 205 U.S. 257, 272 (1907).

The will of the United States is in fact the 'supreme will' on Okinawa. The United States has therefore acquired, and still retains, what may be termed a 'de facto sovereignty'. *Cobb v. United States*, 191 F.2d 604, 608 (9th Cir. 1951). See also *Rose v. McNamara*, 375 F.2d 924, 926 (DC Cir. 1967).

Likewise military courts have often been faced with similar situations.

In *United States (United States Element, Allied Kommandatura, Berlin) v. Tiede*, the jurisdiction of the United States Court for Berlin was established. *United States v. Tiede*, 86 F.R.D. 227, 237-238 (US CT. Berlin, 1979).

And the jurisdiction over and trial of German nationals in China by military commission after the Second World War was upheld by the US Supreme Court. See *Johnson v. Eisentrager*, 339 U.S. 763; 70 S. Ct. 936 (1950).

Most recently the United States Court decided at length the exact status of United States Naval Station at Guantanamo Bay, Cuba. See *Boumediene v. Bush*, 128 S. Ct. 2229, 2240 et seq. (2008).

Herein, Petitioner asserts that as he was de facto Civil Administrator for Taiwan on behalf of the United States Military Government and claims certain protections not available under the Chinese legal system in Taiwan apply to him. This Court is asked only to identify the USMG for Taiwan and to request them to intervene as is their duty.

VII. RELIEF REQUESTED

Petitioner, who has been sentenced to life in prison for his actions as de facto Civil Administrator for Taiwan seeks an order from the Court as to the following:

1. Order the USMG for Taiwan to acknowledge its agent, Chen Shui-bian;
2. Acknowledge that Chen Shui-bian's actions for which he has been sentenced to prison were undertaken while acting as USMG de facto Civil Administrator
3. Order the USMG to instruct the current de facto Civil Administrator for Taiwan, to cease the politically motivated prosecution of Chen Shui-bian and those associated with him, rescind the life sentence and restore his human and civil rights.
4. Appoint a Special Master if required and any other relief this Court deems necessary to resolve the matter.

VIII. RESPONDENT

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DATED: September 21 , 2009.

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