

Declaration of Chen Shui-bian

I, Chen Shui-bian, declare as follows:

1. 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.
2. According to my view, there are many ways that a “state” can be compared to an elaborate set of machinery. I was intimately involved with the operations of the “ROC machinery of state” during my eight years as President. However, I often had the feeling that there was some additional machinery operating in the background. I came to this conclusion after seeing that the US Executive Branch often made decisions regarding the lives, liberty, and property of the native Taiwanese people, as well as the territory of Taiwan itself, but we native Taiwanese were never consulted. After many years of contemplation, investigation, discussions, and historical research, I concluded that the machinery operating in the background was not the 1979 Taiwan Relations Act or any Executive Orders issued by the US Commander in Chief, but rather the 1952 San Francisco Peace Treaty (hereinafter “SFPT”).
3. It is therefore important that I elucidate upon the functioning of this peace treaty in relation to Taiwan. I will do so as follows for the public record.
4. As a preface to my analysis, the following definitions and clarifications are important.

A. cede: (a) to surrender possession of, especially by treaty, (b) to transfer of control of or sovereignty over specific property or territory, especially by treaty, (c) to surrender or give up something such as land, rights, or power, (d) [noun] cession

B. civil government: [in the practice of the United States] (1) administrative authority conducted by civilian officials in a government of territory (or a state) under constitutional powers of the US Congress, (2) a government as distinguished



from "military government."

C. limbo cession: a territorial cession with no "receiving country" indicated.

D. military government: the form of administration by which an occupying power exercises governmental authority over occupied territory. (Reference note: military government continues until legally supplanted.)

E. military occupation: a condition in which territory is under the effective control of foreign armed forces. (Reference note: Territory is considered occupied when it is actually placed under the authority of foreign armed forces.)

F. the occupying power: the conqueror. (Reference note: the occupying power may also be termed "the principal occupying power.")

G. property: (a) something, as land and assets, legally possessed, (b) a piece of real estate, (c) something tangible or intangible to which its owner has legal title, (d) the right of ownership; title.

H. receiving country: [for a territorial cession in a peace treaty] the country to which the territorial sovereignty of the indicated territory is being transferred, (effective as per the entering into force of the treaty), and which therefore is authorized to establish "civil government" in the territory.

I. treaty dates: (a) after the Mexican American War, the Treaty of Guadalupe Hidalgo entered into force on July 4, 1848, (b) after the Spanish American War, the Treaty of Paris entered into force on April 11, 1899, (c) after WWII in the Pacific, the SFPT entered into force on April 28, 1952.

5. The US Court of Appeals decision, in the case of Roger Lin et al. v. United States of America, stated on April 7, 2009, that the SFPT "does generally identify the United States as 'the principal occupying Power,' but does not indicate over what." I must point out that this analysis is not entirely correct.
6. If we recognize that the Japanese surrender ceremonies in Taiwan on Oct. 25, 1945, only marked the beginning of the military occupation of Taiwan, we must research the question: "Under the customary laws of warfare, who is the occupying power of Taiwan?"
7. Everyone can see that the ROC has been administering the island since this date in late Oct. 1945. However, is the ROC correctly identified as "the occupying power"? This must be clarified.

8. The United States military forces conquered and occupied California during the Mexican American War, as well as Puerto Rico, the Philippines, Cuba, and Guam, during the Spanish American War. Based on a simple consideration of these five historical situations, it is the conqueror which has the right to occupy the territory.
9. In respect to Taiwan (aka "Formosa and the Pescadores"), the United States is the conqueror, because all military attacks against Taiwan in the WWII period were conducted by US military forces. Therefore it is the United States which has the right to occupy Taiwan. For Taiwan, the United States must be "the occupying power" as spoken of in the customary laws of warfare.
10. After WWII in the Pacific, the relevant peace treaty is the SFPT. Article 23(a) designates the United States of America as "the principal occupying Power." I believe that the terminology of "the principal occupying Power" has been chosen here because the military occupation of certain Article 2 cessions has been delegated to other countries' troops, in the form of a principal – agent relationship. The military occupation of Taiwan has been delegated to the Republic of China military troops, also known as the Chinese Nationalists. In other words, the ROC is serving as a subordinate occupying power in Taiwan beginning Oct. 25, 1945. When the ROC moved its central government to occupied Taiwan in December 1949, it became a government in exile.
11. United States Military Government (USMG) administrative authority over Taiwan will have begun with the surrender of Japanese troops on Oct. 25, 1945. Historically speaking, Taiwan was "Japanese property" beginning from 1895, and USMG administrative authority over Taiwan is recognized by SFPT Article 4(b). Recognizing that "military government continues until legally supplanted," we must research the question: "Where is the civil government which has supplanted USMG administrative authority over Taiwan in the post-WWII period?"
12. For the situations of California during and after the Mexican American War, as well as Puerto Rico, the Philippines, Cuba, and Guam, during and after the Spanish American War, civil government began on the following dates respectively: Dec. 20, 1849; May 1, 1900; July 4, 1901; May 20, 1902; and July 1, 1950. In other words, the military government of the (principal) occupying power did not end with the coming into force of the peace treaty, but continued until legally supplanted. Notably, the beginning of civil government operations, which supplanted USMG administrative authority, was formally announced by the US Commander in Chief in

each instance. In regard to the military occupation of Taiwan, there has been no similar announcement.

13. The ROC is not a signatory to the SFPT. Under the terms of this peace treaty, it is clear that Taiwan was not awarded to the ROC. This is clearly stated in Article 2(b), where Taiwan is a limbo cession, and confirmed by Article 25. With no receiving country designated for the cession of Taiwan, Taiwan remains under military government until such government is legally supplanted.
14. Article 2 of the Sino-Japanese Peace Treaty (Treaty of Taipei) fully recognizes these SFPT arrangements for the disposition of Taiwan.
15. In conclusion, I assert that under the terms of the SFPT, Taiwan today remains under the jurisdiction of “the principal occupying Power” of the treaty. That is the United States of America. This jurisdiction is being conducted by USMG. The proof of this assertion is established by noting that the US Commander in Chief has made no announcement recognizing any civil government in Taiwan which has supplanted USMG administrative authority in the period of late April 1952 to the present.
16. The US District Court decision, District of Columbia, in the case of Roger Lin et al. v. United States of America, stated on March 18, 2008, that the native Taiwanese Plaintiffs “have essentially been persons without a state for almost 60 years.” In consideration that the specifications of the SFPT, fully supported by the historical and legal records, lead great weight to the assertion that USMG administrative authority over Taiwan is still active here in the 21st century, I believe that native Taiwanese persons should be entitled to certain fundamental rights under the Constitution and laws of the United States, especially the rights to life, liberty, property, and due process of law.
17. The liberty of the Fifth Amendment should include the right for native Taiwanese persons to obtain internationally recognized travel documents issued by a sovereign nation – the United States of America. To leave the native Taiwanese people in a condition of statelessness is a serious violation of numerous international covenants and declarations on human rights, as well as being in violation of the Eighth Amendment.
18. In this regard I would like to point out that Article 10 of the Treaty of Taipei was primarily drafted as a convenience to Taiwanese persons who wished to travel to

Japan, and was viewed as a temporary stop-gap solution to the problem of what travel documents they were to carry. Hence, this Article begins with the words "For the purposes of the present Treaty ...", in order to clarify that this is a matter between the ROC authorities and the government of Japan, and does not have any direct applicability to the relations between the ROC and other countries. Of course, when this treaty came into force on Aug. 5, 1952, the ROC was already in exile on Taiwan.

19. I must stress that under international law there is no legal basis for the following actions of the ROC authorities: the announced annexation of Taiwan territory on Oct. 25, 1945, the seizure, expropriation, and confiscation of Taiwanese and Japanese property in Taiwan beginning in late 1945, the mass naturalization of native Taiwanese persons as ROC citizens in January 1946, the imposition of military conscription policies over the local Taiwanese populace beginning in the late 1940s, etc. Since these actions occurred in occupied territory, they qualify as war crimes. Notably, the effects of these actions have continued up to the present day, and they have yet to be dealt with in any way, shape, or form. I believe that the appropriate tribunal for investigating these war crimes would be a United States military commission, most likely established under the name of the "United States Court of Taiwan." There is no statute of limitations on war crimes.
20. To the best of my knowledge and belief, my Declaration contains statements that are true and correct and contains my carefully considered, impartial, unbiased professional judgment, opinions, analyses and conclusions, subject only to the assumptions or limiting conditions referenced herein.



Chen Shui-bian

Born: Oct. 12, 1950

Former President of the ROC government in exile

Date: 2009/

