

BASIC FACTS CONCERNING TAIWAN'S INTERNATIONAL LEGAL POSITION

FROM THE 1895 TREATY OF SHIMONOSEKI TO THE PRESENT

Compiled by the Formosa Nation Legal-strategy Association (FNLA)

We, the members of the FNLA, accept the fact that from the close of hostilities in WWII in the Pacific to the present, Taiwan's status has remained as "undetermined." However, we believe that the key parameters of this undetermined status can be completely and precisely delineated. Using this methodology, the so-called "strategic ambiguity" regarding the Taiwan question can be totally eliminated, and the civil rights of the native Taiwanese people can be more fully safeguarded.

The following legal and historical clarifications are noteworthy:

- (1) In 1894, Japan defeated China in the Sino-Japanese War. Following the war, the Treaty of Shimonoseki entered into force on May 8, 1895. Pursuant to Article 2 of the treaty, "China ceded to Japan in perpetuity and full sovereignty . . . [t]he island of Formosa, together with all islands appertaining or belonging to the said island of Formosa."
- (2) The Treaty of Shimonoseki gave Formosa and the Pescadores (today commonly known as "Taiwan") to Japan to hold as a territorial cession, not merely as militarily occupied territory. As a result, beginning in May 1895, Japan exercised sovereignty over Taiwan and held title to its territory.
- (3) The announced "cancellation" or "nullification" of the 1895 Treaty of Shimonoseki by the Chiang Kai-shek regime at various times during the 1930s and early to mid-1940s is without any legal significance whatsoever.
- (4) The intentions expressed in the Cairo Declaration (Dec. 1, 1943), the Potsdam Proclamation (July 26, 1945), and the Japanese surrender

documents (Sept. 2, 1945) did not serve to finalize any transfer of the territorial sovereignty of Taiwan to the Republic of China (ROC).

- (5) 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.
- (6) The Japanese surrender ceremonies of Oct. 25, 1945, did not signify a transfer of Taiwan's territorial sovereignty to the ROC. There was no "Taiwan Retrocession Day."
- (7) The completion of the Oct. 25, 1945, surrender ceremonies only marked the beginning of the military occupation of Taiwan, and international law dictates that "military occupation does not transfer sovereignty." The legal occupier is the "conqueror," which (in consideration of the historical record of military attacks against Taiwan) is the United States of America.
- (8) The administrative authority for the military occupation of Taiwan has been delegated to the Chinese Nationalists (ROC). In other words, the United States is "the principal occupying power." The ROC is a "subordinate occupying power."
- (9) Military occupation is conducted under "military government." In its position as the principal occupying power, the USA has "United States Military Government" (USMG) jurisdiction over Taiwan.
- (10) The announced "mass naturalization" of native Taiwanese persons as ROC citizens according to the specifications of a Jan. 1946 ROC military order, and/or according to other military proclamations in the period of late 1945 to 1946, is totally illegal.
- (11) To affect the transfer of territorial sovereignty, a treaty is needed. Taiwan was sovereign Japanese territory until ceded in the San Francisco Peace Treaty (SFPT) of April 28, 1952. Under the terms of the SFPT, the territorial sovereignty of Taiwan was not awarded to the ROC.
- (12) According to the SFPT, Taiwan was a "limbo cession" with the United States as the principal occupying power and USMG administrative authority over Taiwan fully active.

- (13) Legally speaking, after April 28, 1952, Japan could have no further say in the “disposition” of Taiwan territory. Hence, it is impossible to interpret the Aug. 5, 1952, Treaty of Taipei as authorizing a transfer of the territorial sovereignty of Taiwan to the ROC. Indeed, the Treaty of Taipei includes no such provisions. The Treaty of Taipei fully recognizes the disposition of Taiwan territory as specified in the SFPT.
- (14) The specifications of Article 10 of the Treaty of Taipei were only made for the convenience of Taiwanese persons traveling to Japan, and should not be interpreted to have any effect on the recognition of the “nationality” of native Taiwanese people by the governments of other world nations. In any event, the Treaty of Taipei was abrogated in 1972.
- (15) For a territorial cession in a peace treaty after war, the military government of the (principal) occupying power does not end with the coming into force of the peace treaty, but continues until legally supplanted. To date, from April 28, 1952, to the present, there has been no announcement by the US Commander in Chief of any recognized “civil government” for Taiwan which has supplanted USMG jurisdiction over “Formosa and the Pescadores.” Hence, the ROC on Taiwan is not recognized as a sovereign nation.
- (16) The US-ROC Mutual Defense Treaty of March 3, 1955, only recognized the ROC’s effective territorial control over Taiwan territory, not sovereignty.
- (17) After the close of hostilities in WWII in the Pacific, the often heard statement that “the status of Taiwan is undetermined” arises from the fact that Taiwan has not yet reached a “final status” as either (a) an independent sovereign nation, or (b) part of any other sovereign nation.
- (18) There are many ways of describing Taiwan’s legal status after its cession from Japan. Here in 2009, Taiwan is still occupied territory of the United States of America. Hence, Taiwan may be considered as “foreign territory under the dominion of the United States.” As such, Taiwan is an “independent customs territory” under USMG, and an insular area of the USA under military government. Significantly, Taiwan does not yet have its own civil government.
- (19) US federal individual and corporate income taxes as such are not

currently imposed in US insular areas.¹ In recognition of the fact that Taiwan is a US insular area, US citizen residents and corporations in Taiwan, as well as local Taiwanese persons and corporations, should be exempt from US federal individual and corporate income taxes.²

- (20) "Taiwan" is a term of geography. The "ROC on Taiwan" is a non-sovereign nation. In the present era, the administrative authority for the military occupation of Taiwan is still being delegated to the Republic of China, which is merely a "subordinate occupying power" (beginning Oct. 25, 1945) and a "government in exile" (beginning mid-December 1949).
- (21) Significantly, the activities of the ROC's Ministry of National Defense (MND) meet the Three Criteria necessary to be designated as a "terrorist organization"³ by the USA. It is our understanding that full information on all relevant aspects of this ROC MND terrorism was provided to the American Institute in Taiwan, with a copy to the US State Dept., as recently as Sept. 2, 2009.
- (22) The failure of the State Dept. to forcefully explain and expound upon the true nature of the ROC on Taiwan, and its terrorist activities, is fully apparent from reading the BACKGROUND NOTE: TAIWAN page at <http://www.state.gov/r/pa/ei/bgn/35855.htm>. In particular, there is no information on this page to explain why the ROC on Taiwan is regarded as a non-sovereign entity. This lack of clarity is distressing.
- (23) The era of the ROC on Taiwan should have been terminated by a decree of the US Commander in Chief at some time shortly after the end of April 1952. At the present time, the native Taiwanese people have every right to demand that the US Commander in Chief take all necessary remedial action in this regard, and announce the end of the

¹ Reference: Nov. 1997 GAO Report to the Chairman, Committee on Resources, House of Representatives, "US INSULAR AREAS: Application of the U.S. Constitution," p. 37

² During the past few years, the American Chamber of Commerce in Taipei has joined with the Asia Pacific Council of American Chambers of Commerce (APCAC) in urging the US government to cease taxing the income of Americans working abroad so as to enhance the global competitiveness of US companies. The United States is the only industrialized country that subjects its expatriate citizens to income tax on their overseas earnings.

³ The "Three Criteria" require that the organization (i) must be foreign, (ii) must engage in terrorist activity, as defined in section 212 (a)(3)(B) of the INA (8 U.S.C. § 1182(a)(3)(B)), . . . or retain the capability and intent to engage in terrorist activity, (iii) and that the terrorist activity or terrorism must threaten the security of U.S. nationals or the national security (national defense, foreign relations, or the economic interests) of the United States.

era of the ROC on Taiwan.

- (24) Under international law, US constitutional law, and the precedent established in other US insular areas, the native Taiwanese people have the right to form their own civil government. The native Taiwanese people are entitled to the aid and assistance of the United States in this effort. The flag of the ROC should come down, and a new flag of the "Taiwan Civil Government" for the Taiwan cession should be raised.
- (25) The "One China Policy" of the US Executive Branch states that the People's Republic of China (PRC) is the sole legitimate government of China. However, in the report China/Taiwan: Evolution of the "One China" Policy by the Congressional Research Service, it was confirmed that the United States has never recognized PRC sovereignty over Taiwan.⁴ Actually, as outlined above, Taiwan is occupied territory of the United States of America.
- (26) As occupied territory of the United States of America after peace treaty cession, Taiwan is a US insular area under military government. The fact that there are no US military personnel to be seen on the streets of Taiwan today is largely irrelevant. The US delegated the administrative authority for the military occupation of Taiwan to the Chinese Nationalists (ROC). This is a principal - agent relationship.
- (27) As representatives of the native Taiwanese people, we the undersigned call for the end of the delegation of USMG authority to the ROC for the administration of Taiwan territory.
- (28) We sincerely proclaim that under international law and US constitutional law, direct USMG authority for the administration of Taiwan territory should be fully (re-)activated. The US Executive Branch should stop playing games with the lives, liberty, and property of the native Taiwanese people.

Afterword: The above very important legal and historical facts have never been comprehensively presented to the residents of Taiwan, with the result

⁴ The July 2007 CRS Report clarified that (i) US policy has not recognized the PRC's sovereignty over Taiwan, (ii) US policy has not recognized Taiwan as a sovereign country, and (iii) US policy has considered Taiwan's status as undetermined.

that the native Taiwanese people are completely confused about their own history from the period of the late 1930s to the present. This situation should be remedied at the earliest possible date.

SUMMARY OF RECOMMENDATIONS

(A) The US State Department's BACKGROUND NOTE: TAIWAN webpage should be revised to fully clarify the legal and historical record, and clearly explain exactly why the ROC on Taiwan is not a sovereign entity.

(B) The US Commander in Chief should announce the end of the era of the "Republic of China on Taiwan."

(C) The status of Taiwan as a US insular area should be confirmed. US citizen residents and corporations in Taiwan should be exempt from federal individual and corporate income taxes. The US Internal Revenue Service (IRS) should promulgate relevant guidelines.

(D) Officials of the US Executive Branch should coordinate with the appropriate representatives of the native Taiwanese people to form a "Taiwan civil government."

(E) The flag of the ROC should come down. The US flag and a new flag of the "Taiwan Civil Government" should be raised.

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