

# Questions of Sovereignty

## *-- the Montevideo Convention and Territorial Cession*

*by Richard W. Hartzell*

On September 15, 2004, after a four hour discussion in the first General Committee meeting of its 59th session, "The Question of the Representation of the 23 million people of Taiwan in the United Nations" was again denied inclusion on the agenda of the UN General Assembly. The year of 2004 marked the twelfth year in a row that Taiwan has tried to promote its own individual identity by joining the world body.

President Chen Shui-bian and other government officials in Taiwan have repeatedly proclaimed that they will continue to promote their island's membership in the United Nations. These proclamations have come even after October 25, 2004, when Secretary of State Colin Powell, in a TV interview in Beijing, China, stated that "Taiwan does not enjoy sovereignty as a nation."

Although the Taiwanese media characterized Mr. Powell's remarks as a slip of the tongue after consuming too much Chinese wine and Peking duck, President Bush repeated substantially the same comments when he met with world leaders on the sidelines of the 12th Asia Pacific Economic Cooperation (APEC) Meeting, during the third week of November 2004. At the APEC venue in Santiago, Chile, PRC President Hu Jintao told the press that U.S. President Bush had on several occasions reiterated the ongoing commitment of the United States government the One-China Policy, in conjunction with the three Sino-U.S. joint communiqués, as well as Washington's continuing opposition to "Taiwan independence."

By some accounts the Taiwan Independence movement has existed for over a hundred years, but it has come to increasing world attention since the election of the pro-independence President Chen Shui-bian in March 2000. His rise to the presidency over this self-governed area effectively culminated a fifty-five year period

of Chinese Nationalist (KMT) party rule, causing a major shift in local political leanings.

Taiwan's effective self-governing status has arisen due to a combination of curious historical factors. Taiwan is a territorial cession under Article 2b of the San Francisco Peace Treaty (SFPT), 3 U.S.T. 3169, of April 28, 1952.<sup>01</sup> Recognition of this fact is crucial in understanding Taiwan's current position under international law. This paper analyzes the Taiwan sovereignty question in two parts. **Part I**, Taiwan as "Sovereign State," and its Presumed Qualifying Criteria; & **Part II**, Taiwan and the Montevideo Convention.

## **PART I: Taiwan as "Sovereign State," and its Presumed Qualifying Criteria**

Does Taiwan qualify as a "state" in the international sense? Should it be accepted for membership in United Nations? This paper researches this subject in detail and concludes that the answer to both of these questions is "No."

The Montevideo Convention<sup>02</sup> provides the classical definition of the "state as a person of international law." Article 1 of the Convention holds that "The state as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with the other states."

Does Taiwan meet these criteria? On the surface it appears that Taiwan does. Taiwan has a permanent population of 23 million. It includes the geographic areas of Formosa, the Pescadores, and some subsidiary islands, an area comprising nearly 13,900 sq. miles. It has a fully functioning government called the "Republic of China" (ROC), and it has formal diplomatic relations with over twenty countries.

However, a closer look at Taiwan's history in the past century, and especially in the post WWII era, combined with careful reference to the Hague Conventions of

1907, shows that these “qualifying conditions” are in fact of highly questionable validity.

A brief historical overview is provided as follows. In 1895, the Qing Dynasty of China ceded “Formosa and the Pescadores” (i.e. Taiwan) to Japan in the Treaty of Shimonoseki. During the WWII period, two documents known as the Cairo Declaration and the Potsdam Proclamation expressed the intention to return Taiwan to the Republic of China after the war. The Japanese Surrender documents repeated this statement of intent. On September 2, 1945, in General Order No. 1, General Douglas MacArthur delegated the Japanese surrender ceremonies on Taiwan to Chiang Kai-shek. On October 25, 1945, the representatives of Chiang Kai-shek accepted the surrender of Japanese troops in Taiwan, raised the ROC flag, and proclaimed “Taiwan Retrocession Day.” However, in the post-WWII SFPT, the sovereignty of Taiwan was **not** awarded to the ROC.

Other than Taiwan’s presumed “qualifying conditions” in relation to the Montevideo Convention, Article 1, the above historical facts are the sum of evidence that most scholars consider when evaluating the true international legal status of the ROC on Taiwan today. Indeed, whether or not the ROC on Taiwan is a sovereign nation is a riddle which has puzzled sinologists and legal researchers for decades. Based on all the above factors, some scholars say “Yes,” some say “No,” and others remain undecided.

The author believes that the key to solving this riddle will only be found by researching “fundamentals.” Certain important questions need to be asked, and among these are: (1) During WWII, who liberated “Formosa and the Pescadores”? (2) Who is the principal occupying power? (3) What flag was raised at the surrender ceremonies? (4) When did the military occupation begin? Has it ended? (5) What flag was raised upon the coming into effect of the peace treaty?

The answers to these questions can be presented in rundown form as follows. According to the historical record, from December 1941 through August 1945, all military attacks against Japanese installations and fortifications in Taiwan, and indeed

in the four main Japanese islands, were conducted by United States military forces. The Republic of China military forces did not participate in these battles. Hence, according to the precedent established in the 1846 – 1848 Mexican – American War (in regard to California) and in the 1898 Spanish – American War (in regard to Cuba, Puerto Rico, and the Philippines), the United States will be the principal occupying power.<sup>03, 04</sup>

Since U.S. military forces were already in Taiwan in September 1945, regardless of the specifications of the Cairo Declaration, Potsdam Proclamation, or the Japanese Surrender documents, it still would have been entirely proper for General MacArthur to direct that United States military officers accept the Japanese surrender and raise the U.S. flag.<sup>05</sup> After all, the cession of treaty is to be handled in the post-war peace treaty.<sup>06</sup> As for the status of territory after the surrender of enemy troops, international law already supplies a clear definition.

The Hague Conventions of 1907 specify that: “Territory is considered occupied when it is actually placed under the authority of the hostile army.”<sup>07</sup> This definition of “military occupation” is *jus cogens*, and binding on all nations. Hence, the situation upon the surrender of Japanese forces can only be viewed as the beginning of military occupation of Taiwan. Numerous declassified US documents from the 1944 to 1945 period also discuss preparations for the military occupation of Taiwan. International law, or more specifically the “law of occupation” under the customary laws of warfare, specifies that (a) The occupying power does not, through occupation, gain sovereignty over the occupied territory. (b) Occupation is considered a transitory phase in which the rights of the population must be respected by the occupying power until formal authority is restored. (c.) When exercising authority, the occupying power must take into account the interests of the inhabitants as well as military necessity. (d) The occupying power must not use its authority to exploit the population or local resources for the benefit of its own population and territory.<sup>08</sup>

In the author’s opinion, the raising of the ROC flag *alone* over “Formosa and the Pescadores” in late 1945 is without legal basis. The flag of the principal occupying power should be raised as well, indeed it should fly highest on the flagpole.<sup>09</sup>

Assuming that the United States did accept the surrender of Japanese troops on September 26<sup>th</sup>, 1945, and raised the U.S. flag, then the following steps would have been appropriate:

(1) the establishment of the High Commission in Taiwan on Sept. 27<sup>th</sup>.

(2) the clear and deliberate delegation of the administrative authority for the military occupation to the ROC military officers on October 25<sup>th</sup>. At this point the U.S. flag would remain flying, and a small contingent of U.S. military officers would be assigned to the High Commission, under a civilian High Commissioner.<sup>10</sup>

Following this procedure, four possible outcomes for the sovereignty of “Formosa and the Pescadores,” to be specified in the post-war SFPT, are clearly available.

In the first outcome, this sovereignty would be retained by Japan. The U.S. flag would come down, and the Japanese flag would go back up, similar to the pre-WWII situation, and the allegiance of the local populace would revert to Japan.

In the second outcome, this sovereignty would be ceded by Japan, and awarded to the Republic of China. The U.S. flag would come down. The Republic of China flag would fly alone on the flagpole, and the allegiance of the local populace would be to the ROC.

In the third outcome, this sovereignty would be ceded by Japan, and awarded to the People’s Republic of China. The U.S. flag would come down. The People’s Republic of China flag would fly alone on the flagpole, and the allegiance of the local populace would be to the PRC.

In the fourth outcome, this sovereignty “Formosa and the Pescadores” would be ceded by Japan, but no “receiving country” would be specified. The U.S. flag would remain flying. This is because the United States is the principal occupying power, and has “disposition rights” over the territory.<sup>11</sup> Under this outcome, according to the doctrine of “temporary allegiance” under the law of occupation, the allegiance of the local populace is to the United States.

In Taiwan, it is most important to note that the ROC is merely a “subordinate occupying power.” A multitude of problems have arisen because the flag of the principal occupying power was not raised at the surrender ceremony of the defeated Japanese troops. President Truman and General Douglas MacArthur, by allocating the surrender of Japanese troops to the ROC, and failing to assure that the Chinese military officers understood the difference between “military occupation” and “annexation,” by permitting the ROC flag to be raised *alone* on the flagpole, by allowing the proclamation of “Taiwan Retrocession Day” to be made, etc., etc. have committed a major legal and diplomatic blunder, the price for which was paid for, and continues to be paid for, by the local Taiwanese populace. The 228 massacre of February 28, 1947, and the White Terror era which followed can be traced directly back to the incorrect activities which occurred in the Fall of 1945.<sup>12</sup>

The intentions expressed in the Cairo Declaration, Potsdam Proclamation, and Japanese Surrender documents to give “Formosa and the Pescadores” to the Republic of China were clearly predicated on the ROC maintaining its legal position as the de-facto and de-jure government of China. However, as civil war raged on the Chinese mainland, the remnants of the ROC government fled to Taiwan in late 1949, thus becoming a government in exile. Under such circumstances, and with most world nations still not granting the PRC diplomatic recognition, it could hardly be surprising that in the post war SFPT, the sovereignty of “Formosa and the Pescadores” was not awarded to the ROC.

Simple reflection on the legal significance of these developments of the late 1940’s and early 1950’s produces the following realization -- upon the coming into effect of the peace treaty on April 28, 1952, the ROC is a government in exile exercising “effective territorial control” over a geographic area where it does not have sovereignty. (See Addendum 1)

Taiwan’s international position in the present day, obscured by the incorrect actions of the Fall of 1945 and their aftermath, is correctly stated as “foreign territory under the dominion of the United States.” As of April 28, 1952, Taiwanese persons should be enjoying fundamental rights under the U.S. Constitution, in a similar

fashion to the inhabitants of other overseas U.S. territories. Unfortunately, in that anti-communist era, the foreign policy of the United States was to support the ROC in the international diplomatic battle against the spread of world communism, and so a policy of “strategic ambiguity” on the Taiwan sovereignty question began to be formulated.

The American people desire, and are determined to work for, a world in which all nations and all peoples are free to govern themselves as they see fit, and to achieve a decent and satisfying life. Above all else, our people desire, and are determined to work for, peace on earth—a just and lasting peace—based on genuine agreement freely arrived at by equals.

Democracy is based on the conviction that man has the moral and intellectual capacity, as well as the inalienable right, to govern himself with reason and justice.

Democracy maintains that government is established for the benefit of the individual, and is charged with the responsibility of protecting the rights of the individual and his freedom in the exercise of his abilities.

Democracy has proved that social justice can be achieved through peaceful change.

Democracy holds that free nations can settle differences justly and maintain lasting peace.

Since the end of hostilities, the United States has invested its substance and its energy in a great constructive effort to restore peace, stability, and freedom to the world.

*-- excerpt from Inaugural Address of Harry S. Truman,*

*January 20, 1949*

**Summary of Part I:** The most often mentioned documents of “importance” regarding Taiwan’s status up to the close of WWII are the Cairo Declaration, Potsdam Proclamation, and Japanese surrender documents. However, we must ask: Do these have the force of internationally binding treaty arrangements to formally transfer the

sovereignty of "Formosa and the Pescadores" to the Republic of China (ROC)? The answer is: No, they are only statements of "intent." Hence, we can analyze the Taiwan sovereignty question in three steps.

Step 1: According to international law it is easily seen that Oct. 25, 1945 marks the beginning of the military occupation of "Formosa and the Pescadores" by the ROC. Military occupation does not transfer sovereignty.

Step 2: When the government of the ROC fled to Taiwan in late 1949, it became a "government-in-exile." The ROC continued to exercise "effective territorial control" over this area which it was holding under military occupation.

Step 3: In the post-war SFPT and Sino-Japanese Peace Treaty, 138 U.N.T.S. 3, the territorial sovereignty of Taiwan was not awarded to the ROC.

Hence, Secretary of State Powell's statement in late October 2004 was correct, Taiwan does not enjoy sovereignty as a nation. Hence, it is not surprising that in September 2005, Taiwan was again refused admittance to the United Nations for the thirteenth year in a row.

## **PART II: Taiwan and the Montevideo Convention**

After the analysis in Part I of this paper, let us return to the Montevideo Convention criteria, and consider them again.

(a) Taiwan has a permanent population of 23 million. Importantly however, there is no legal basis for considering these Taiwanese persons as ROC citizens. This is explained as follows. The Republic of China "Nationality Law" was originally promulgated in February 1929. At that time, Taiwan was an overseas territory of Japan, and the local people held Japanese nationality.



The surrender ceremony for Japanese troops in Taiwan was held on October 25, 1945. On January 20, 1946, the ROC government announced the mass naturalization of Taiwanese people as ROC citizens. However, such an announcement of mass naturalization in an area under military occupation is a violation of the laws of war. Legally speaking, the ROC government would have to wait for Taiwan to be formally ceded to the ROC in the post war peace treaty, and then it could pass domestic legislation regarding procedures for “mass naturalizations” of Taiwanese persons as ROC citizens.

In fact, neither of these conditions have been met. In other words, Taiwan was not ceded to the ROC in the post war peace treaty, and indeed there have been no laws passed by (or amended by) the ROC’s Legislative Yuan after April 28, 1952, affecting mass naturalization of Taiwanese persons as ROC citizens. In short, the recognition of Taiwanese persons as ROC citizens is without legal basis.

(b) Taiwan it includes the geographic areas of Formosa and the Pescadores, an area comprising nearly 13,900 sq. miles. However these areas were initially “obtained” and “held” under military occupation, and to date there has been no transfer of title.

(c.) Taiwan has a fully functioning government called the “Republic of China.” However, this is a government in exile. According to international law, there is no way for a government in exile to obtain legitimacy other than by returning to its “original location” and reasserting its governance there.

(d) Taiwan has formal diplomatic relations with over twenty countries. However, these diplomatic relations are conducted under the auspices of the “Republic of China government in exile.”

It is the author’s assertion that the drafters of the Montevideo Convention intended all of its four criteria in Article 1 to be proper and just. However, in the case of Taiwan, its qualifying criteria in all four criteria are of highly questionable validity.

The author proposes that a solution to this problem needs to be addressed in two steps. First, the increasing complexity of the international scene requires that the first four elements of the Montevideo Convention criteria be expanded into eight elements (or variables), to clearly denote the de-facto and de-jure situations. Secondly, in the case of a territorial cession, there must be the transfer of the “juridical person.” This is presented in a diagram as follows --

Hartzell’s extrapolation of the Montevideo Convention, Article 1, specifying the criteria for <i>a territorial cession</i> to become “a state as a person of international law”		
criteria	de-facto	de-jure
permanent population		
defined territory		
government		
capacity to enter into relations with the other states		
transfer of the “juridical person”		

It would be expected that a “yes” or a “no” would be placed in each box. In the situation of Taiwan, regardless of what conclusions one reaches in regard to the first four criteria in their de-facto and de-jure senses (for a total of eight variables), the author believes that the ninth variable must be given a “no.” In the SFPT, the territorial sovereignty of “Formosa and the Pescadores” was not awarded to the Republic of China.

Taiwanese legal scholars often claim that despite whatever may have been the legal ramifications of October 25, 1945, the Republic of China government in Taiwan can still maintain a valid claim over the sovereignty of “Formosa and the Pescadores” from the international legal doctrines of (1) **terra nullius** and/or (2) **prescription**.

To some extent, the reasoning of the Taiwanese legal scholars is based on a failure to fully understand the scope and applicability of these two doctrines. In Chinese, the legal term “terra nullius” is generally rendered as “*land without a master*.”<sup>13</sup> However, the true sense of the term in the post-Napoleonic period is “uninhabited land.” In 1945, Taiwan was certainly inhabited, indeed it boasted a population of approximately six million people.

In terms of nation building, “prescription” is the process of acquiring title to territory by reason of uninterrupted possession of a lengthy duration. In Chinese, the legal term “prescription” is generally rendered as “*time effectiveness principle*.”<sup>14</sup> Clearly, this refers to the process of making claim to something by long use or lengthy “occupation.”

Unfortunately, the term “occupation” has many meanings, and this can be confusing to those researchers without a solid background in law of war studies. Two of these meanings are most relevant here, and must be distinguished carefully. In the first sense, “occupation” is the possession, use, or settlement of land; the act or process of holding or possessing a place; actual possession and control; a holding or keeping, tenure, use, etc. For “terra nullius” which is occupied for a period of time, there can be the acquirement of title. Contrastingly, for territory held under “military occupation,” there is no period of time, regardless of length, which can result in the acquirement of title. This is because international law states that “military occupation does not transfer sovereignty.”

**Summary of Part II:** Taiwan is not a sovereign nation, and it is not qualified to join the United Nations. A more technical statement of Taiwan’s international position as after the coming into effect of the SFPT in late April 1952 is that it is undetermined and unorganized territory under the United States Military Government (USMG), and in interim status under the law of occupation.<sup>15, 16, 17, 18</sup>

## Footnotes:

01. Article 2b of the April 28, 1952, San Francisco Peace Treaty specifies: “Japan renounces all right, title and claim to Formosa and the Pescadores.”

02. The Montevideo Convention on the Rights and Duties of States entered into force on December 26, 1934.

03. As per the analysis in this paragraph, the determination of the “principal occupying power” may often be derived in a direct fashion. In some instances however, it is assigned, as per the specifications of General Orders, or in the peace treaty, etc.

04. Conflict between Mexican and American military forces was reported on April 25, 1846, and the US Congress declared war against Mexico on May 13.

Conflict between Spanish and American troops on broke out on February 15, 1898, and the US Congress declared war against Spain on April 22.

05. During the US military occupation of large areas of Mexico in the Mexican -- American War, including the California territory, the US flag was flying.

During the US military occupation of Puerto Rico, Cuba, Guam, and the Philippines, during the Spanish – American War, the US flag was flying. Under the administrative authority of USMG, and according to the customary laws of warfare, the US flag continued to fly even past the date of the coming into effect of the peace treaties, until USMG in each area was legally supplanted.

In the situation of Cuba, the United States did not oppose Cuban independence. The island of Cuba became independent country on May 20, 1902, whereupon the US flag came down and the Republic of Cuba flag was raised.

06. In *DeLima v. Bidwell*, 182 U.S. 1 (1901), the US Supreme Court stated: “One of the ordinary incidents of a treaty is the cession of territory. It is not too much to say it is the rule, rather than the exception, that a treaty of peace, following upon a war, provides for a cession of territory to the victorious party.”

07. See the Annex to Hague Convention No. IV, (18 October 1907), embodying the Regulations Respecting the Laws and Customs of War on Land, Article 42.

08. See the Human Rights Watch website, *internet*:  
<http://www.hrw.org/campaigns/iraq/ihlfaqoccupation.htm>

09. When the flag of the subordinate occupying power is raised alone, it is often seen

that many difficult legal problems develop. An examination of the military history of the world in the post-Napoleonic era shows that this has happened many times.

10. Under this type of arrangement, if the ROC flag were to be raised, it would fly below the US flag on the flagpole.

11. Article 4b of the April 28, 1952, San Francisco Peace Treaty specifies: "Japan recognizes the validity of dispositions of property of Japan and Japanese nationals made by or pursuant to directives of the United States Military Government in any of the areas referred to in Articles 2 and 3."

12. Under international law, there is no recovery mechanism for this type of situation. Taiwan appears to be "a state as a person of international law," but in fact it is a "non-sovereign nation," or "non-state."

13. In Chinese this is "wu zhu tu di."

14. In Chinese this is "shi xiao yuan zi."

15. "Military Government is that which is established by a commander over occupied enemy territory. To entitle it to recognition it is necessary that the authority of the State to which the territory permanently belongs should have ceased there to be exercised." See Military Government and Martial Law, by William E. Birkhimer, third edition, revised (1914), Kansas City, Missouri, Franklin Hudson Publishing Co., page 16.

*internet:*

<http://familyguardian.betterthanyours.com/Publications/MilitaryGovAndMartLaw/MilitaryGovernmentAndMartialLaws.pdf>

16. "Military government may be exercised not only during the time that war is flagrant, but down to the period when it comports with the policy of the dominant power to establish civil jurisdiction." Reference: Birkhimer, op. cit., p.1.

17. As noted previously in this paper, military occupation is a transitory phase, or a period of "interim status." Final status in relation to the "law of occupation," under the customary laws of warfare, is reached when military government is supplanted by another effective legal arrangement. Birkhimer summarizes this by stating that: "Military Government continues until legally supplanted." Reference: Birkhimer, op.cit., p. 26.

18. A limbo cession which is still under the military government of the principal occupying power can be said to be "undetermined." Territory which does not have its own organic law is said to be "unorganized."

## **Addendum 1:**

### *Effective territorial control does not equal “sovereignty”*

An example is easily given as follows. Let us suppose that there was a war in Southeast Asia, and the military forces of Holland were fighting Indonesia. Further let us suppose that in the battle for Sumatra, Holland had been allied with Malaysia. Military forces from Holland and Malaysia were fighting together in the archipelago, and after several months of heavy aerial and naval bombardments by Holland, the Indonesian commanders on Sumatra agreed to surrender.

At this point we can imagine that Holland's military forces still had additional operations to take care of in nearby geographic areas. Hence, the Dutch general would direct that senior Indonesian commanders and all ground, sea, air and auxiliary forces within Sumatra surrender to Malaysia's military forces, and that Malaysia should take charge of the administration of the island.

Moreover, let us imagine that five years later (before the post-war peace treaty is written) there is a coup d'etat in Malaysia, and a number of high-ranking government officials and military personnel all flee to Sumatra. At this point it might be expected that the old Malaysian government which has established itself in Sumatra still has full diplomatic relations with thirty or more countries. An important question is: Can we consider "Malaysia in Sumatra" to be an independent and sovereign nation?

Let's pause to look at the entire situation from the point of view of the local Sumatrans. What would they say about the legitimacy of the Malaysian government which has established itself in Sumatra?

But with reference to Article 1 of the Montevideo Convention (which entered into force on December 26, 1934), "Malaysia in Sumatra" does indeed meet the four criteria of having (a) a permanent population, (b) a defined territory, (c) a government and (d) the capacity to enter into relations with other states.

A closer examination of the facts, however, shows that "Malaysia in Sumatra" is only a subordinate occupying power and a government in exile. It has effective territorial control over Sumatra, but does not have sovereignty. Indeed, the local Sumatrans would probably be glad for the Malaysians to move to Paris, Rome, London, or some other city and establish their government in exile there. However, it is unlikely the Malaysians would leave.

Hence, the author would maintain that the four criteria of the Montevideo Convention are clearly incomplete. For complex situations which involve (1) military occupation, (2) governments in exile, or (3) territorial cessions with no clear transfer of legal title, the Montevideo Convention gives a "false reading."

This is exactly the problem with Taiwan. Under the customary laws of warfare of the post-Napoleonic period, it is clear that Oct. 25, 1945, can only be regarded as the beginning of the military occupation of Taiwan. In late 1949, the remnants of the ROC government fled from China and came to Taiwan, thus becoming a government in exile. In the postwar San Francisco Peace Treaty, Japan renounced the sovereignty of "Formosa and the Pescadores," but no receiving country was specified.

Some researchers still maintain that that the ROC has been an independent sovereign state since its establishment in 1912, but conveniently fail to consider that the ROC did not include Taiwan in that era. China had already ceded Taiwan to Japan in the 1895 Treaty of Shimonoseki.

**Addendum 2:**

*Summary of US Policy Statements*

The author must point out that the analysis in this paper, derived directly from the historical record and the provisions of the San Francisco Peace Treaty, with reference to the laws of war, and in particular the laws of occupation, does indeed confirm that the US State Department’s insistence on a “One China Policy” is entirely correct. The analysis presented herein is also in complete agreement with other important United States’ policy statements over the last fifty years. (What is missing in current US policy statements of course is any clear recognition that Taiwan is actually an overseas territory of the United States.)

<b>Item</b>	<b>Analysis</b> (Correct/Incorrect)	<b>Comments</b>
Truman Statement (June 27, 1950) regarding the status of Taiwan as being “undetermined”	CORRECT	Military occupation is a transitional period, or a period of “interim status.” Taiwan will not have reached a final political status until the military government of the principal occupying power has ended.

<p>Shanghai Communiqué (Feb. 28, 1972): The United States acknowledges that all Chinese on either side of the Taiwan Strait maintain there is but one China and that Taiwan is a part of China. The United States Government does not challenge that position. It reaffirms its interest in a peaceful settlement of the Taiwan question by the Chinese themselves.</p>	<p>( ? )</p>	<p>The United States has disposition rights over the property of “Formosa and the Pescadores” according to SFPT Article 4b. The Commander in Chief has determined that the PRC is the sole legitimate government of China and has put Taiwan (a Chinese speaking area) on a “flight path” for future unification with the PRC. However, it can be challenged that such an action violates the rights of the Taiwanese people to life, liberty, property, and due process of law under the Fifth Amendment. These Fifth Amendment protections are “fundamental rights” under the US Constitution, and apply in overseas territories even without any actions by the US Congress.</p>
<p>One China Policy</p>	<p>CORRECT</p>	<p>In China, the communists conducted a coup d’etat in the Fall of 1949, founded a new country, and promulgated a new constitution. Contrastingly, the ROC in Taiwan is a government in exile. The One China Policy is correct, however it cannot be interpreted to say that “Taiwan is a part of China.”</p>
<p>Acknowledgement of the PRC position that Taiwan is part of China</p>	<p>CORRECT  (BUT POTENTIALLY MISLEADING)</p>	<p>Many senior researchers in well known think tanks in the United States have repeatedly pointed out that there are no official US government documents which definitively state that Taiwan is a part of China. As most people know, the United States maintains “strategic ambiguity” on this point. At the same time, the United States demands that a resolution to the Taiwan question be achieved in a peaceful manner.</p>



<p>Three Noes (June 1998):  We don't support (A) independence for Taiwan; or (B) "two Chinas" or "one Taiwan, one China"; and (C.) we don't believe that Taiwan should be a member in any organization for which statehood is a requirement.</p>	<p>CORRECT</p>	<p>Taiwan does not meet the Montevideo Convention's criteria for statehood. The United States has administrative authority over Taiwan, and the US President has plenary powers over foreign affairs. He has determined that Taiwan should be unified with the PRC at some unspecified future date. If the Taiwanese do not want this kind of outcome, then they should demand their "fundamental rights" of life, liberty, property, and due process of law under the Fifth Amendment.</p>
<p>Taiwan Relations Act</p>	<p>CORRECT</p>	<p>The United States broke diplomatic relations with the ROC government in exile in late 1978. Under US law, Taiwan is treated as a "sub-sovereign foreign state equivalent." The TRA states that the US will "will <i>make available</i> to Taiwan such defense articles and defense services in such quantity as may be necessary to enable Taiwan to maintain a sufficient self-defense capability." In fact, as an overseas territory of the USA, Taiwan's defensive needs should be handled by the Pentagon directly.</p>
<p>Powell Statement (Oct. 25, 2004): "Taiwan is not independent. It does not enjoy sovereignty as a nation, and that remains our policy, our firm policy."</p>	<p>CORRECT</p>	<p>The territorial sovereignty of "Formosa and the Pescadores" has never been transferred to the Republic of China (ROC) or to the Taiwan governing authorities.</p>

written by Richard W. Hartzell

September 2005  
updated November 2005