

THE DELICATE QUESTION OF TAIWAN'S LEGAL STATUS

1. In Mandate for Change 1953-1956, President Dwight D. Eisenhower stated:

The Japanese peace treaty of 1951 ended Japanese sovereignty over the islands but did not formally cede them to "China," either Communist or Nationalist.

2. After WWII, the problem of Taiwan's legal status remained unresolved. It was a delicate question that the Executive Branch found difficult to answer and chose to overlook whenever possible. The Eisenhower administration gradually stopped planning according to the premise that Taiwan was a part of China and US policy toward Taipei and Beijing a "zero sum game" Consequently, his Cabinet members adopted the guiding principle that Taiwan did not have to be annexed by "China" (Nationalist or Communist), or become formally independent. It could exist in a grey zone without a clear legal status.

3. A more careful delineation of the situation of the Republic of China (ROC) in Taiwan was given in *Sheng v. Rogers* (D.C. Circuit, Oct. 6, 1959). The judges held that:

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.

4. In 1970, the US Dept. of State (DOS) informed the Senate that: "As Taiwan and the Pescadores are not covered by any existing international disposition; sovereignty over the area is an unsettled question subject to future international resolution." This testimony was repeated in a July 13, 1971, "Legal Status of Taiwan" Memorandum by Robert Starr, the DOS Legal Advisor, and has been quoted frequently since.

5. No doubt, the main advocates of such a legal viewpoint are all *civilians*. They have completely overlooked the subject of "military jurisdiction under the US Constitution."

All military attacks against Taiwan in the WWII period were conducted by US military forces. However, General Douglas MacArthur directed the Chinese Nationalists (ROC) under Chiang Kai-shek to conduct the Japanese surrender ceremonies and take charge of the military occupation of Taiwan after the close of hostilities.

Analysis: After the Oct. 25, 1945, Japanese surrender ceremonies in Taiwan, the ROC is a subordinate occupying power under the United States of America. The USA is the principal occupying power. Accordingly, when the ROC moved its central government to occupied Taiwan in December 1949, it became a government in exile.

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6. The above analysis is fully supported by the specifications of the Senate-ratified San Francisco Peace Treaty of 1952. ("China" was not a signatory to this treaty.) Taiwan is a "limbo cession" in Article 2(b). Article 23(a) confirms the United States as "the principal occupying power," and the scope of application of this role is given by Article 4(b), which confirms the jurisdiction of a federal agency, the **United States Military Government** (USMG), over Taiwan.

According to US Army Field Manual FM 27-10, *The Law of Land Warfare*: "Military government is the form of administration by which an occupying power exercises government authority over occupied territory."

7. Notably, in the situation of a territorial cession, the military government of the (principal) occupying power **does not end** with the coming into force of the peace treaty. "Military government continues until legally supplanted" is the rule. After conquest by US military forces, Taiwan has remained under the jurisdiction of USMG up to the present day.

8. Under customary international law and established international precedent: (a) military occupation does not transfer sovereignty; & (b) a government in exile can never become recognized as the legitimate government of its current locality of residence. Therefore, it is entirely appropriate that ROC/Taiwan is **not** included in DOS's listing of *Independent States in the World*. To date, as occupied territory, Taiwan's **political status** has not been finalized, and is correctly described as "undetermined."

9. According to the established legal precedent in dealing with California, Puerto Rico, Guam, Philippines, Cuba and other territorial cessions in the history of the United States, the native Taiwanese people have the right to form their own civil government. The formation of such a civil government does not equal "independence," rather it more fully clarifies Taiwan's true legal status as a quasi-trusteeship under USMG, and the sixth major insular area of the USA.

10. We welcome your support in completing this important task. For more information, please visit <http://www.civil-taiwan.org/>