

Our Request to the U.S. Government

You! Must DO it!

Written by Roger C. S. Lin & Richard W. Hartzell



Issuance of Certificates of Identity as Travel Documents for the People of Taiwan

In his letter of July 26, 1950 in response to the question concerning "Future of Formosa", Kenneth Younger, the then British Acting Foreign Secretary, mentioned that "Formosa is still de jure Japanese territory, and there is no Government of Formosa as such." The British viewpoint on Formosa's legal status was reaffirmed by Gen. Douglas MacArthur's statement at a U.S. congressional hearing held on May 5, 1951: "Legalistically Formosa is still a part of the Empire of Japan."

According to the Memorandum of Conversation prepared by Mr. Eric Stein of the Office of United Nations Political and Security Affairs on November 16, 1950 regarding the consideration of a framework for a plan for the solution of the Formosa question, one of the basic principles is:

"The United States, as a principal victor of the war in the Pacific and as the sole occupying power of Japan has great responsibility in the disposition of Formosa."

Today, what is Taiwan? Taiwan is the residual territory of imperial Japan now under ROC Chinese colonial administration as a proxy occupation force for the United States of America, the principal occupying Power specified in the 1952 Treaty of Peace with Japan.

American Perceptions of Taiwan

- * On Oct. 25, 2004, U.S. Secretary of State Colin Powell confirmed that "Taiwan is not independent. It does not enjoy sovereignty as a nation, and that remains our policy, our firm policy."
- * For many years, the "Taiwan" entry in the U.S. State Department publication "Treaties in Force" has clearly noted that "The United States does not recognize the Republic of China (ROC) as a state or a government."
- * Such policies and pronouncements find a clear legal basis in a 1959 U.S. court decision, where the judges held that Taiwan, formerly called 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." See *Cheng Fu Sheng v. Rogers*, 177 F. Supp. 281, 284 (D.C. District, 1959).

Furthermore, in the appeal decision of *Sheng v. Rogers* (D.C. Circuit, 1960), the court described the status of Formosa as follows:

* "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."

* On August 30, 2007, Dennis Wilder, Senior Director for Asian Affairs at the National Security Council, 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."

* Acting under his foreign affairs powers, the U.S. President recognized the "Republic of China" as the sole legitimate government of China as of December 31, 1978. However, no U.S. President has ever recognized the "Republic of China" as the legitimate government of Taiwan.

U.S. Court Decisions on Taiwanese Civil Rights Lawsuits

On October 24, 2006, Roger C.S. Lin assembled 228 supporters and filed a lawsuit against the United States of America in the U.S. District Court for the District of Columbia. In this lawsuit, the Plaintiffs alleged that the people of Taiwan are not correctly classified as having "Republic of China nationality." Moreover, based on the history of the Pacific War and the specifications of the Treaty of Peace with Japan, aka the San Francisco Peace Treaty (SFPT), they are entitled to carry some form of U.S.-issued travel documents.

Important excerpts from the court decisions are given as follows:

March 18, 2008 District Court Decision

Plaintiffs have essentially been persons without a state for almost 60 years. The last completely clear statement of authority over Taiwan came from General MacArthur in 1945. One can understand and sympathize with Plaintiffs' desire to regularize their position in the world.

As sources cited by Plaintiffs make plain, at the end of World War II, the sovereignty of Taiwan was an undecided question. It remains a very delicate issue in international relations.

According to the Plaintiffs, the decision not to cede Formosa to China was a considered judgment the final draft of the SFPT did not transfer "full sovereignty" in Taiwan and the Pescadores Islands from Japan to China. . . . Instead, Article 23 designated the United States as "the principal occupying Power," with the government of the ROC as its agent.

April 7, 2009 Court of Appeals Decision

America and China's tumultuous relationship over the past sixty years has trapped the inhabitants of Taiwan in political purgatory. During this time the people on Taiwan have lived without any uniformly recognized government. In practical terms, this means they have uncertain status in the world community which infects the population's day-to-day lives. This pervasive ambiguity has driven Appellants to try to concretely define their national identity and personal rights.

In 1949, China's civil war -- a battle between Chinese nationalists and communists -- ended; mainland China fell to the communists and became the People's Republic of China, forcing Chiang Kai-shek to flee to Taiwan and re-establish the Republic of China in exile. . . .

The Taiwan Relations Act also outlined the United States' "expectation that the future of Taiwan will be determined by peaceful means"

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.

Once the Executive determines Taiwan's sovereign, we can decide Appellants' resulting status and concomitant rights expeditiously . . . without knowing Appellants' status, we cannot delineate Appellants' resultant rights.

The Unfinished Legal Business between the U.S. Military Authorities and the people of Taiwan.

* In December 1949, the Chinese Nationalist Government exiled to Taiwan, an integral part of the Empire of Japan as from April 1, 1945, and under Chinese military occupation since October 25, 1945. Hence the resultant Chinese colonial regime on Taiwan.

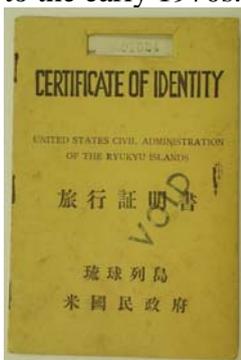
Within this context, on the one hand, under the laws and usages of war, the governing authorities on Taiwan are without any legal justification to issue passports to the people of Taiwan in the name of the "Republic of China."

On the other hand, with the coming into force of the Treaty of Peace with Japan on April 28, 1952, in which the United States of America is specified as the principal occupying Power, under the law of agency, the native Taiwanese persons are supposed to hold the Certificates of Identity (COIs) as the travel documents issued in the name of the United States military authorities instead of the passports issued in the name of the Republic of China. The United States military authorities are definitely in a position to exercise the right to issue these COIs.

The Ryukyu Islands Model

In light of the above, the undersigned officials of the Taiwan Civil Government hereby call upon the U.S. military authorities headed by the U.S. President as the Commander in Chief to adhere to the Law of Nations, the U.S. Constitution, the Treaty of Peace with Japan, the laws and usages of war, the law of agency, and relevant U.S. court decisions to issue the "Certificates of Identity (COIs)" as "Travel Documents" to the people of Taiwan; i.e., native Taiwanese persons.

Such "Travel Documents" should be similar to the COIs issued by United States Civil Administration of the Ryukyu Islands to the native inhabitants of the Ryukyus from the late 1940s to the early 1970s.



(SAMPLE)

The Certificate of Identity for the native inhabitants of the Ryukyu Islands under U.S. military occupation

TAIWAN CIVIL GOVERNMENT

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Deputy Chief Executive	Gavin C.Y. Tsua
Speaker of the Legislature	Wen-yen Chang
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Online references:

<http://www.usmgtcg.ning.com/>

<http://www.taiwandocuments.net/coi-menu.htm>

God bless America, Taiwan, Japan,
and the whole World!

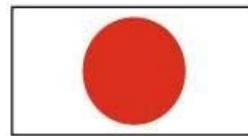
The false claims of "citizenship of the Republic of China" for native Taiwanese Persons holding ROC passports should render those passports illegal under U.S. law.



U.S.A.



U.S.M.G.



JAPAN



T.G.

The Republic of China 1937 to 1952

YOUTUBE VIDEOS

<http://www.taiwanbasic.com/nstatus/roc1952.htm>

Our inquiry to the U.S. government --

What are you doing?

by Richard W. Hartzell and Roger C. S. Lin

The Beginning of WWII in the Pacific

"Yesterday, December 7, 1941 -- a date which will live in infamy -- the United States of America was suddenly and deliberately attacked by naval and air forces of the Empire of Japan." President Roosevelt's speech of December 8, 1941, was immediately followed by a Congressional Declaration of War. On the following day, December 9th, the Chiang Kai-shek's Republic of China also declared war against Japan.

Formosa and the Pescadores had been ceded to Japan in the 1895 Treaty of Shimonoseki. Under international law, there is no doubt that Japan had possession of the sovereignty of these areas after 1895.

During the course of the Pacific war, the historical record shows that all military attacks against Japanese Formosa and the Pescadores, and indeed against the four main Japanese islands, were conducted by United States military forces. It is very significant that the Republic of China military forces did not participate. According to the precedent established in the Mexican American War, the Spanish American War, etc., after the end of hostilities, the United States will be the (principal) occupying power of these areas.

In early August 1945, the United States dropped two atomic bombs on Japan, and the Japanese surrendered on August 15th. U.S. troops were in Formosa soon after, and on September 1st, U.S. naval vessels arrived to arrange for the transport of 1,000 U.S. prisoners of war to Manila. On September 2nd, General Douglas MacArthur directed the senior Japanese commanders and all ground, sea, air and auxiliary forces within Formosa to surrender to Chiang Kai-shek (CKS).

The relationship between the United States and the CKS' Republic of China in the military occupation of Formosa and the Pescadores (hereinafter called "Taiwan") is important. The United States is the principal occupying power. The Republic of China under CKS (hereinafter called "ROC") is the subordinate occupying power. General MacArthur gave orders to Chiang Kai-shek, and the Generalissimo accepted them. This is a principal - agent relationship. [Footnote 1]

The ROC military forces accepted the surrender of Japanese troops on October 25, 1945, in Taipei. The ROC officials immediately announced this occasion as "Taiwan Retrocession Day," however such an announcement is a violation of the laws of war. It is extremely regrettable that the United States government made no efforts to correct this error at the time. This was the first major mistake by the USA in the handling of Taiwanese affairs in the post-war period.

According to the Hague Conventions of 1907, the date of October 25, 1945 can only be interpreted as the beginning of the military occupation of Taiwan. Military occupation is conducted under "military government," and the United States has delegated the military occupation of Taiwan to the ROC. United States Military Government (USMG) in Taiwan has begun as of October 25, 1945.

In January of 1946, the ROC government announced mass naturalization of native persons in Taiwan as "ROC citizens." Additionally, some Taiwanese males were conscripted to fight in the Chinese civil war. (More formal military conscription laws over Taiwanese males were put into effect several years later.) Such unilateral announcements regarding naturalization and military conscription over persons in occupied territory are violations of the laws of war. It is extremely regrettable that the United States government made no efforts to correct these errors at the time. These were the second and third major mistakes by the USA in the handling of Taiwanese affairs in the post-war period.

In late 1949, with a civil war raging in Mainland China, additional military forces and government officials of the ROC fled to Taiwan. As of early 1950, the ROC government in Taiwan is "wearing two hats" -- it is a subordinate occupying power (beginning October 25, 1945), exercising "effective territorial control" over Taiwan, and at the same time it is a government-in-exile (beginning December 1949). Decisions regarding the transfer of the sovereignty of Taiwan will be made in the post-war peace treaty, hence in early 1950 the ROC is clearly not in possession of the sovereignty of Taiwan.

On April 28, 1952, the San Francisco Peace Treaty (SFPT) came into force. Japan renounced the sovereignty of Taiwan in Article 2b, however, no receiving country was specified. This is a "limbo cession." The United States is confirmed as the principal occupying power in Article 23. Final disposition of Taiwan will be according to the directives of USMG, as per Article 4b:

Japan recognizes the validity of dispositions of property of Japan and Japanese nationals made by or pursuant to the directives of the United States Military Government in any of the areas referred to in Articles 2 and 3.

The ROC on Taiwan

As we know, the ROC is the legal government of "China" as spoken of in WWII. However, the ROC failed to maintain its legal position when it fled to Taiwan in late 1949. As of late April 1952, with the coming into force of the SFPT, the ROC is not the legally recognized government of Taiwan; it is merely a subordinate occupying power and government in exile.

With this recognition, an analysis of Taiwan's position under international law and U.S. Constitutional law from late April 1952 up to the present day can proceed very straightforwardly. An examination of the situation of Puerto Rico and Cuba after the Spanish American War provides the necessary legal background.

Puerto Rico, Cuba, and Taiwan

Preliminary Comments:

The Hague Conventions of 1907 specify that "territory is considered occupied when it is actually placed under the authority of the hostile army." The form of administration by which an occupying power exercises government authority over occupied territory is called "military government." 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.

Puerto Rico:

United States Military Government in Puerto Rico began on August 12, 1898, with the surrender of Spanish troops. The United States was the (principal) occupying power. The Treaty of Paris came into force on April 11, 1899, and Puerto Rico was ceded to the United

States in Article 2. In *Downes v. Bidwell* (1901), the U.S. Supreme Court ruled that upon cession by Spain, under U.S. law Puerto Rico became "unincorporated territory." However, the Foraker Act, which was passed by the U.S. Congress to provide a civil government for Puerto Rico (and supplant USMG), only came into effect on May 1, 1900. Hence, from April 11, 1899 to May 1, 1900, Puerto Rico is clearly "unincorporated territory under USMG."

Cuba:

United States Military Government in Cuba began on July 17, 1898, with the surrender of Spanish troops. The United States was the (principal) occupying power. The Treaty of Paris came into force on April 11, 1899, and Cuba was a limbo cession in Article 1. However, the Republic of Cuba government, established to provide a civil government for Cuba (and supplant USMG), only began operations on May 20, 1902. Based on the rulings in *Downes v. Bidwell* (1901) and *Neely v. Henkel* (1901) it is clear that upon the coming into force of the peace treaty, Cuba became "unincorporated territory under USMG." Indeed, the United States flag flew over Cuba from July 17, 1898, until the formal end of USMG in Cuba was proclaimed by the U.S. President on May 20, 1902.

Taiwan:

United States Military Government in Taiwan began on October 25, 1945, with the surrender of Japanese troops. The United States is the principal occupying power. The San Francisco Peace Treaty came into force on April 28, 1952, and Taiwan was a limbo cession in Article 2b. [Footnote 2] Based on the rulings in *Downes v. Bidwell* (1901) and *Neely v. Henkel* (1901) it is clear that upon the coming into force of the peace treaty, Taiwan has become an "overseas territory under USMG." As of late April 1952 (if not earlier), the United States flag should be flying over Taiwan. [Footnote 3] To date, there has been no announcement by the U.S. President of the formal end of USMG in Taiwan, nor the supplanting of USMG by any other United States approved civil government operations.

Fundamental Constitutional Rights

In the *Insular Cases* (beginning 1901) the U.S. Supreme Court held that even without any actions by the U.S. Congress, "fundamental rights" under the U.S. Constitution apply in all unincorporated territories. However, with no action by the U.S. Commander in Chief, what we have seen in Taiwan from late April 1952 to the present is something completely different.

Specifically, the Taiwanese people have been forced to accept ROC citizenship without any internationally recognized legal basis, and males are subject to military conscription in violation of the Geneva Conventions. The Taiwanese people are living under the ROC Constitution, and in their daily lives they are singing the ROC national anthem, raising the ROC flag, and recognizing an ROC national father. The ROC on Taiwan is a non-state, but the ROC constitutional structure in force specifies that insurrection or rebellion against the ROC is punishable by death or lengthy imprisonment!!

Hence, as of late Spring, 1952, in order to conform to the provisions of the Senate-ratified SFPT, and to support and defend the Constitution of the United States against all enemies, foreign and domestic, the U.S. Commander in Chief must issue an Executive Order for the Republic of China government on Taiwan to disband. The U.S. government must help the Taiwanese people organize a temporary government (with a new President, Vice-President, and other top officials), and begin preparations for the calling of a Constitutional Convention.

The myriad mistakes by the USA in the handling of Taiwanese affairs in the post-war period are extremely regrettable.

The One China Policy

With the coming into force of the SFPT in 1952, a clear basis for the future development of Japan was established. However, the situation of Taiwan was a total mess.

We do not dispute the One China Policy, but at the same time it must be recognized that Taiwan is Taiwan and China is China.

In the Shanghai Communique of February 28, 1972, the following wording is particularly important:

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. With this prospect in mind, it affirms the ultimate objective of the withdrawal of all U.S. forces and military installations from Taiwan.

Some have argued that this is a very convoluted way of saying that "Although Taiwan is not a part of China, we want everyone to think that it is." This is certainly worthy of further examination.

That the Commander in Chief has the right to make "dispositions of the property of Japan," in accordance with SFPT Article 4b, we do not challenge. However, we do maintain having done no prior consultation with the Taiwanese people, making a decision to put Taiwan on a "flight-path" for eventual unification with the PRC does violate 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 U.S. Constitution, and apply in overseas territories even without any actions by the U.S. Congress.

Misleading the U.S. Congress?

The State Department informed the Senate in 1970 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 statement was repeated in a "Subject: Legal Status of Taiwan" Memorandum from the Department of State Legal Advisor on July 13, 1971, [Footnote 4] and has been often repeated since. Is this willful ignorance of the truth or some type of politically motivated cover-up? Might it indicate collusion with the China lobby, funded by Generalissimo and Madame Chiang Kai-shek? Or is it simple negligence?

We believe that after reading this entire essay, all members of the public will understand why the "ROC on Taiwan" is not an internationally recognized government, while at the same time the Taiwan Relations Act is a domestic law of the United States. Moreover they will understand why when tensions flared between the PRC and Taiwan 1996, the U.S. Commander in Chief sent two aircraft carriers into the Taiwan Strait without any previous consultation with the Taiwan governing authorities. Significantly, the "ROC on Taiwan" has been unable to obtain admittance to the United Nations, and has been refused membership in such important international bodies as the World Health Organization. [Footnote 5] Why is this? On October 25, 2004, in a press conference in

Beijing, former Secretary of State Powell stated: "Taiwan is not independent. It does not enjoy sovereignty as a nation, and that remains our policy, our firm policy." We agree with Mr. Powell's statement entirely.

The Situation in 2005 and 2006 and Beyond

We strongly urge that the members of Congress and other responsible U.S. government officials consider the following actions:

- * Suspension of the operations of the ROC Ministry of National Defense. The U.S. Constitution states that Congress will provide for the common defense. None of the pre-existing five major unincorporated territories (Guam, Northern Mariana Islands, American Samoa, Puerto Rico, and the U.S. Virgin Islands) have their own Ministry of National Defense, or have they instituted military conscription laws over their local populace. All defense matters for the fifty states and territories under U.S. administrative authority are handled by the Department of Defense in the Pentagon.
- * Authorization for the U.S. Department of Defense to assume full responsibility for the defense of Taiwan, and to increase the deployment of military equipment and personnel in the western Pacific in order to protect United States' interests.
- * Suspension of the operations of the ROC Ministry of Foreign Affairs. All diplomatic and consular matters for the fifty states and territories under U.S. administrative authority are handled by the Department of State.
- * Establishment of the "United States Court of Taiwan." Under the U.S. Constitution, this would be an Article II Court, and would serve to protect the rights of U.S. citizens in Taiwan and deal with other important matters regarding U.S. administrative authority over Taiwan. The issue of whether this Court or a separate tribunal would deal with the alleged war crimes perpetrated by ROC government officials could be decided at a later date.
- * Authorization for the Taiwanese people to begin preparations for the calling of a Constitutional Convention, designing of a new flag, new seal, etc.
- * Authorization for the establishment of a timetable for the retirement of the current ROC President, Vice President, the heads of the Five Yuan, the Supreme Court justices, High Court justices, other top officials, etc. as well as U.S. government assistance for the appointment of transitional Taiwanese government officers in these positions.
- * Authorization for the Taiwanese people to obtain new "Taiwan" passports, or "Certificates of Identity," issued under United States administrative authority. [Footnote 6]
- * Authorization for the U.S. Marines to raise the U.S. flag over Taiwan.

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Additional Background Information on Military Government, Military Occupation, and the Taiwan Status

U.S. Army Field Manual FM 27-10 "The Law of Land Warfare" is a compendium of the Hague Conventions, Geneva Conventions, Uniform Code of Military Justice, and other recognized "laws of

war" precedent, customs, and norms governing the conduct of military operations on land. The first edition was published October 1, 1940.

In *Application of Yamashita* (1946), the U.S. Supreme Court held that: "FM 27-10 (1940) states the principal offenses under the laws of war recognized by the United States."

The contents of this Field Manual are important when discussing the Taiwan status, see <http://www.globalsecurity.org/military/library/policy/army/fm/27-10/index.html> and in particular, an in-depth understanding of Chapter 6: OCCUPATION is imperative, see <http://www.globalsecurity.org/military/library/policy/army/fm/27-10/Ch6.htm>

The U.S. Constitution has placed no limit upon the war powers of the government, but they are regulated and limited by the laws of war. One of these powers is the right to institute military governments. In *Ex Parte Milligan* (1866), the U.S. Supreme Court held that military government is to be "exercised in time of foreign war without the boundaries of the United States, or in time of rebellion and civil war within states or districts occupied by rebels treated as belligerents."

Footnotes:

1. The law of agency is the body of legal rules and norms concerned with any principal - agent relationship, in which one person (or group) has legal authority to act for another. The law of agency is based on the Latin maxim "Qui facit per alium, facit per se," which means "he who acts through another is deemed in law to do it himself." Hugo Grotius spoke of agency in his treatise *On the Law of War and Peace*, written in 1625. In particular, see Book 2, Chapter XI, Sec. XII: "We are obliged to confirm the engagements made by others, acting in our name, if it is evident that they had special, or general instructions from us to do so. And in granting a commission with full powers to any one, it may so happen that we are bound by the conduct of that agent, even if he exceed the secret instructions which he has received. For he acts upon that ostensible authority, by which we are bound to ratify whatever he does, although we may have bound him to do nothing but according to his private instructions."
2. Article VI of the U.S. Constitution provides that: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land"
3. For a much more detailed analysis of the international legal status of Taiwan see Mr. Hartzell's article entitled "Understanding the San Francisco Peace Treaty's Disposition of Formosa and the Pescadores", in the *Harvard Asia Quarterly*, published Fall 2004 by the Harvard Asia Center, Cambridge, Massachusetts.
4. See Rethinking "One China", edited by John J. Tkacik, Jr., The Heritage Foundation, Washington, D.C., published 2004, Appendix C.
5. Importantly, the "ROC on Taiwan" was not admitted to the World Trade Organization as a country but as a "separate customs territory." The status of "separate customs territory" arises under military occupation.
6. The U.S. Supreme Court has held that the "liberty" of the Fifth Amendment includes the right to travel, and that the right to travel includes the right to obtain a travel document.

Definitions:

Conquest -- the acquisition of territory by force.

Fiduciary Relationship -- the relationship between a trustee, beneficiaries, and property held in trust.

Government-in-exile -- a temporary government moved to or formed in a foreign land by exiles who hope to rule when their country is liberated.

Irredentism -- claiming a right to territories belonging to another state on the grounds of common ethnicity and/or prior historical possession, actual or alleged.

Law(s) of Occupation -- the subset of the Law(s) of War which deals with military occupation.

Law(s) of War -- the body of laws governing armed conflict. In relation to the Taiwan status, the laws of war spoken of are "the customary laws of warfare in the post-Napoleonic period."

Ligeance -- the connection between sovereign and subject by which they were mutually bound, the former to protection and the securing of justice, the latter to faithful service; allegiance. [Note: also written as ligeancy and liegance.]

Military Occupation -- (1) invasion, conquest, and control of a nation or territory by foreign armed forces, (2) a condition in which territory is under the effective control of foreign armed forces, (3) the military government exercising control over an occupied nation or territory. [Note: military occupation is not annexation and the doctrine of "prescription" does not apply.]

Prescription -- (1) the process of acquiring title to property by reason of uninterrupted possession of specified duration, (2) acquisition of ownership or other real rights in movables or immovables by continuous, uninterrupted, peaceable, public, and unequivocal possession for a period of time.

Property -- (1) something, as land and assets, legally possessed, (2) a piece of real estate, (3) something tangible or intangible to which its owner has legal title, (4) the right of ownership; title.

Taiwan Strait -- a channel between mainland China and the island of Taiwan, varying in width between 180 km to 131 km (112 miles to 81 miles). The Taiwan Strait is part of the South China Sea and connects to the East China Sea to the northeast.

Military Occupation Basics

- Military occupation is conducted under military government.
- Military occupation is period of "interim (political) status." The occupied territory is said to be "in interim status under the law of occupation." Since the territory has not reached a final (political) status, it is a sub-sovereign entity.
- The conqueror is the (principal) occupying power.
- Military Occupation does not transfer sovereignty. In other words, military occupation does not equal annexation.
- The invoking of various "legal" or "quasi-legal" doctrines in the prelude to, beginning of, or at any time during the continuation of the military occupation does not legitimize an annexation of the territory.

- Military Occupation -- (1) invasion, conquest, and control of a nation or territory by foreign armed forces, (2) a condition in which territory is under the effective control of foreign armed forces, (3) the military government exercising control over an occupied nation or territory. [Note: military occupation is not annexation and the doctrine of "prescription" does not apply.]
 - Military government continues until legally supplanted. In other words, military occupation ends when the military government of the principal occupying power is legally supplanted by a recognized "civil government" for the area.
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Searching for a symbol

by Chen Meng-chao 陳孟喬

At first reading it seems hard to dispute a hearty call to wave the national flag as a way to promote a sense of patriotism among the readers of this newspaper. However, after some careful research and reflection, I feel I must object to the comments made in Chang Shin-ping's recent letter (Letter, Nov. 23, page 8).

Looking at the historical and legal record, it is an indisputable fact that when the Republic of China's (ROC) government moved to Taiwan in December 1949, Taiwan was still a part of the empire of Japan. U.S. General Douglas MacArthur later clarified this in a congressional hearing in May 1951.

The interpretation that the surrender of Japanese troops in Taiwan on Oct. 25, 1945, amounted to the transfer of Taiwan's territorial sovereignty to China is impossible under international law. Indeed, none of the Allies recognized any such transfer. Oct. 25, 1945, only marked the beginning of the military occupation of Taiwan, and international law clearly states that "Military occupation does not transfer sovereignty."

By moving outside of China's national territory, the ROC became a government in exile as of December 1949. There has been no change in this status to date.

Some would argue that the ROC on Taiwan certainly appears to meet all of the Montevideo Convention's criteria for statehood. However, in fact, all of its "qualifying criteria" are bogus: It exercises effective territorial control over Formosa and the Pescadores, but there has been no official transfer of title; the native Taiwanese population was mass-naturalized as ROC citizens in 1946, based on the false premise of "Taiwan Retrocession Day," and in direct violation of the Hague Convention's stipulations regarding the treatment of the populace of occupied territory: It has a government, but it is a government in exile, etc.

Based on the above, I must conclude that in the world today: "Taiwan" is a geographical term and there is no country in the world called the "Republic of Taiwan" (or anything similar), with its own government, population, etc. The ROC flag is not the flag of Taiwan and as a government in exile, the ROC does not exercise sovereignty over Taiwan, but only a high degree of territorial control.

The Ministry of Foreign Affairs will no doubt take exception to the above and point out that the issuance of ROC passports is the act of a sovereign state. However, I must mention that in a March 18, 2008, District Court Decision in Washington, in *Roger Lin v. USA*, the judge held that native Taiwanese are essentially stateless. The ministry has yet to offer any "official rebuttal" to the judge's conclusion in that important lawsuit.

One might wonder what symbol can be used to connect Taiwanese around the world. I do not have the answer to that question, but I am sure that it is not the flag of the ROC government in exile.

Chen Meng-chao is a Lieutenant Governor, Taipei State, TCG

TAIPEI TIMES

March 14, 2013

Page 8

ROC has no right to sovereignty

by Te Lin 林德興

In a recent letter to the Taipei Times (Letters, March 8, page 8) it was stated that the Cairo Declaration cannot be used as legal backing for the Republic of China (ROC) government's sovereignty claim over Taiwan. The Cairo Declaration aside, there are many other statements and documents which are regularly used by the Chinese Nationalist Party (KMT) government to justify its sovereignty claims.

It can be very instructive to view these statements and documents in a systematic fashion from the viewpoint of the customary law of the post-Napoleonic period.

Some people may assert that a particular document or statement has the legal power to transfer the territorial sovereignty of Taiwan to the ROC.

However, to prove such an assertion, the following data must first be collected: Several historical examples where similar documents or statements have produced such a transfer of sovereignty in other parts of the world, and whether the international community recognized the validity of that transfer.

In this manner, the Cairo Declaration (Dec. 1, 1943), the Potsdam Proclamation (July 26, 1945), the Japanese Instrument of Surrender (Sept. 2, 1945), General Order No. 1 (Sept. 2, 1945), the formal surrender of Japan in Taipei (Oct. 25, 1945) and the relocation of the ROC government to Taipei (Dec. 10, 1949) can all be shown to have had no legal effect on the transfer of Taiwanese sovereignty to a third party — for example, the ROC — whatsoever.

Most significantly perhaps, the surrender of enemy troops only served to mark the beginning of a new military occupation, and international law states that military occupation does not transfer sovereignty.

As for post-war treaty stipulations, it is important to remember that Taiwan remained Japanese territory until the San Francisco Peace Treaty came into effect on April 28, 1952.

This is the only valid interpretation of historical record, based on the study and interpretation of numerous other post-war situations and treaty arrangements.

The San Francisco Peace Treaty did not award sovereignty of Taiwan to "China," and "China" was not a signatory of the treaty. Nevertheless, the ROC-Japan bilateral Treaty of Taipei (Aug. 5, 1952) is often cited by pro-KMT academics who say that since one party (Japan) "renounced," it must be understood that the other party (the ROC) "received."

However, after renouncing all “right, title and claim” to Taiwan under the San Francisco Peace Treaty, Japan would have no legal power to make any further disposition of Taiwan in later treaties.

A 1959 U.S. court case summarized all relevant details as follows: “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” (Sheng v. Rogers, D.C. Circuit, Oct. 6, 1959, <http://www.taiwanbasic.com/state/usg/shengvsro.htm>).

Today, the ROC on Taiwan holds the dual statuses of (1) subordinate occupying power, beginning Oct. 25, 1945, and (2) government in exile.

Neither of these statuses include a valid sovereignty claim over Taiwan.

Te Lin is the Director of the Taiwan Civil Government in Washington D.C.

Eight Points to be Discussed with U.S. Executive Branch Officials

一、日本台灣國際地位：日本天皇仍擁台灣主權，美國軍事政府仍然佔領。

The International Legal Position of (Japanese) Taiwan: Taiwan's sovereignty is held by the Japanese Emperor, and Taiwan is still under U.S. military occupation.

二、佔領不移轉主權：中國流亡殖民政權（ROC）不得違反國際法主張。

"Military occupation does not transfer sovereignty": The ROC government in exile must follow the norms of international law.

三、流亡者不得就地合法：中華民國不得使用「台灣政府」名義或名號。

"A government in exile cannot become the legally recognized government of its current locality of residence": It is impossible for the ROC to be recognized as the true Taiwan Government.

四、美軍台灣民政府旅行文件：台灣人不是中華民國人，ROC 護照是違法。

U.S. Dept. of Defense should issue "Certificates of Identity" for the People of Taiwan: Native Taiwanese People are not ROC citizens, hence use of the ROC passport is illegal.

五、停止台灣人服兵役：佔領區人民不得當佔領者兵役，志願也是違法。

All military conscription activities in Taiwan should be ended: International law forbids military conscription in occupied territory, and the formation of volunteer forces is not allowed either.

六、停止中國人移民台灣：保持被佔領區民族特性是戰爭法所規範。

Chinese immigration into Taiwan should be stopped: The laws of war forbid large-scale immigration into occupied territory, in order to maintain the distinctive character of the original people.

七、停止流亡政權所有選舉：台灣人非志願參與選舉，不當利益嚴重扭曲。

All elections of the ROC government in exile should be ended: Participation in these elections is not according to the free will of the native Taiwanese, thus resulting in a serious distortion of proper benefits for the populace.

八、依照琉球慣例，返還台灣予日本天皇或讓台灣、日本成為「日台邦聯」。

According to the precedent established in the Ryukyu Islands, Taiwan should be returned to Japan, or Taiwan and Japan should join together in a "commonwealth".

A. Eight Viewpoints on Taiwan as the Reminder to U.S. Officials

1. The historical evolution of the Taiwan status:

May 8, 1895:

The Treaty of Shimonoseki entered into force such that Taiwan, the then Chinese colony, was ceded by Emperor Kuang-Hsu of China to Emperor Meiji of Japan.

June 17, 1895:

Kabayama Sukenori, the first Governor-General of Taiwan appointed by the Emperor of Japan, commenced to exercise jurisdiction over Taiwan as a colony of Japan.

April 1, 1945:

Taiwan was incorporated as an integral part of Japan through the application of the Constitution of the Empire of Japan over the whole of Taiwan such that Taiwan was decolonized and became Japanese Taiwan thenceforth.

September 2, 1945:

The Empire of Japan surrendered to the Allied Powers. Gen. Douglas MacArthur issued General Order No. #1.

October 25, 1945:

The ROC Chinese military occupation in Japanese Taiwan commenced.

December 10, 1949:

The ROC nationalist government exiled to Japanese Taiwan then under ROC Chinese military occupation, hence the resultant ROC Chinese colonial regime on Japanese Taiwan thenceforth.

April 28, 1952:

The Treaty of Peace with Japan entered into force such that Japanese Taiwan under ROC Chinese colonial administration as the proxy occupation force for the United States military government ensued.

Article 2(b) of the Treaty of Peace with Japan stipulates that "Japan renounces all right, title and claim to Formosa and the Pescadores." It was interpreted in a confidential document of 1974 declassified and released by the U.S. Department of State that "Japan renounced any claims to Taiwan and Pescadores, but in accordance with prevailing U.S. position did not cede these territories to any other entity. Until recently, U.S. position on sovereignty over Taiwan continued to be that it was an unsettled question subject to future international resolution."

August 5, 1952:

Japanese Taiwan under ROC trusteeship commenced as the Treaty of Peace between Japan and the Republic of China entered into force, based on the fait accompli of the existing ROC Chinese colonial administration as the proxy occupation force for the United States of America, the principal occupying Power specified in Article 23(a) of the Treaty of Peace with Japan.

March 3, 1955:

The Mutual Defense Treaty between the United States of America and the Republic of China entered into force, signifying the principal-agent relationship between the United States and the ROC Chinese colonial regime under Article 23(a) of the Treaty of Peace with Japan.

February 28, 1972

The United States of America and the People's Republic of China issued the Joint Communiqué in Shanghai; i.e., the Shanghai Communiqué, in which 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.

However, according to a confidential document of 1974 declassified and released by the U.S. Department of State, "since that time as matter of policy we have avoided any statements on issue of sovereignty over Taiwan." In addition, "It can be fairly argued that ROC did not represent Taiwanese people; but PRC represents the Taiwanese even less."

September 29, 1972

The ROC trusteeship over Japanese Taiwan came to an end as the Government of Japan abrogated the Treaty of Peace between Japan and the Republic of China.

January 1, 1979:

Taiwan Relations Act became effective, sustaining the principal-agent relationship between the United States and the ROC Chinese colonial regime as the governing authorities on Taiwan under Article 23(a) of the Treaty of Peace with Japan .

The Status Quo:

Japanese Taiwan under ROC Chinese colonial administration as the proxy occupation force for the United States Military Government.

The United States of America as the principal occupying Power of Japan has the responsibility to restore Japanese Taiwan to its normal status under the Law of Nations.

- 2. The ROC Chinese military occupation authority must follow the international law precept that "military occupation does not transfer sovereignty."**

In no way can Japanese Taiwan, as the occupied territory, be transformed into the Republic of China, as the occupying state. Hence, Taiwan is by no means the Republic of China.

- 3. Inasmuch as the government-in-exile is without legal grounds to be granted sovereignty as the legitimate authority of its locality, on the one hand, the ROC Chinese government-in-exile in**

Taipei is not in a position to claim the title of "the Government of Taiwan"; on the other hand, it is unjustifiable for any nation in the world including the United States and Japan to recognize the ROC Chinese government-in-exile in Taipei as "the Government of Taiwan".

In no way can the Republic of China, as the Chinese government-in-exile in Taipei, be transformed into Japanese Taiwan, as an integral part of Japan. Hence, the Republic of China is by no means Taiwan.

4. Native Taiwanese People; i.e., the people of Taiwan, should no longer be deemed as nationals of the Republic of China since the Government of Japan abrogated the Treaty of Peace between Japan and the Republic of China on Sept. 29, 1972.

The people of Taiwan, as persons without a state according to the U.S. District Court decision of March 18, 2008, are supposed to hold the "Certificates of Identity" as the travel documents issued in the name of the United States military authorities instead of the passports issued in the name of the Republic of China.

5. Pursuant to Article 51 of the Geneva Convention IV:

The Occupying Power may not compel protected persons to serve in its armed or auxiliary forces. No pressure or propaganda which aims at securing voluntary enlistment is permitted.

All ROC military conscription activities in Taiwan should be ended.

The international law forbids military conscription in occupied territory. Moreover, the formation of volunteer forces is not allowed either.

6. Pursuant to Article 49 of the Geneva Convention IV:

Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive. The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.

Chinese immigration into Taiwan should be stopped.

It is prohibited for the occupying power to confiscate land in the occupied territory for the sole purpose of establishing settlements for its nationals. In addition, the occupying power has the responsibility to preserve and maintain the demographic and social configuration of the occupied territory, which may entail restricting even voluntary migrations. Hence, it is against the laws of war for the occupying authority to execute the immigration policy in the occupied territory.

According to the late Antonio Cassese, the prominent Italian jurist specialized in public international law as a war crimes law expert, states must refrain from altering the structure of the concerned "people" by moving populations in or out of the occupied territory.

7. All elections held by ROC Chinese colonial regime should be ended:

The participation of the people of Taiwan, as the inhabitants of the occupied territory, in the election campaigns held by the ROC Chinese colonial regime, as the resultant of the Chinese

occupying authority and the Chinese government-in-exile, is without precedent in the international law. Hence the election results are unjustifiable.

8. Since "permanent occupation" is not only against "the principle of territorial integrity of states" in the international law but against "the natural law of conscience", the United States of America as the principal occupying Power of Japan should terminate the principal-agent relationship between the United States and the ROC Chinese colonial regime as the proxy occupation force for the United States military government, and restore Taiwan to its normal status.

While the Ryukyu Islands under United States trusteeship were returned to the jurisdiction of the Government of Japan as "the Okinawa Prefecture of Japan", the Chinese-colonized Taiwan, referring to the international precedents for the reversions of the British-colonized Hong Kong and the Portuguese-colonized Macau, is supposed to be restored to the Emperor of Japan as "the special administrative region of Japan" derived from the compromise between Article 2(b) of the Peace Treaty with Japan, in which the Government of Japan renounced all rights of sovereignty over Taiwan, and the peremptory norm as the principle of the Law of Nations, in which the necessary and indispensable obligations of sovereignty as the "residual sovereignty" over Taiwan imposed on the Emperor of Japan by the Law of Nations are not subject to change, hence just being suspended owing to foreign occupation without being abrogated.

Obligations of Sovereignty imposed on the Emperor of Japan by the Law of Nations described in the Preamble of the Constitution of the Empire of Japan:

朕は我が臣民の権利及財産の安全を貴重し、及之を保護し、此の憲法及法律の範囲内に於て、其の享有を完全ならしむべきことを宣言す。

「I as the Emperor declare to respect and to protect the security of the rights and the properties of my subjects, and to have them enjoy completely within the extent of the provisions of this Constitution and law.」

Rights of Sovereignty resulting from the Obligations of Sovereignty under the Law of Nations vested in the Emperor of Japan described in the Preamble of the Constitution of the Empire of Japan:

國家統治の大權は、朕が之を祖宗に承けて、之を子孫に傳ふる所なり、朕及朕が子孫は、將來此の憲法の條章に循ひ、之を行ふことを愆らせるへし。

「I as the Emperor inherited the rights of sovereignty of the State from ancestors, and shall bequeath them to descendants. I as the Emperor and my descendants shall in the future abide by the provisions of this Constitution, no violation allowed.」

B. Three White House Petitions

The White House Petition 1:

August 5—September 5, 2012

WE PETITION THE OBAMA ADMINISTRATION TO:

Title

Return Taiwan to the Emperor of Japan under the Law of Nations to Ensure the Peace and Security of the Western Pacific.

Description

Taiwan was ceded to the Emperor of Japan by China in perpetuity on the Treaty of Shimonoseki in 1895, and was Incorporated into an integral part of Japan.

Pursuant to Article 2(b) of the Peace Treaty in 1952, Japan renounced all rights over Taiwan. However, the obligations for indigenous Taiwanese subject remain with Japan.

While permanent occupation is unlawful, unpleasant politics between the Chinese on Taiwan and the PRC have taken place by formal reconciliation in 2010.

The US is the principal occupying Power upon Japan as per the Treaty. The US President has absolute authority to restore normality of Taiwan by returning it to the Emperor of Japan as it had once done with Okinawa in 1972, for the ultimate security of the region.

The White House Petition 2:

September 8—October 8, 2012

WE PETITION THE OBAMA ADMINISTRATION TO:

Title

Restore Taiwan, Liancourt Rocks, South Kurile, Spratly and Paracel Islands to Normal Status under the Law of Nations

Description

The Peace Treaty with Japan signed on September 8, 1951, has to observe the Law of Nations to be lawful.

Japan renounced all rights of sovereignty over the said territories except Liancourt Rocks pursuant to Article 2 of the Treaty. However, the natural obligations of sovereignty thereover remaining with Japan were just suspended under foreign occupations, and cannot be altered or abrogated abiding by the peremptory norm as a principle of the Law of Nations.

The USA is the principal occupying Power pursuant to Article 23(a) of the Treaty, such that restoring those disputed territories to normal status can only be made possible through the good offices of the US President under the Law of Nations based on the principle of territorial integrity as a moral, sacred duty toward Japan.

The White House Petition 3:

October 5—November 6, 2012

WE PETITION THE OBAMA ADMINISTRATION TO:

Title

Recognize Japanese Emperor's title over the Senkaku Islands so as to avoid a war between China and Japan

Description

The Senkaku Islands geographically appertaining to Taiwan were ceded concomitantly with Taiwan to the Emperor of Japan as per the Treaty of Shimonoseki. China refused to recognize Japan's territorial claim on Jan. 14, 1895, but admits Japan acquired formal title on May 8, 1895.

The terms of the Cairo Declaration were nullified due to Chinese intervention in Korean War and unable to be carried out.

The Peace Treaty concluded between Allied Powers and Japanese Government is not concerned with Japanese Emperor's title over any integral part of Japan including the connected islands of the Senkakus and Taiwan.

It is improper for US Government to veil the legal status of the Senkaku Islands by taking no position on ultimate sovereignty, leaving room for a territorial dispute between China and Japan.

C. The Advertising of the Taiwan Civil Government in the *Washington Post* on January 21, 2013

You, Must DO it

<http://www.taiwandocuments.net/advertorial.htm>

D. English Version for the Advertising of the Taiwan Civil Government in Yomiuri Shimbun on April 28, 2013

Japanese Taiwan under ROC Chinese Colonial Administration as the Proxy Occupation Force for the United States Military Government

Memorandum by the Joint Chiefs of Staff to the Secretary of Defense (Lovett)

Top Secret Washington, 15 August 1952.

Subject: Future Post-Peace Treaty Disposition of Ryukyu and Bonin-Volcano Islands.

Enclosure

FACTS BEARING ON THE PROBLEM AND DISCUSSION
(developed by the Joint Chiefs of Staff)

4. In Article 2 of the Peace Treaty, Japan renounced right, title and claim to Korea, Formosa, the Kuriles, Sakhalin, the Mandated Islands, Antarctic area, the Spratly Islands and the Paracel Islands. It may be inferred that ultimate Japanese sovereignty was recognized over the islands she agreed to place in trusteeship. This conception was conceded by Mr. Dulles (page 78, Dept.State Publication 4392)* and by Mr. Younger, the U.K. delegate (page 93, Dept. State Publication 4392). Mr. Dulles speaks of the current Japanese position as "residual sovereignty".

Department of State, Conference for the Conclusion and Signature of the Treaty of Peace with Japan; Record of Proceedings, September 4-8, 1951 (Washington, Government Printing Office, 1951).

As per the contents of this excerpted memorandum, among the territories referred to in Article 2 of the Treaty of Peace with Japan that the Government of Japan renounced "territorial rights", as interpreted by the late Japanese Prime Minister Yoshida Shigeru in his book The World and Japan published in 1963, there should exist the territory under Article 2 that the Government of Japan agreed to place under occupying state trusteeship by reaching an agreement with the occupying state. Citations for Trusteeship Provisions:

1. Article 3 of "the Treaty of Peace with Japan", signed on September 8, 1951 and entered into force on April 28, 1952, as the Treaty provision on "United States trusteeship":

"Japan will concur in any proposal of the United States to the United Nations to place under its trusteeship system, with the United States as the sole administering authority, Nansei Shoto south of 29 deg. north latitude (including the Ryukyu Islands and the Daito Islands), Nanpo Shoto south of Sofu Gan (including the Bonin Islands, Rosario Island and the Volcano Islands) and Parece Vela and Marcus Island. Pending the making of such a proposal and affirmative action thereon, the United States will have the right to exercise all and any powers of administration, legislation and jurisdiction over the territory and inhabitants of these islands, including their territorial waters."

Article 3 of this Treaty implies that Japan agreed to place those territories referred to in Article 3 under "United States trusteeship" by renouncing, in favor of the United States, all administrative rights over those territories in the event that the United States decided not to make a proposal to the United Nations to have those territories placed under "United Nations trusteeship system".

2. Article 10 of "the Treaty of Peace between Japan and the Republic of China", signed on April 28, 1952 and entered into force on Aug. 5, 1952, as the Treaty provision on "Republic of China trusteeship":

"For the purposes of the present Treaty, nationals of the Republic of China shall be deemed to include all the inhabitants and former inhabitants of Taiwan (Formosa) and Penghu (the Pescadores) and their descendants who are of the Chinese nationality in accordance with the laws and regulations which have been or may hereafter be enforced by the Republic of China in Taiwan (Formosa) and Penghu (the Pescadores);"

* * *

Article 10 of this Treaty implies that Japan, based on the fait accompli of the existing ROC Chinese colonial administration as the proxy occupation force for the United States military government, agreed to place Formosa and the Pescadores under "Republic of China trusteeship" pursuant to Article 10 of this Treaty. Under this Article, the inhabitants of Formosa and the Pescadores were deemed by Japan and the Republic of China as "nationals" of the Republic of China under the jurisdiction of the ROC in Taiwan headed by the then President Chiang Kai-Shek as the agent of the United States Military Government, with the then President Harry Truman as the Commander-in-Chief of the principal occupying power under Article 23(a) of the Treaty of Peace with Japan.

For more information on Article 10, see <http://www.civil-taiwan.org/taipei-10.htm>

It could be argued on the authority of the above-mentioned official documents that in the Treaty of Peace with Japan, not only those territories referred to in Article 3 but some certain territories referred to in Article 2 were the territories Japan "agreed to place in

trusteeship." Among the territories referred to in Article 2 of the Treaty of Peace with Japan, "Formosa and the Pescadores," aka Taiwan, is the only territory that the Government of Japan "agreed to place in trusteeship" in a peace treaty. Thus it may be inferred that ultimate Japanese sovereignty was recognized over Taiwan, coinciding with Mr. Dulles' perception of "residual sovereignty" under the Law of Nations.

Article 2(b) of the Treaty of Peace with Japan stipulates that "Japan renounces all right, title and claim to Formosa and the Pescadores." It was interpreted in a confidential document of 1974 declassified and released by the U.S. Dept. of State that "Japan renounced any claims to Taiwan and Pescadores, but in accordance with prevailing U.S. position did not cede these territories to any other entity. Until recently, U.S. position on sovereignty over Taiwan continued to be that it was an unsettled question subject to future international resolution."

Where there is a problem, there is a solution. Consequently, there is a Taiwan problem, there should be a Taiwan solution. Taiwan, as an integral part of Japan, can never be ceded and has never been ceded to any other entity, hence no Taiwan cession as such. The Taiwan problem is by no means a Chinese internal affair and can only be resolved through the international processes based on the international laws.

The Chinese Nationalists and the Chinese Communists reached a reconciliation deal by signing the "ECFA (Economic Cooperation Framework Agreement)" on June 29, 2010. Thus, the perception that both the Chinese Nationalist Army and the Chinese Communist Army are both part of the "Chinese Army" has gradually evolved across the Taiwan Strait with an atmosphere markedly unfavorable to the U.S.-Japan security alliance.

The realization of the normalized Taiwan status will certainly contribute to the solution of the dispute over the Senkaku Islands. Consequently, it is not only an appeal that the Taiwan Civil Government put forward on the authority of the international laws as well as the international precedents. Additionally, it is an issue that both the United States of America and Japan shall have to take seriously for reasons of their mutual security interests in the Western Pacific Region.

The Five-sided Relationship between Japan - Taiwan - PRC - ROC – USA
LINKS
<http://www.taiwanadvice.com/tcg-ref.htm>

Taiwan is occupied territory

by Lin Yung-cheng 林永承

In "Focus on national name a distraction," (May 30, page 8), law professor Chiang Huang-chih does a good overview of the recent 60-plus years of Taiwanese history, and says that before the coming into force of the San Francisco Peace Treaty (SFPT) on April 28, 1952, Taiwan's territorial sovereignty remained with Japan.

He correctly states that the Republic of China (ROC), a "foreign regime," ruled Taiwan between 1945 and 1949, while waiting for the signing of a peace treaty. When the ROC moved its central government to Taiwan in late 1949, it was moving outside of China's national territory, and hence became a government-in-exile.

However, Chiang's analysis fails when he states that since the early 1970s, the cross-operations of international and domestic law have meant that the ROC and Taiwan have been gradually fused into one entity. Under international law in the post-Napoleonic period, no such "fusion" is possible.

In this regard, two important legal tenets must be mentioned. First, "military occupation does not transfer sovereignty." Second, there are no actions, procedures, or other methodology whereby a "government-in-exile" can become established as the legal government of its current locality of residence.

With the surrender of Japanese troops on Oct. 25, 1945, Taiwan came under the rule of the "foreign" ROC regime, and that was a condition of military occupation. There was no transfer of Taiwan's territorial sovereignty to China in the late 1940s or early 1950s, as Chiang stated. When Japan renounced all rights to Taiwan in the SFPT without specifying a receiving country, the military occupation of Taiwan continued, and the status of the ROC as a government-in-exile remained unaffected.

Although Taiwan has democratized over the past few decades, it remains in a legal condition of military occupation, which means that its "final political status" is undetermined. Hence, Taiwan is not a country, it is merely an occupied territory. The ROC cannot obtain further international legitimacy, because it is, at the most basic level, a government-in-exile. (The status of the "Chinese government-in-exile in Taipei" is frequently abbreviated to "Chinese Taipei" for participation in international organizations.)

A chart which outlines these considerations in detail is available at www.taiwanadvice.com/examlegalit.htm

It is to be hoped that Chiang can produce a similar chart to present his views and analysis in more detail.

Based on the legal tenets above, the assertion that "the ROC is Taiwan, and Taiwan is the ROC" is not tenable. Realistically, it is not the "focus on national name" that is a distraction, but rather the focus on national sovereignty.

The world community only recognizes one China, and that is the People's Republic of China (PRC). According to UN General Assembly Resolution 2758, the PRC is the successor government to the ROC. If the Taiwanese people continue to stress that the "ROC in Taiwan" is a sovereign entity, this amounts to handing Taiwan to the PRC on a silver platter.

Hence, such sloganeering should be avoided.

Lin Yung-cheng is a TCG Cabinet member.

Formation of Civil Governments

under the laws of war

After the end of active fighting in a war, there is a period of military occupation. Military occupation is conducted under military government. For the military forces of the United States, that is the United States Military Government (USMG).

SECTION 1: Civil Governments formed via a law passed by the U.S. Congress

In the aftermath of war, in the situation of areas ceded to the United States, the local civil government would have to be formed based on a law passed by the U.S. Congress. This was the situation in California after the Mexican American War, and also the situation in the Philippines, Guam, and Puerto Rico after the Spanish American War.

The local civil government supplants military government jurisdiction over the territory.

CALIFORNIA, GUAM, PUERTO RICO & PHILIPPINES

	Location	United States military occupation began	Civil Government Formed by U.S. Congress	Notes and/or References
1)	California	Jan. 13, 1847	California Civil Government Dec. 20, 1849	
2)	Guam	June 21, 1898	Guam Civil Government July 1, 1950	
3)	Puerto Rico	Aug. 12, 1898	Puerto Rico Civil Government May 1, 1900	See Foraker Act
4)	Philippines	Aug. 14, 1898	Philippines Civil Government July 4, 1901	

These four situations are quite well documented in the relevant literature and on internet websites.

The distinction between military government and civil government should be clear, however one particular consideration should be noted. There is the so-called "civil affairs administration of a military government," and the shortened appellation for this is often

simply "civil administration." Civilians should recognize that the *civil (affairs) administration of a military government* is still "military government."

SECTION 2: Civil Governments formed by the Local People

The situations of Cuba, the Ryukyus, and Iraq are similar in that these areas were **not** ceded to the United States. Hence, while under United States Military Government (USMG) jurisdiction, when the local people want to strive to have a larger degree of self-government, the correct path is to establish their own civil government.

The local civil government operates under USMG until the U.S. Commander in Chief decides that the territory should become fully independent, or should become part of some other independent entity.

CUBA, THE RYUKYUS, & IRAQ

	Location	United States military occupation began	Civil Government Formed by Local People	Notes and/or References
5)	Cuba	July 17, 1898	Cuba Civil Government by mid 1899	<u>American Passages, Volume 2: A History of the United States: Since 1865</u> , page 568
6)	Ryukyus (Okinawa)	June 23, 1945	Ryukyus Civil Government April 1, 1952	Also called the "Government of the Ryukyu Islands"
7)	Iraq	March 20, 2003	Iraqi Civil Government July 13, 2003	Also called the "Iraqi Interim Governing Council"

In regard to Cuba, we read in the historical literature that --

The establishment of the first Cuban civil administration was completed on November 25, 1898, by General Leonard Wood as the Military Governor of Santiago de Cuba.

General Leonard Wood was of course head of the United States Military Government. As a local civil government developed, the United States insisted on guarantees that Cuba would retain political and military ties with the country that had liberated it from Spanish sovereignty. The result of this process was the Platt Amendment of March 1901, which barred an independent Cuba from allying itself with another foreign power. Under these conditions, the United States granted Cuba full independence as of May 20, 1902. The Cuba Civil Government emerged from under USMG jurisdiction to be a fully-functional government for Cuba.

In regard to the Ryukyus, President Nixon and Prime Minister Eisaku Sato decided that this island chain should be returned to Japanese sovereignty, and the transfer of jurisdiction was completed as of May 15, 1972. The Ryukyu Civil Government

emerged from under USMG jurisdiction to be a fully-functional government for the Ryukyu islands. The islands were then administratively divided into (1) the Satsunan Islands to the north, belonging to Kagoshima Prefecture, Japan; and (2) Ryukyu Shoto to the south, belonging to Okinawa Prefecture, Japan.

TAIWAN

	Location	United States military occupation began	Civil Government Formed by Local People	Notes and/or References
8)	Taiwan	Oct. 25, 1945	Taiwan Civil Government Feb. 2, 2008	

All military attacks against Taiwan in the WWII period were conducted by U.S. military forces. No military forces of any other country (including the Republic of China) participated. Hence, under international law, the United States has both the responsibility and the obligation to conduct the military occupation of Taiwan. However, according to the specifications of General Order No. 1, issued by General Douglas MacArthur on Sept. 2, 1945, the United States delegated the Japanese surrender ceremonies on Taiwan and the ensuing military occupation to the Chinese Nationalists under Chiang Kai-shek. This is a principal - agent relationship, and is clearly delineated in the San Francisco Peace Treaty of April 28, 1952 --

In Article 23(a), the United States of America is confirmed as "the principal occupying power," while Article 4(b) unequivocally states that the United States Military Government has jurisdiction over Taiwan.

Today, Taiwan remains as occupied territory of the United States of America.

TERMINOLOGY

Civil Government -- [in the practice of the United States] (1) administrative authority conducted by civilian officials in a government of territory, or a state. This administrative authority is often, but not always, under the constitutional powers of the U.S. Congress, (2) a government as distinguished from "military government."

Military Government -- civil administration of military government for interim cessions; commonly composed of both civil and military components; technically interim and provisional government of undetermined cessions; not martial law but can be indefinite. Some scholars view military government as the international laws of "martial law," legally used for "foreign territory" under control by conquest. In general, military government is "the form of administration by which an occupying power exercises governmental authority over occupied territory." This is a good dictionary definition.

TREATY DATES

Mexican American Peace Treaty -- [July 4, 1848] California, Nevada, Utah, etc.

Spanish American Peace Treaty -- [April 11, 1899] Guam, Puerto Rico, Philippines, Cuba

San Francisco Peace Treaty -- [April 28, 1952] Japan, Taiwan, Ryukyus, etc.

Taiwan Civil Government

The Taiwan Civil Government (TCG) is an organization active in promoting the recognition of Taiwan's true status under international law, and the achievement of a self-governing status under the terms of the San Francisco Peace Treaty (SFPT) of 1952. This treaty was ratified by the United States Senate.

Through the period of the cold war after WWII, and up to the present day, the world has developed an incorrect understanding about Taiwan in numerous aspects, such as (1) that Taiwan had been returned to China; (2) that Taiwanese are Chinese; (3) that the Republic of China (ROC) is a legitimate state which is still in existence, etc. In fact, all of these assertions are in error.

Beginning in 1895, Taiwan became an inseparable part of the domain of Japan. In the SFPT of April 28, 1952, Japan renounced all right, title and claim to Taiwan. But, neither the peace treaty nor the United States of America (the principal occupying power) have ever specified a "receiving country."

Ostensibly, the ROC on Taiwan appears to be a legitimate state, but actually it is merely serving as the agent of the Allied Forces (led by the United States) in undertaking the military occupation of Taiwan. These arrangements were specified by the Supreme Commander of Occupation Forces over Japan, General Douglas MacArthur, in General Order #1, on Sept. 2, 1945. Later, the ROC deteriorated into a "government in exile" after fleeing the Mainland China in late 1949 upon losing the Chinese Civil War. As a government in exile, it can never hold legitimacy to govern anywhere.

In Taiwan, there has been no declaration of the end of military occupation by the Allied Forces, led by the USA as the **principal occupying power**. (A U.S. Presidential proclamation of the "end of U.S. military government jurisdiction" is the established precedent in dealing with U.S. conquered territories, as may well be seen by an examination of the historical record from the Mexican American War, Spanish American War, and even the Ryukyu islands in WWII.)

Today, essentially speaking, Taiwan presents a situation similar to the 1945 to 1972 period of Okinawa (Ryukyus) under the United States Military Government (USMG). However, the day to day authority for the military occupation has been delegated to a corrupt local authority (the ROC), much to the misery of the native Taiwanese people.

In **Roger Lin v. USA**, the U.S. court gave judgment in March 2008 and April 2009 on this Taiwanese lawsuit against the U.S. Federal Government (the government of the principal occupying power) that:

(1) Taiwan has no internationally recognized government; (2) Taiwanese people are stateless; (3) Taiwanese people have been in political purgatory for more than sixty years. See <http://www.taiwanbasic.com/court.htm>

In 2011, the U.S. Department of State, the defendant, gave up its defense plea in the U.S. Supreme Court.

Civil Government

The formation of a civil government is normal practice to assist the local people in dealing with governance issues in areas under foreign occupation.

TCG was formed by various civic-minded groups on Feb. 2nd 2008, and its first World Congress was held in Taipei on April 25, 2010.

Oct. 25, 1945 to Today

In Taiwan, since the onset of Chinese occupation in Oct. 1945, countless policies have been implemented which are, under international law, illegal in dealing with the population of occupied territory. As a result, the native Taiwanese have suffered, and are still suffering, up to the present day.

In regard to the international legal status of Taiwan, the State Dept. issued the 1961 Czyzak Memorandum and the 1971 Starr Memorandum. These are commonly referenced by scholars in the current era, however they are quite incomplete. This is because these Memoranda totally failed to take into consideration the "laws of war" as recognized by the United States. The organizers of the Taiwan Civil Government have compiled extensive information on this, and all related topics.

With the staffing of our Washington D.C. Office in Jan. 2013, we are hoping to have meaningful dialogue with all Executive Branch agencies about these matters.

We certainly believe that the interests of the United States in maintaining peace in the Pacific Ocean area could be better served if the true facts regarding the international legal status of Taiwan were fully brought to light.

It might even be possible for the House Committee on Foreign Affairs to consider having a Coordination Meeting on this important subject, with officials from the Dept. of Defense, Homeland Security, Dept. of State, National Security Council, Taiwan Civil Government, etc. in attendance.

** END **