WORKING DRAFT VERSION

May 25, 2015

The Taiwan Legal Status Issue

Commonly Seen Mistakes (1)

1. WWII in the Pacific was over upon the Japanese surrender ceremonies 1945.10.25, and Japanese sovereignty over Taiwan ended

The surrender does not mark the end of the war, but only the end of hostilities. The date when Japanese sovereignty over Taiwan ended, and when the war was officially over, was April 28, 1952, with the San Francisco Peace Treaty came into effect.

1. The Japanese surrender ceremonies marked the beginning of Chinese sovereignty over Taiwan

The Japanese surrender ceremonies in Taiwan on Oct. 25, 1945, only marked the beginning of the military occupation. International law specifies that “military occupation does not transfer sovereignty.”

The Allies did not recognize any transfer of Taiwan’s territorial sovereignty to China upon the Oct. 25, 1945, surrender ceremonies in Taiwan. For more information on this aspect see our videos

The Truth of Oct. 25, 1945

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1. The Republic of China moved its central government to Taiwan in December 1949, and thus became the island’s legal government

FALSE

Before the end of April 1952, Taiwan was still sovereign Japanese territory. By moving its central government outside of Chinese national territory in December 1949, the Republic of China immediately became a government in exile.

Hence, for the Republic of China to regain international legitimacy, it would have to move back to its former capital of Nanjing, China, and resume governance there.

1. Taiwan was awarded to China in the post-war WWII peace treaties.

Reference -- Starr Memorandum July 13, 1971:

... technical sovereignty over Formosa and the Pescadores has never been settled. That is because the Japanese Peace Treaty merely involves a renunciation by Japan of its right and title to these islands. But the future title is not determined by the Japanese Peace Treaty nor is it determined by the Peace Treaty which was concluded between the Republic of China and Japan.

Commonly Seen Mistakes (2)

1. Military occupation of Taiwan ended in 1952

After war, the military occupation of territory separated from the mother country via the specifications of a peace treaty does not end with the coming into force of the peace treaty. The US Supreme Court has ruled on this issue on many occasions.

Military occupation is conducted under military government. Hence, if Taiwan is occupied territory, we would expect to find some specifications about “military government” in the San Francisco Peace Treaty.

Indeed, the relevant specifications are quite clear. The treaty specifies United State Military Government (USMG) jurisdiction over Taiwan. Has the US Executive Branch enforced this provision? No, the Executive Branch officials have treated the San Francisco Peace Treaty as a “lost treaty” ….. and instead concentrated on selling military arms to a government in exile on Taiwanese soil – the Republic of China.

In fact, the US defense companies would find a much larger market for their equipment and services if they would urge the US Executive Branch to follow the specifications of the SFPT directly, and allowing the DOD to provide for Taiwan’s “national defense” needs (both personnel and equipment) directly.

1. The ROC is the occupying power of Taiwan, and can govern Taiwan any way it pleases (USA, and falls under “common defense” clause)

The Republic of China is only exercising delegated administrative authority for the military occupation of Taiwan. The “occupying power” or more properly the “(principal) occupying power” is the conqueror.

What does this mean?

During the period of WWII in the Pacific, beginning December 1941, all military attacks against Taiwan were conducted by US military forces. The military forces of other countries, including England, France, the USSR, Australia, New Zealand, the Republic of China, etc. did not participate.

Hence, the United States of America is the principal occupying power of Taiwan. Under the specifications of General Order No. 1, issued by General Douglas MacArthur, the Republic of China in Taiwan is a proxy occupying force.

1. With no final disposition of Taiwan in the peace treaty, sovereignty is held by the local Taiwanese people

An examination of the subject of “territorial cession” under international law shows it is an action between governments, and that that territorial sovereignty is held by a government. Territorial sovereignty is not held by any amalgamous group of people.

Examples: Mexican cession, Virgin islands, etc.

There is a concept of “popular sovereignty” which is found in constitutional studies. However, this is a very different concept from “territorial sovereignty.”

1. Taiwan was incorporated into ROC national territory via procedures in the ROC Constitution regarding “new territory”

[See article given to Mr. Camp] Taiwan never incorporated into Roc territory.

Article 4 of the ROC Constitution (entered into force Dec. 25, 1947) specifies that "The territory of the Republic of China within its existing national boundaries shall not be altered except by a resolution of the National Assembly." In regard to the alleged inclusion of Taiwan into Chinese territory, there is no resolution of the National Assembly on record.

Of course it is true that Taiwan was already under the jurisdiction of the ROC when the ROC Constitution was promulgated and came into force in 1947.

But, there are many actions (under Hague and Geneva) which are forbidden in occupied territory. One of these is the promulgation of a new legal structure. Hence, the promulgation of the ROC Constitution in occupied territory in 1947 is entirely illegal.

Such an analysis is totally beyond the comprehension of most civilians, because they have essentially no knowledge of military law or the laws of war.

Commonly Seen Mistakes (3)

1. ROC on Taiwan meets criteria as sovereign state, under any definition

As stated above, the Japanese surrender ceremonies in Taiwan only marked the beginning of the military occupation. Under international law, and specifically according to the Hague and Geneva Conventions, there are many types of actions which are illegal in occupied territory. Among these are

Announced annexation of the territory

Mass naturalization of the local populace

Enforcement of military conscription policies over the local populace

Promulgation of a new legal structure

A quick examination of the Republic of China’s supposed qualifying criteria for recognition as a “sovereign state” quick shows that they are based on major violations of international law, such as the announcement of Taiwan Retrocession Day on Oct. 25, 1945, the mass naturalization of the local populace on Jan. 12, 1946, etc.

1. After more than seventy years in governing Taiwan, the Republic of China has a long term of “effective territorial control,” and qualifies to claim sovereignty over Taiwan. It has already become a “domestic regime”

11) In order to become a true state in the international community, Taiwan should declare its independence

Asylum, refugee policy

Declare independence from whom? Look at international precedent

Commonly Seen Mistakes (4) “defense policy”

13) The Taiwan Relations Act mandates sales of military equipment and hardware to Taiwan

The Taiwan Relations Act uses the terminology of “provide” or “make available to.” Sell, or any similar wording, is not used.

Hence, the United States Dept. of Defense would not be violating the terms of the TRA if it assumed full responsibility for the “national defense” needs of Taiwan. Ideally, this would be done by directly stationing US military personnel in Taiwan and building military airports and dockage facilities.

14) Under the One China Policy, the maintenance of an ROC MND on Taiwan is fully authorized

15) As a non sovereign nation, the ROC on Taiwan is qualified to have military conscription policies

As a fundamental point of reference, the US Supreme Court has ruled that military conscription policies must be based on “national sovereignty.” The Republic of China on Taiwan is a non-sovereign entity, and hence, by definition cannot have any form of military conscription policies. Without such policies of course, there is no manpower available for the staffing of a Ministry of National Defense.

16) The legal basis for the establishment of ROC MND in Taiwan is found in the post-war treaties and TRA

A thorough examination of the post-war peace treaty, the Taiwan Relations Act, State Dept. pronouncements on Taiwan and Executive Orders issued by the US President fail to find any clauses which can be interpreted to authorize the existence of a Republic of China government structure on Taiwanese soil, or the functioning of a Ministry of National Defense under the authority of a so-called “Republic of China Constitution.” One China Policy

1. Military occupation does not continue past the date when the peace treaty enters into force

Notably, for the disposition of territory under military occupation there are only two possible outcomes. First is that the territory becomes part of another sovereign nation. Second is that it is recognized as an independent sovereign nation in its own right.

In the current era, the international legal status of Taiwan is frequently stated to be “undetermined” or “unsettled.” In other words, Taiwan has not yet reached a final political status. The only possible conclusion is that under international law Taiwan is still under military occupation.

Such an analysis is totally beyond the comprehension of most civilians, because they have essentially no knowledge of military law or the laws of war.

1. According to many sources, there was an announcement of the cancellation of the 1895 treaty by high-ranking Chinese officials, sometime the late 1930s or early 1940s, and based on this announcement Taiwan was returned to China

This can be discussed in two parts. First, unilateral announcements of the cancellation or nullification of a treaty, which have no basis in the provisions of the treaty itself, have no significance at all. Second, it is only preferential trade arrangements, or other clauses which have continuing force, the so-called “active clauses” which are affected by the nullification or cancellation of a treaty. Clauses regarding the cession of territory, having already been completed, are no longer active clauses, and are not subject to retroactive readjustment.

1. Taiwan was never occupied territory (Taiwan returned to China immediately)