

An Introduction to our Efforts to Clarify

The Status of Taiwan under U.S. law

and related considerations



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DEFINING THE STATUS OF TAIWAN UNDER U.S. LAW

At the end of World War II in 1945, Taiwan reverted to Chinese rule,

source: [Background Note: Taiwan](#) [Dept. of State archives, Feb. 8, 2012]

INITIAL QUESTIONS FOR RESEARCH

Given that the Japanese surrender ceremonies in Taiwan were held on Oct. 25, 1945:

- What is the accepted international practice regarding the disposition of territory after surrender ceremonies?
- Is this date correctly regarded as the “end of WWII in the Pacific”? As we know, beginning on this date of Oct. 25, 1945, governance over the island was delegated to the Republic of China (ROC), as per the instructions provided by General MacArthur in General Order #1.
- Was this a temporary arrangement, or a permanent arrangement?
- Can it be held that Taiwan was legally returned to China on this date? Is the information from the U.S. Dept. of State (as provided above) 100% accurate?

Nearly seven years later, the U.S. Senate-ratified San Francisco Peace Treaty (SFPT) came into force on April 28, 1952, however, this treaty did not transfer (or “grant”) the territorial sovereignty of Taiwan to China. Moreover, there is no wording in the treaty to indicate that the signatories recognized any relinquishment of Japan’s sovereignty over Taiwan **before** this April 28, 1952, date.

Based on these undeniable facts, is it reasonable to say that the implementation of the following actions:

- Announcement of "Taiwan Retrocession Day" on Oct. 25, 1945,
- Mass naturalization of the Taiwan populace as ROC citizens on Jan. 12, 1946,
- Promulgation of ROC Constitution in Taiwan on Dec. 25, 1947,
- Establishment of an ROC Ministry of National Defense on Taiwan soil after the ROC central government moved to Taiwan Dec. 10, 1949,
- Implementation of ROC military conscription policies over the Taiwan populace on July 25, 1951,
- Should have all been **completely rescinded** after the SFPT came into force?

Moreover, it is very important to clarify --

- If the status of Taiwan is “undetermined,” does that mean that Taiwan belongs to China? What is the legal rationale for saying that an entity calling itself the “Republic of China” has the responsibility for providing for the defensive needs of Taiwan territory?
- Can we find any evidence to support the contention that Taiwan has remained under the jurisdiction of the U.S. military authorities up to the present day?

FINDING A STARTING POINT

Since the end of WWII, there have been many disagreements between Chinese and American people over a wide variety of issues. One of the key disagreements involves the legal status of Taiwan. Under the Trump administration, the People's Republic of China (PRC) has been labeled as a "strategic competitor." In dealing with the Taiwan issue, must U.S. government officials necessarily acquiesce to the Chinese interpretations of legal and historical principles? Are those interpretations even valid? This series of information sheets will introduce our efforts to clarify the status of Taiwan under U.S. law, based on U.S. and international legal principles.

The 18th century is a good starting point for our investigation.

- The time span of 1776 to 1982 appears to be most relevant. As we know, 1912 marked the founding of the Republic of China (ROC), while 1949 marked the founding of the People's Republic of China (PRC). The Three Joint PRC-USA Communiques were issued in 1972, 1970, and 1982. Many members of the U.S. general public believe somewhere in this time span, the U.S. government has agreed that Taiwan is a part of China. Is this true?
- Of importance is to ascertain: Which legal document promulgated during the 1912 to 1982 time span has the highest "legal weight" in the current era? This document should be determinative in any discussion of Taiwan's legal status under U.S. law. (Frankly speaking, many so-called experts in Taiwan affairs are unable to answer this question.)
- For decades, U.S. government officials have repeated statements to the effect that the status of Taiwan is undetermined. However, when anyone asks what the precise parameters of this *undetermined status* are, no answers are forthcoming. This problem certainly appears worthy of serious investigation.

We will begin our analysis with the Qing Dynasty (1644 to 1912) of China.

**LATE
1700s**

**UNDER U.S. LAW: THE TERRITORIAL SOVEREIGNTY OF TAIWAN
BELONGED TO QING CHINA**

In the late 1700s, during the early years of the formation of the United States, Taiwan belonged to Qing China. There was some limited contact between U.S. officials and Qing officials during this period. Hence, to analyze Taiwan's status under U.S. law, we can begin here.

Next is the 1895 Treaty of Shimonoseki. In this treaty, the territorial sovereignty of Taiwan was ceded to Japan.

**Beginning
1895**

**UNDER U.S. LAW: THE TERRITORIAL SOVEREIGNTY OF TAIWAN
BELONGED TO JAPAN**

Commentary: Many Chinese people will advance numerous arguments as to why the 1895 Treaty of Shimonoseki is invalid. The major rationale are the "unequal treaty principle," the "unilateral cancellation principle," and the "historical sovereignty principle." None of these have any basis in established international precedent, customary international law, or international court rulings. Nor are these "principles" mentioned in any U.S. or international law books.

In the 1922 Washington Naval Treaty, Taiwan was recognized as "an insular area of Japan." Clearly, such a recognition was based on the specifications in the 1895 treaty. Hence, under U.S. law, the arrangements regarding the cession of Taiwan to Japan in the 1895 treaty must be considered as valid.

**DISAGREEMENTS REGARDING THE DEVELOPMENT OF TAIWAN'S LEGAL
STATUS IN THE 20th CENTURY**

In the late 20th century and into the 21st century, the central point of most argumentation regarding the legal status of Taiwan revolves around Taiwan's sovereignty, or more plainly "ownership." If we speak to people who have been raised with a so-called "Chinese cultural mindset," when the subject of Taiwan's sovereignty comes up, they steadfastly claim that "Taiwan is a part of China."

In the view of many people, this main assertion is proven by a second assertion, namely that Taiwan's territorial sovereignty was "returned to China" at the end of, or as the result of, WWII in the Pacific. (As mentioned above, the Background Note: Taiwan, issued by the U.S. Dept. of State, also appears to support this view.)

Note: According to the historical record, the events which would develop into WWII in the Pacific began on July 7, 1937, when Japanese and Chinese soldiers began fighting outside Beijing.

Specifically, the following events, and their related documentation, whether singly or in combination, are typically presented as proof that Taiwan belongs to China.

Date	Historical Event
1941.08.14	Atlantic Charter
1941.12 ~ 1945.10	World War II in the Pacific
1943.12.01	Cairo Declaration
1945.07.26	Potsdam Proclamation
1945.08.15	Japan's Emperor agrees to Surrender
1945.09.02	General Order No. 1
1945.10.24	United Nations is founded
1945.10.25	Japanese troops in Taiwan surrender
1949.10.01	PRC is founded
1949.12.10	ROC central government relocates to Taiwan
1952.04.28	San Francisco Peace Treaty comes into force
1952.08.05	Treaty of Taipei comes into force

Important Commentary: In 1941, China proclaimed that all treaties with Japan were abrogated. Though this act was devoid of legality and effect in international law, China pressed its viewpoint at meetings of the Allies and succeeded in having some of its territorial demands inserted in the Cairo Declaration of Dec. 1, 1943, which expressed the intention that: *Formosa, and the Pescadores shall be restored to the Republic of China*

Certain postwar policies were again enunciated by the three major Allies -- the U.S.A., the U.K., and the U.S.S.R. -- at Potsdam in 1945. Section eight of the concluding Potsdam Declaration of July 26, 1945, contained a confirmation of the Cairo Declaration.

The Chinese maintain that declarations and proclamations of this type are given effect by the enemy's surrender ceremonies, which in their view mark "the end of the war." In the Chinese view, when the newly arriving Chinese troops entered Taiwan, at the direction of Gen. MacArthur, and accepted the Japanese surrender, the territorial sovereignty of Taiwan was transferred to China.

Analysis: In order to analyze the pros and cons of the Chinese viewpoint, we must delve into the subject of the **Disposition of Territory as the Result of War**.

Importantly, from the second half of the eighteenth century onwards, international law came to distinguish between (1) the military occupation of a country, or portion thereof, and (2) territorial acquisition by invasion and immediate annexation. The difference between the two was originally expounded upon by Emerich de Vattel in his opus The Law of Nations (1758). The distinction then became clear and has been recognized among the principles of international law since the end of the Napoleonic wars (circa 1820).

In the post-Napoleonic era, for territory which has been conquered by foreign military forces, the exercise of legal governance includes the following aspects:

- Territory may be “acquired” as a result of conquest by military forces, and the conqueror is the (principal) occupying power,
- The administration and disposition of such territory must be conducted according to the laws of war, which include the laws of military occupation,
- The territory is under military occupation, and military occupation does not transfer sovereignty.

Unfortunately, even many U.S. scholars with supposed expertise on Taiwan affairs have little knowledge of these “military occupation” issues. Three examples from U.S. history have been researched and are given below. Similar to the situation of Taiwan, these are all examples of foreign territory conquered by U.S. military forces.

EXAMPLE 1: SAN DIEGO, NEW SPAIN (aka “MEXICO”)

DISPOSITION OF TERRITORY AS THE RESULT OF WAR

Local History up to early 1846 --

San Diego: A fort and mission were established in 1769 in this Spanish ruled area known as “upper Las Californias,” (an integral part of New Spain) and later developed into a permanent settlement under Spanish sovereignty. After Mexican independence in 1821, Mexico held sovereignty over this area.

Mexican American War period – [May 13, 1846, to May 30, 1848]

Summary: American naval forces arrived in San Diego harbor on July 29, 1846. The American troops landed and established control of the area, raising the American flag on July 30, 1846, however, battles between local Mexican loyalists and the Americans continued through late 1846. An armistice was signed Jan. 13, 1847, with the Americans in full control of Los Angeles and San Diego.

EXAMPLE 2: TAMPICO, MEXICO

DISPOSITION OF TERRITORY AS THE RESULT OF WAR

Local History up to early 1846 --

Tampico: This city and port on Mexico's eastern seaboard, bordering the Gulf of Mexico, is located in the state of Tamaulipas, at the southeastern corner. It was founded in 1823 on the north bank of the Pánuco River about 10 km (6 mi) from the Gulf, after Mexico had achieved independence from Spain two years earlier.

Mexican American War period – [May 13, 1846, to May 30, 1848]

Summary: In late Oct. 1846, under onslaught by U.S. navy warships, Mexican forces in the port city of Tampico determined that their situation was indefensible, and abandoned the city. On Nov. 14, U.S. troops captured the city without a fight. The U.S. flag was raised.

EXAMPLE 3: THE ISLAND OF CUBA

DISPOSITION OF TERRITORY AS THE RESULT OF WAR

Local History up to 1898 –

Cuba: Spanish soldiers arrived in 1492, conquered Cuba and appointed Spanish governors to rule in Havana. In 1762, Havana was briefly occupied by Great Britain, before being returned to Spain in Florida. Dissatisfaction with continuing Spanish rule and the desire for Cuban independence led to a series of local rebellions during the 1800s.

Spanish American War period – [April 21, 1898, to April 11, 1899]

Summary: February 1895 saw important new offensives in the Cuban struggle for independence from Spain.

Several years later, two major causes for U.S. intervention were: (a) America's support for the ongoing struggle by Cubans against Spanish rule, and (b) the mysterious explosion of the battleship U.S.S. Maine in Havana Harbor, on Feb. 15, 1898, resulting in the death of 250 out of 355 American sailors on board.

Members of the U.S. Senate who visited Cuba were frustrated by Spain's evident inability to end the war by either victory or concession. On April 11, 1898, President McKinley addressed the U.S. Congress and emphasized that “the war in Cuba must stop.” From Congress, he asked for the authority to use the armed forces of the United States “to secure a full and final termination of hostilities between the government of Spain and the people of Cuba.”

The Spanish government responded by severing diplomatic relations and declaring war. The U.S. Congress responded with a declaration of war against Spain. The United States began its military maneuvers by blockading Cuban ports. U.S. Army troops landed on Cuba in early July. After the U.S. Navy conducted a series of successful attacks against Spanish ships in Cuba, the remaining Spanish soldiers surrendered on July 17, 1898.

QUESTIONS AND ANSWERS

DISPOSITION OF TERRITORY AS THE RESULT OF WAR

Q&A

Q1. What was the legal condition of San Diego, Tampico, and the Island of Cuba after coming under the control of U.S. military forces?

A1. According to the customs and usages of war, when territory comes under the authority of foreign military forces, it is under military occupation. There is no transfer of territorial sovereignty.

Q2. What organization/agency is in charge of the administration of these areas after the termination of hostilities?

A2. With the termination of hostilities, (by default) areas conquered by U.S. military forces come under the jurisdiction of a U.S. federal agency – the United States Military Government (USMG). That the conqueror has jurisdiction over conquered territory is a fundamental tenet of the laws of war.

Q3. What is the definition of military government?

A3. Military government is the form of administration by which an occupying power exercises governmental authority over occupied territory. In other words, military government is the government of occupied territory.

Multiple Choice

Q. In regard to the cities of San Diego and Tampico, and as well as the island of Cuba – After taking control of the territory, which of the following criteria would be a valid basis for U.S. military forces to claim immediate possession of the territorial sovereignty?

(1) Previous declarations and/or proclamations to the effect that these areas rightfully belong to the United States, (2) The fact of the termination of hostilities and/or surrender of local troops, (3) On-site announcements by U.S. military commanders that these areas now belong to the United States, (4) Celebratory gatherings by the local populace welcoming U.S. administration, (5) The enemy's original declaration of war.

A. The correct answer is -- None of the above.

EXAMPLE 4: FORMOSA & THE PESCADORES (aka “TAIWAN”)

DISPOSITION OF TERRITORY AS THE RESULT OF WAR

Local History up to the mid-20th century – [Chart #1]

	Date	Conqueror	Taiwan was acquired under the principle of _____	Taiwan was held under the dominion of _____	Sovereignty held by _____
1	1683	Qing Dynasty	conquest	Qing Dynasty, 1683 to 1895	Qing Dynasty, to 1895
2	1895	Japan	conquest	Japan, 1895 to 1945 USA/ROC, 1945 to 1952	Japan, to April 28, 1952

Overview: After the attack on Pearl Harbor, a declaration of war against Japan was made by the United States on Dec. 8, 1941, and by the Republic of China (ROC) on Dec. 9, 1941. After the U.S. military forces dropped two atomic bombs on Japan in early August 1945, the Japanese Emperor agreed to an unconditional surrender. General Douglas MacArthur issued General Order No. 1 on Sept. 2, 1945, directing that --

The senior Japanese commanders and all ground, sea, air and auxiliary forces within China (excluding Manchuria), Formosa and French Indo-China north of 16 north latitude shall surrender to Generalissimo Chiang Kai-shek.

Accordingly, the Japanese surrender ceremonies were held in Taiwan on Oct. 25, 1945. According to the internationally recognized laws of war, this marked the beginning of the military occupation of Taiwan.

Summary and Analysis:

1. Under the customs and usages of war, it is impossible to conclude that there was any transfer of Taiwan's territorial sovereignty to the Republic of China on the Oct. 25, 1945, date of the surrender ceremonies. For comparative data on this aspect see the examples of San Diego, Tampico, and the Island of Cuba.
2. During the period of WWII in the Pacific, the Republic of China did not make any military attacks against (Japanese) Taiwan. In fact, over 96% of military attacks against Taiwan were conducted by U.S. military forces. Accordingly, upon the date of the Oct. 25, 1945, surrender ceremonies, the United States is fulfilling the role of the legal occupier (i.e. "principal occupying power"), and the ROC is fulfilling the role of proxy occupying forces.

THINK-TANKS' ANALYSIS OF TAIWAN'S LEGAL STATUS

When examining the content of various reports, lectures, position papers, etc. made available by leading think tanks in the United States regarding the legal status of Taiwan, a conscientious researcher would hope to obtain expert analysis on the following topics:

The legal validity (or “invalidity”) of the following actions:

- the mass naturalization of local Taiwan people as ROC citizens on Jan. 12, 1946,
- the promulgation of the ROC Constitution in Taiwan territory effective Dec. 25, 1947,
- the implementation of military conscription policies over Taiwan persons on July 25, 1951,

Examination of international precedent regarding the disposition of other territories after war:

- comparisons between the handling of occupied Cuba and occupied Taiwan, after the Spanish American War and WWII in the Pacific, respectively,
- whether Taiwan came under military occupation in Oct. 1945, and if so, the dates for the beginning of military occupation, the end of military occupation, as well as a specification of the legal occupier,
- comparisons between the disposition of the Ryukyu island group and Taiwan, as specified in the post-war treaty,

Explicit clarifications on the following points:

- the end of Japanese sovereignty over Taiwan,
- whether Taiwan was given to (or “transferred to”) China under the terms of the post-war treaties, AND/OR whether Taiwan has been legally incorporated into the national territory of the Republic of China,
- whether Taiwan has come under the scope of “military jurisdiction under the US Constitution,”
- the legal basis for the Republic of China government to remain in Taiwan after April 28, 1952,

We may refer to the above as the “Ten Fundamental Taiwan Status Issues.” A clarification of these issues will allow us to better understand the parameters of Taiwan’s “undetermined status.” Central to our inquiry is a determination of whether the Republic of China is the competent authority to handle the defensive responsibility (personnel and equipment) for Taiwan.

Most people would agree with the proposition that any “new” disposition of territory as the result of war would be conducted **after the war is over**. Regarding the situation of Taiwan, we can find many statements of this nature given by the leading “experts,” such as –

The island was forfeited by China after the latter’s defeat by Japan in 1895. China’s KMT government gained control after Tokyo’s defeat in 1945. With the Communist Party victory in 1949 the KMT retreated to the island.

<https://www.cato.org/publications/commentary/arm-taiwan-america-dont-defend-it>

Japan governed it as a colony until 1945, when Japanese forces on the island were required to surrender to Chiang Kai-shek’s ROC military forces.

The ROC, which had governed China for decades, fled to Taiwan after losing the civil war to the Communists in 1949.

<https://www.cfr.org/backgrounder/china-taiwan-relations>

Taiwan's sovereign status is perhaps the most celebrated case of "unsettled" dominion in the annals of international law. After losing World War II in 1945, Japan "renounce[d] all right, title, and claim to Formosa [Taiwan] and the Pescadores," but de jure state sovereignty over Taiwan remained — purposefully — unassigned after the war.

<https://www.heritage.org/asia/report/taiwans-unsettled-international-status-preserving-us-options-the-pacific>

After years of assuming a disproportionate burden in fighting the Japanese while trying to govern a fractious society, an exhausted ROC government and as many as a million soldiers evacuated to Taiwan in 1949. As the KMT government went into exile, the territory under effective ROC control had changed, but the state remained intact. With the establishment of the People's Republic in October 1949, two governments—the PRC and ROC—adopted a principle of Taiwan being an integral part of China. Each government in effect exercised exclusive administrative jurisdiction over the territory under their respective control, with neither side subordinate to the other government.

https://project2049.net/wp-content/uploads/2018/04/P2049_Stokes_Tsai_Alternate_Future_Policy_Options_In_The_Taiwan_Strait_020116.pdf

Taiwan, a Japanese colony from 1895 until 1945, had been returned to China after World War II, but controversy broke out in the early 1950s over which of the two governments represented China

<https://www.brookings.edu/research/biding-time-the-challenge-of-taiwans-international-status/>

At the end of World War II in 1945, Taiwan reverted to Chinese rule,

Background Note: Taiwan [U.S. Dept. of State archives] latest edition

Regarding Taiwan history since the 1940s, the above selections represent the best information that could be found on the websites of the leading think-tanks in the United States. Unfortunately, none of this content provides us with any insights for discussing the “Ten Fundamental Taiwan Status Issues,” which were posed above.

Moreover, it appears that the “experts” in these think tanks have all made a fundamental error in treating the Japanese surrender ceremonies as the “end of the war.” In fact, the surrender ceremonies only represent the “end of hostilities.” The end of the war is achieved when the peace treaty comes into force. For Taiwan, that would be April 28, 1952.

Significantly, these “experts” also appear to fully accept the Chinese propaganda (aka “disinformation”) that Taiwan was permanently returned to China in October 1945. Frankly speaking, their knowledge of the laws of war of the post-Napoleonic period, which includes the Hague and Geneva Conventions, appears to be non-existent.

Moreover, we don't see any evidence to suggest that they have done any fundamental research into the DISPOSITION OF TERRITORY AS THE RESULT OF WAR. (Above, we gave several examples.)

In summary, the research of these so-called experts can hardly be regarded as comprehensive. Their knowledge is clearly inadequate for discussing Taiwan's situation in the world today or making a delineation of Taiwan's international legal status.

INTRODUCTION TO THE NEW EBOOK

by the TAIWAN AUTONOMY FOUNDATION, LOS ANGELES, CALIFORNIA

We have compiled a series of lectures, dialogues, stories, discourses, commentary, etc. on the legal status of Taiwan under U.S. law, and edited these into an ebook containing 15 chapters. Reading through the pages in that volume, the reader will find answers to all the questions raised above, along with the inspection of and answers to myriad other questions.

Notably, our ebook contains exhaustive analysis of the following:

- Has Taiwan been legally integrated into the national territory of the Republic of China? If so, when?
- Are the PRC and the ROC both legal governments for “China”? If not, what is the current legal position of the ROC?
- What is the significance of the European Castle Story?
- When discussing Taiwan history, what lessons can be learned from the Spanish American War, the Mexican American War, and the Fall of Singapore?
- Was Taiwan under military occupation after the surrender of Japanese troops? If so, why? If not, why not? Has that occupation ended? What proof can be offered?
- From the vantage point of the early 1950s, did U.S. military actions against Taiwan during the period of WWII in the Pacific violate the United Nations Charter?
- Does the ROC on Taiwan meet the international standards for statehood? Or are some of its supposed *qualifying criteria* actually bogus?

And most importantly --

- What entity should be responsible for Taiwan's defensive needs (both personnel and equipment)? Should it be the ROC? the PRC? some coalition of S.E. Asian nations? the USA? the UN?

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Please visit – <https://www.twdefense.info/usa/ebook.htm>

A CORRECT UNDERSTANDING:

In order to fully understand Taiwan's current legal status, one must be familiar with "the customary laws of warfare," often simply called the laws of war.

The laws of war are derived from two principal sources:

- a. *Lawmaking Treaties (or Conventions)*, such as the Hague and Geneva Conventions.
- b. *Custom*. Although some of the law of war has not been incorporated in any treaty or convention to which the United States is a party, this body of unwritten or customary law is firmly established by the custom of nations and well defined by recognized authorities on international law.

Lawmaking treaties may be compared with legislative enactments in the national law of the United States. The customary portion of the laws of war may be compared with the unwritten Anglo-American common law.

In the broadest sense, a correct understanding of Taiwan's legal status requires in-depth knowledge of the following subjects:

- military jurisdiction under the U.S. Constitution, including military occupation, military government, the principle of conquest, etc. and the content of all relevant U.S. Supreme Court cases on these subjects,
- the "acquirement" of territory after war, the development of insular law, recognition of U.S. territorial jurisdiction, U.S. court cases involving the application of the Bill of Rights in overseas territories, etc.

- the customary law of treaties, especially in regard to the dispositions of territorial cessions in general, and the disposition of territorial cessions after war in particular, including sovereignty delineation issues,
- the functioning of governments in exile,
- U.S. Army regulations, including FM 27-5 “Military Government”, FM 27-10 “The Law of Land Warfare”, FM 41-10 “Civil Affairs Operations”, etc.
- Hague Convention IV of 1907, Geneva Conventions of 1949, the ICRC Commentaries, etc.
- other established laws of war precedent.
- Notes: The validity of the customary laws of warfare is fully recognized by competent jurists, experts, and other legal scholars, even if average “civilians” have little expertise or knowledge in such topic areas.

To gain a more comprehensive understanding of the above subjects, please download our ebook.

<https://www.twdefense.info/usa/ebook.htm>