Understanding the “One China Policy”

MANY professors, researchers, think-tank scholars, academics, and even members of Congress are confused about the subject of “China.” Some people who profess to having thorough knowledge of this entire matter are quite vehement in claiming that there are Two Chinas.

We are forced to ask: Why does the U.S. executive branch insist on saying that there is only One China?

Let’s go back to the year of 2004. Testifying before the House International Relations Committee on April 21, 2004, Assistant Secretary of State for East Asian and Pacific Affairs James Kelly was asked to explain the underlying rationale for the One China Policy. He was unable to do so. Unfortunately, from 2004 to the present, no U.S. State Dept. officials have offered any further detailed remarks on this important issue. This is very puzzling to many people.

In fact, the U.S. executive branch’s insistence on One China can only be explained by reference to a branch of international law which is largely unknown to most civilians. That is the “laws of war” and their subset the “laws of occupation.” With no knowledge of this branch of law, most persons assume that the dispute over Two Chinas arose due to the Chinese Civil War of the 1940s.   However, this conceptualization of the subject is in error. More accurately, the “Taiwan question” must be understood as an issue left over from WWII in the Pacific.

Looking back at the history of WWII, many of the so-called “China experts” seem to acquiesce to the idea that Chiang Kai-shek (CKS) of the Republic of China (ROC) could define the significance of the Oct. 25, 1945, Japanese surrender ceremonies in Taiwan any way he wanted. At those ceremonies, CKS’ military officers said that the sovereignty of Taiwan now belonged to China, and proclaimed “Taiwan Retrocession Day.”

Under the laws of war however, which include the Geneva Conventions, Hague Conventions, and other established international precedent, such an explanation is impossible. The surrender ceremonies only mark the beginning of the military occupation. The conqueror has the right, and indeed the obligation, to conduct the military occupation of conquered territory. To delineate any transfer of territorial sovereignty, a formal peace treaty is necessary.

All military attacks (or at least 99.5%) against Taiwan in the WWII period were made by U.S. military forces, but General MacArthur delegated the administrative authority for the occupation to the Chinese Nationalists (ROC) under CKS. Japanese sovereignty continued after October 1945, since the San Francisco Peace Treaty (SFPT) did not come into effect until April 28, 1952.

Notably, the SFPT designates the USA as the principal occupying power.

With the above information, we can quickly make three important observations.

* First, beginning Oct. 25, 1945, the ROC was only exercising delegated administrative authority for the military occupation of Taiwan.
* Second, in December 1949 when the ROC moved its central government to occupied Taiwan, it was moving outside of Chinese national territory.
* Third, with the coming into force of the peace treaty in 1952, the Allies have disbanded; however the United States (i.e. “the principal occupying power) has assented, tacitly or otherwise, to the pre-existing arrangements for continuing the military occupation of Taiwan.

In other words, the ROC is serving as a proxy occupation force for the USA, in addition to maintaining its status as a government in exile.

At this point, two questions may be asked:

1. Is Taiwan a part of the ROC?
2. Is Taiwan a part of the PRC?

In fact, the U.S. Executive Branch has never recognized the forcible incorporation of Taiwan into the territory of the Republic of China (ROC) or the People's Republic of China (PRC). Hence, the answers to these two questions should be very clear.

Relevant documentation is as follows:

*Taiwan is not part of the ROC*

In the case of Sheng v. Rogers (D.C. Circuit, Oct. 6, 1959), quoting from official pronouncements of the Department of State, the judges held that:

" . . . the provisional capital of the Republic of China has been at Taipei, Taiwan (Formosa) since December 1949; that the Government of the Republic of China exercises authority over the island; that the sovereignty of Formosa has not been transferred to China; and that Formosa is not a part of China as a country, at least not as yet, and not until and unless appropriate treaties are hereafter entered into. 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."

*Taiwan is not part of the PRC*

In the Congressional Research Service report China/Taiwan: Evolution of the "One China" Policy dated July 9, 2007, the following points were made --

(1) The United States did not explicitly state the sovereign status of Taiwan in the three US-PRC Joint Communiques of 1972, 1979, and 1982.
(2) The United States "acknowledged" the "One China" position of both sides of the Taiwan Strait.
(3) US policy has not recognized the PRC's sovereignty over Taiwan;
(4) US policy has not recognized Taiwan as a sovereign country; and
(5) US policy has considered Taiwan's status as undetermined.

In conclusion, the People’s Republic of China, founded Oct. 1, 1949, in Beijing, is the sole legitimate government of China.

Taiwan does not belong to China, nor is it an independent entity. Taiwan is an occupied territory of the United States of America. Does this mean that Taiwan belongs to the United States? The answer is No. Taiwan’s legal status is a type of *quasi USA trusteeship* under military government within the U.S. insular law framework.

Hopefully, U.S. executive branch officials can be more precise in explaining the underlying rationale behind the “One China Policy” in the near future.

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