Travel Documents Issued by a Sovereign State

*Should native Taiwanese people who want to travel internationally be able to apply for travel documents issued by a sovereign state?*

Discussion & Analysis

*Secretary Powell's Statement*

quote: "Our policy is clear. There is only one China. Taiwan is not independent. It does not enjoy sovereignty as a nation, and that remains our policy, our firm policy."

(source: Statement by Sec. of State Colin Powell, Oct. 25, 2004)

*Director Wilder's Statement*

quote: "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."

(source: Statement by Dennis Wilder, US National Security Council Senior Director for Asian Affairs, Aug. 30, 2007)

*Roger C. S. Lin et al. v. United States of America*

quotes:

(March 18, 2008 District Court Decision) [The Native Taiwanese] 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.

(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.

According to the above data, the United States Executive Branch and U.S. courts do not recognize the Republic of China (ROC) on Taiwan as a sovereign state. So, what is the ROC on Taiwan? Based on the legal and historical record, Taiwan was Japanese national territory until Japan renounced all of its rights, claims, and title in the San Francisco Peace Treaty (SFPT) of 1952. Hence, it seems reasonable to say that when the ROC moved its central government to occupied Taiwan in early December 1949, it was moving outside of China's national territory and immediately became a government in exile.

Reference may be made to the case of Sheng v. Rogers, D.C. Circuit, Oct. 6, 1959, where the judges examined the legal status of Taiwan in detail, and held: " . . . 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." (Emphasis added.)

Based on the above it is clear that there was no "Taiwan Retrocession Day" on Oct. 25, 1945, the ROC has never held the territorial sovereignty of Taiwan, and the issuance of ROC passports to native Taiwanese persons is without legal basis.

DEFINITION

Native Taiwanese People

Upon the signing of the surrender documents by the Japanese Emperor on Sept. 2, 1945, all people of Taiwan bearing household registration in Japanese-governed Taiwan and their descendants continuing to possess household registration in Taiwan up to the present.

Importantly, the human rights of the native Taiwanese people are being violated and have been violated since the end of World War II. They are native Taiwanese people, not Chinese citizens. As such, they should not be forced to carry ROC passports.

Passports and Nationality

The Republic of China passport carried by native Taiwanese people clearly indicates the bearer’s nationality as “Republic of China.”  Under international standards however, such a nationality designation does not exist.  This is explained as follows.

ISO 3166-1 alpha-3 codes are three-letter country codes defined in ISO 3166-1, part of the ISO 3166 standard published by the International Organization for Standardization (ISO), to represent countries, territories, etc.  These three-letter abbreviations have been formally adopted by the International Civil Aviation Organization (ICAO) as the official designation(s) of a “recognized nationality” for use in manufacturing machine-readable passports, carried by travelers in order to deal with entry/exit procedures at customs authorities in all nations/territories of the world.

According to these three-letter ISO country codes adopted by ICAO, the “Republic of China” is not a recognized nationality in the international community, and thus there is no “ROC” entry.

This is a serious human rights issue for native Taiwanese people, because Article 15 (1) of the Universal Human Rights Declaration says everyone has the right to a nationality.

What is the solution to this problem?

At the minimum, the native Taiwanese people should be entitled to hold "travel documents" issued by a sovereign state.

The question then arises, "Which sovereign state should take the responsibility for issuing 'travel documents' to native Taiwanese people?" The following excerpts from the Foreign Relations of the United States series, edited by the Department of State, offer some important insights:

Foreign Relations of the United States

49-3) June 9, 1949

Plebiscite Proposal

There has been no recognition (by the Allies) that Taiwan has been incorporated into Chinese territory.

49-5) Oct. 23, 1949

Right of conquest

Chinese President Li Zongren is in favor of joint Sino-American Commission to govern Taiwan, but admits US could take control based on right of conquest.

49-6) Dec. 3, 1949

Special Responsibility of US

The United States has a special responsibility for Taiwan due to its military liberation of the island.

50-1) Oct. 23, 1950

International Problem

By sending the Seventh Fleet into the Taiwan Strait, the U.S. Executive Branch has forcefully emphasized its position that Formosa is an international problem.

50-2) Nov. 11, 1950

No Formal Act

To date, no Formal Act restoring Formosa & Pescadores to China has occurred.

50-3) Nov. 16, 1950

Principal Victor over Japan

As principal victor over Japan, US has a great responsibility in regard to the disposition of Formosa.

51-2) May 3, 1951

Occupation of Formosa

There are many types of military occupation, and the US could occupy Formosa without any Americans being present . . . .

52-1) June 2, 1952

Undetermined sovereignty

Sovereignty over Formosa is still undetermined with the coming into force of the San Francisco Peace Treaty (SFPT) on April 28, 1952.

54-1) Sept. 27, 1954

Inchoate Juridical Status

Formosa and the Pescadores (aka "Taiwan") have an inchoate juridical status under SFPT, however Kinmen and Mazu have continuously been Chinese territory.

54-2) Oct. 14, 1954

US juridical position

Neither the San Francisco Peace Treaty of April 28, 1952, nor the Sino-Japanese Peace Treaty (Treaty of Taipei) of Aug. 5, 1952 can be interpreted to say that Formosa and the Pescadores have been ceded to China. Importantly, the United States retains a juridical position in these islands.

54-3) Oct. 18, 1954

Distinctive Juridical Status

(Eisenhower:) Technically, Formosa and the Pescadores are not under Chinese sovereignty. The Chinese Nationalists are living in a privileged sanctuary.

54-4) Oct. 28, 1954

Unsatisfied US Interest

Japan did not cede sovereignty over Formosa and the Pescadores to China. Japan renounced its own sovereignty but left the future title undefined. As principal victor over Japan, the United States has an unsatisfied interest in these former Japanese islands.

55-1) July 1, 1955

United States Could Assert Legal Claim

In the peace treaty, Japan has merely renounced sovereignty over Taiwan, but there has been no other disposition. The United States also has an interest in Taiwan and could assert a legal claim to the island(s). Hence, the disposition of Taiwan is not merely an internal Chinese problem.

56-1) June 10, 1956

Former Japanese Territories

The United States has residual responsibility over all former Japanese territories.

Unfortunately, over the last eight or more years, the US Secretary of Defense has not responded to numerous Petitions of native Taiwanese persons for the issuance of Travel Documents.

Whether this situation will change in the months to come remains to be seen.

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