To: Los Angeles Times

 Letter to the Editor

RE: Taiwan Arms Sales and Military Conscription

Dear Editor,

A recent article on missile sales to Taiwan by an LA Times reporter entitled “Pentagon OKs missile sale to Taiwan” again offers the tired mantra that “Taiwan and China split in 1949 after a civil war . . . ” Unfortunately, this ignores the entire flow of events in WWII in the Pacific.

Specifically, at the close of fighting in the Pacific War, it was the USA which was the legal occupier of Japan and her overseas territories such as Taiwan. In 1952, Taiwan was not awarded to the Republic of China (ROC) in the San Francisco Peace Treaty (SFPT), but the US still allowed the ROC government officials and military personnel to remain in Taiwan as a proxy occupying force, serving as a bulwark against communist expansion. Under the terms of the treaty, the United States then continued its role as the “principal occupying power.”

Based on the 1979 Taiwan Relations Act, the United States sells military hardware to Taiwan, but such sales must necessarily be predicated on an assumption that mandatory military conscription policies in the ROC rest on a firm legal basis. Is there any such legal basis? Looking at the historical record, in October 1945, the ROC officials unilaterally announced the “annexation” of Taiwan, followed in January 1946 with the “mass naturalization” of local persons as ROC citizens, both of which actions are illegal under the internationally recognized laws of war.

Dennis Wilder, National Security Council (NSC) Senior Director for Asian Affairs stated on August 30, 2007, 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."

Indeed if the ROC is an issue undecided, then it is a non-sovereign entity. We can ask the fundamental question -- “Is it permissible for non-sovereign nations to impose military conscription policies over the people residing within their territorial boundaries?” U.S. court decisions have confirmed that the answer to this question is “No.” Most notably, in the Selective Draft Law Cases (1918), the U.S. Supreme Court held that military conscription must be based on national sovereignty.

We are forced to conclude that military conscription policies in Taiwan are illegal, and must be regarded as severe violations of the Taiwanese people’s human rights. Specifically, such policies are in direct contravention of the human rights clause of the Taiwan Relations Act.

Other people have pointed out that territory under military occupation can be described as having an “undetermined legal status,” which is exactly the way Taiwan is often described. Such a situation could have easily arisen because no date for the end of the military occupation of Taiwan has ever been announced. Interestingly, such an analysis reaches the same result, because under the Hague and Geneva Conventions, military conscription policies in occupied territory are illegal.

If anyone could explain why the Congressional Taiwan Caucuses continue to ignore these legal issues, I am sure that the Taiwanese people would be most interested.

Sincerely,

(name, address, title, educational background, email, telephone #, FAX #, birthdate, age, hair color, shoe size, sex at birth, etc. were all included in original email Letter)

written in Tainan, Taiwan

August 29