Territorial Cession as the Result of War

Let’s look again at our table, which we discussed in Part 1 of this news report. We want to pay special attention to the positioning of Cuba. In the Treaty of Paris after the Spanish American War, Spain relinquished the sovereignty of Cuba, but no receiving country was specified. This is a very similar situation to Taiwan.

這種情況與台灣是非常類似的。

So, we may want to ask, what is the condition of Cuba after the peace treaty came into force on April 11, 1899, and before Cuba became independent? During this period, Cuba was not yet a state in the international community, nor was it a part of any other country. We can say that its final political status was “unsettled” or “undetermined.” Notably, Cuba remained under military occupation after the peace treaty came into force.

值得注意的是，在和平條約生效後，古巴仍然維持軍事佔領的狀態。

This is a very good precedent and good comparative example for discussing Taiwan’s situation. The military occupation of Taiwan began in late October 1945, and the peace treaty came into force on April 28, 1952. In the peace treaty, Japan renounced sovereignty over Taiwan, but no receiving country was specified.

We must also note that there are only two possible outcomes for the “final political status” of any occupied territory. In the first case, the territory becomes a sovereign nation in its own right, otherwise, the territory becomes "part" of another sovereign nation.

Hence, the often heard statement that the legal status of Taiwan is “unsettled” or “undetermined” is further proof that Taiwan remains in a condition of military occupation in the present day.

Moreover, by recognizing that that Taiwan is under military occupation, we have additional verification that Taiwan has not been transferred to Chinese sovereignty. It remains under the jurisdiction of the “legal occupier,” which is the conqueror. With reference to the record of military attacks on Taiwan territory during the WWII period, that is the United States of America.

So, from the 1949 CIA report, we can immediately understand that there was no transfer of Taiwan’s territorial sovereignty to China in 1945. The surrender ceremonies only mark the beginning of the military occupation. Additionally, with the recognition that Taiwan is occupied territory, we must pay special attention to the customary laws of warfare, which have prohibitions against many types of activity in areas under military occupation. Such prohibited activities are all serious violations of international law.

The ROC’s violations of international law in occupied Taiwan territory include:

在佔領中的台灣領土，中華民國違反國際法的行為包括：

*  the mass naturalization of native Taiwanese as ROC citizens in January 1946,
*  the confiscation of Japanese public and private property,
*  the implementation of military conscription policies over the local populace,
*  the promulgation of a new legal code, legal structure, or constitution in December 1947, etc.

Of particular importance is to note that the amendment of the ROC Constitution by adding additional Articles does nothing to change the fact that the promulgation of this Constitution in Taiwan should be considered void ab initio.

Now let us turn to the Republic of China’s supposed “qualifying criteria” for statehood under international law.

The Republic of China and the Montevideo Convention

中華民國/台灣與蒙特維多公約

Many researchers claim that the ROC on Taiwan meets the four Montevideo Convention criteria for statehood. They completely ignore the facts that (1) the mass naturalization of native Taiwanese persons as ROC citizens in Jan. 1946 is illegal under the laws of war, (2) there are no international treaty references which can lead any credibility to the assertion that the ROC has the title to Taiwan territory, and (3) as of late 1949 the ROC has already become a government in exile.

 (3) 到1949年年底中華民國已經成為一個流亡政府。

Significantly, there is no doctrine under international law whereby certain actions taken by a government in exile can cause it to become the internationally recognized legal government of its current locality.

By definition, a government in exile is spoken of in terms of its native country, hence it must return to its native country and regain power there in order to obtain legitimacy as the legal government of that geographic area. In other words, in order for the ROC to obtain legitimacy in the international community, it would have to return to Nanjing, China, and resume governance there.

In Taiwan, the ROC has been exercising control for over 70 years. However, it cannot invoke the international law doctrine of “prescription” in an attempt to claim the ownership of Taiwan territory. This is because international law states that “military occupation does not transfer sovereignty.”

這是因為國際法規定，“軍事佔領不移轉主權。”