The End of the War and Taiwan’s “Undetermined Status”

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| Dialogue  (graphic on screen) |  |
| Background is green\_paperROOM.jpg |  |
| Mom: That series of lectures about WWII in the Pacific was certainly interesting. I am glad that we had the opportunity to attend. (L101)  Child: Well, I have always been interested in all kinds of puzzles, so I was particularly attracted to the discussion of Taiwan’s “undetermined” legal status. (B01)  Mom: The professor said that to understand Taiwan, there were three key items, or three key concepts. (L102)  Child: That is correct. She said that with those three items of knowledge, you can easily unlock the puzzle of Taiwan’s legal status. (B01)  Mom: The first one was something about the end of the war. (L227)  Child: We must recognize that there is a difference between the end of hostilities and the end of the war. The surrender ceremonies are simply the end of hostilities. The end of the war is when the formal peace settlement comes into effect. (B16)  Mom: So, for Taiwan, that would be the San Francisco Peace Treaty of 1952. (L217)  Child: Exactly. Second, the surrender ceremonies only mark the beginning of the military occupation. This is the only possible interpretation that complies with the Hague Conventions and Geneva Conventions. (B19)  Mom: And I seem to recall that the other item involves the peace treaty. (L220)  Child: The third item is that the specifications regarding any territorial cession are given in the peace treaty. Moreover, the territorial cession only becomes valid when the peace treaty comes into force. Before that time, the legal possession of the territory has not changed. (B322)   |  | | --- | | 1. End of hostilities, End of the War (dates are different) 2. Surrender ceremonies, Beginning of military occupation (interpretation is matching) 3. Territorial cession provisions are specified in the peace treaty, and come into force along with the peace treaty (time is identical) |   pic-3items.jpg  Mom: The professor said that from these simple facts, we can derive all relevant information about Taiwan’s true legal situation. But I forget how it is done. (L365)  Child: I took some notes. (1) For Taiwan, the surrender ceremonies of Oct. 25, 1945, only mark the end of hostilities, not the end of the war. (2) The military occupation of Taiwan begins on this date. An important principle of international law says Military occupation does not transfer sovereignty. (B323)  Mom: So, October 25, 1945, was not Taiwan Retrocession Day. It was only the beginning of the military occupation. (L133)  Child: (3) When the Republic of China moved its central government to occupied Taiwan in December 1949, it was moving outside of China’s national territory. At that point, it immediately became a government in exile. (B323)  Mom: In other words, the legal ownership of Taiwan territory stayed with Japan until the peace treaty came into force. (L220)  Child: Additionally, the US Supreme Court has said the conqueror acquires the rights to govern the conquered territory, and may set up its own authority. So, in terms of conducting the military occupation, this clearly means that the conqueror is the “legal occupier.” (B19)  Mom: The professor also mentioned that her research had confirmed that 98% or more of military attacks against Taiwan in the WWII period were made by US military forces. (L101)  Child: So the United States of America is the conqueror, and therefore the legal occupier. (B20)  [ Diagram USA is the *legal occupier* of Taiwan]  USA-leg-occBEIGE.png  Child: From this, we can immediately derive the position of the Republic of China officials in Taiwan. Beginning Oct. 25, 1945, they are proxy occupying forces. Beginning Dec. 10, 1949, they also gain the status of government in exile. There has been no change in these statuses up to the present day. (B20)  Mom: This means that at the most basic level, Taiwan today is still under a legal condition of military occupation by the USA. (L102)  Child: Yes. The professor said that with no final disposition of Taiwan in the San Francisco Peace Treaty, the military occupation will continue indefinitely. (B22)  Mom: But some of my co-workers in Taiwan told me that some recent TV reports have advanced the theory that Taiwan “belongs” to the 48 signatories of the San Francisco Peace Treaty. She sent me a film clip, here it is. (L101)  [ ADD Chinese Film clip from <https://www.youtube.com/watch?v=58qDXxV_Czg> ]  Full screen  *See instructions in FTV-excerpt.docx*  Child: That analysis is totally incorrect. With the coming into force of the San Francisco Peace Treaty in late April 1952, the Allies have disbanded. They are not exercising any authority over Taiwan territory. (B14)  Mom: I hate it when these TV announcers report on historical issues from an incorrect perspective. (L220)  Child: The question which has to be considered is: “Who is the legal occupier?” The legal occupier is not the 48 signatories of the San Francisco Peace Treaty. To understand this point, we need to reference the customary laws of warfare. These customary laws are very clear on the point that it is the **conqueror** who acquires the rights to govern the conquered territory. Beginning in the mid-1800s, more and more of these customary laws have been codified in the Hague and Geneva Conventions. (B28)  Mom: How does all of this relate to the DISPLACEMENT ANALYSIS which the professor introduced? (L216)  Child: Yes, maybe we need to return to the fundamentals. The professor introduced something called a “sovereignty displacement” analysis. (B16)  Mom: Sovereignty. That is a topic that confuses many people.  (L220)  Child: Sovereignty contains two components. One is exercise of control over territory. The second is legal ownership of the territory. So any displacement of these will result in a “displacement of sovereignty.” (B16)  Mom: The professor explained this by showing the video, right? (L217)  Child: I made a copy of her diagram. It shows the sovereignty displacement analysis for Taiwan from the 1890s to the present day. There are four instances: we can call them D1, D2, D3, and D4. (B324)  [ DIAGRAM ]  displace-graphic.jpg  *(on whiteboard, then expand to full screen)*  Mom: So, let’s go back to the beginning. I remember that as a result of the First Sino-Japanese War, Taiwan was ceded to Japan in the mid-1890s. (L147)  Child: That was in 1895. According to the terms of a peace treaty between the Qing Dynasty and Japan, Taiwan was ceded to Japan, and became part of Japan’s national territory. Hence, we have both components of the sovereignty being displaced. Qing China has given up the exercise of control and the legal ownership. (B01)  Mom: Qing China had a sovereignty displacement OUT. Taiwan was ceded to Japan, so for Japan there is a sovereignty displacement IN. (L150)  [ DIAGRAM ]  Full screen  displace-D1D2.jpg  Child: That is D1 and D2 on the chart. So, after 1895, Japan exercises control over Taiwan, and Japan has the legal ownership. (B321)  Mom: The professor said that the United States confirmed the validity of the 1895 treaty in 1922. (L217)  Child: Yes, the 1922 Washington Naval Treaty fully recognized Taiwan as an insular area of Japan. (B321)  Mom: The definition of “insular” is -- (a) of or relating to an island or islands, 　(b) dwelling or situated on an island. (L101)  Child: That was the situation beginning in 1895. Then a lot of things happened here in the middle (B20)  [ six-second Film clip 0:00 to 0:06 ]  *from*  https://www.youtube.com/watch?v=7dn\_E9UgyKs  Child: But the next time we have any event which affects the displacement of sovereignty is as of Oct. 25, 1945. (B20)    Mom: What is the interpretation of that? (L216)  Child: On this day, the United States’ conquest of Taiwan has become a fact. That is the final result. So, the United States now has the authority for exercising control over Taiwan. (B324)  [ DIAGRAM ]  USA principal occupying power  ROC proxy occupying forces  USA-prin-occBEIGE.png  *(on whiteboard, then expand to full screen)*  Mom: Yes, I remember. The United States exercises such a “control” component as the legal occupier. (L217)  [ DIAGRAM ]  sov-2itemBEIGE.png  Full screen  *CIRCLE the* **exercise of control**  *( effect should be similar to red-circle.png )*  Mom: The professor said the sovereignty has been displaced because the original Japanese government of Taiwan is put in a position where it can no longer function. (L102)  [ DIAGRAM ]  Full screen  displace-D3.jpg  Child: Such a result is quite a normal situation in occupied territory, as the result of war. (B16)  Mom: But unfortunately, most people don’t see the United States exercising control over Taiwan. This is because the United States has delegated the military occupation of Taiwan to the Chinese nationalists under Chiang Kai-shek. The United States, as the legal occupier, has allowed the Chinese nationalists to continue exercising authority over Taiwan territory after the surrender ceremonies of Oct. 25, 1945. (L216)  Child: As I understand it, the surrender ceremonies were held on behalf of the Allies. (B20)  Mom: However, the ensuing military occupation is conducted on behalf of the legal occupier, which is the USA. (L366)  Child: Then on April 28, 1952, there has been a further displacement of sovereignty, because the legal ownership has been renounced by Japan. (B01)  [ DIAGRAM ]  sov-2itemBEIGE.png  Full screen  *CIRCLE the* **legal ownership**  *( effect should be similar to red-circle.png )*  Mom: This is the fourth displacement of sovereignty. (L101)    [ DIAGRAM ]  Full screen  displace-D4.jpg  Mom: So, what are we left with? (L101)  Child: We are left with the legal occupier exercising control over Taiwan territory. The legal occupier is the United States of America. However, the USA has, tacitly or expressly, delegated this control to the Republic of China, which by December 1949 had already downgraded itself to the status of a government in exile. (B16)  Mom: And I believe that delegation of authority to administer Taiwan territory was originally specified in General Order No. 1 of Sept. 2, 1945. (L147)  Child: General Order No. 1 was written in the Pentagon, and later approved by President Truman, before being issued by General Douglas MacArthur. Additionally, we must remember that in October 1945, Republic of China military personnel were transported to Taiwan on US ships and aircraft. (B322)  Mom: So, this is the situation. For Taiwan, there have been four displacements of sovereignty from 1895 to the present. Let’s show the video now. (L150)  [ entire Film clip 0:00 to 0:43 ]  *from*  https://www.youtube.com/watch?v=7dn\_E9UgyKs  Mom: The professor said that this analysis corresponds exactly with all current US government pronouncements on Taiwan. (L217)    Child: Those pronouncements include – (B324)   * Taiwan is not independent. * The Republic of China is not a state in the international community. * We do not support Taiwan’s membership in any organization for which statehood is a requirement. * We do not support the two state formulation of “One Taiwan” and “One China.” * The Republic of China is an issue undecided. * We have a One China Policy.   (B324 )  *(lettering is on whiteboard, then rolls up as appropriate,*  *gradually expanding to full screen)*  Mom: With all of this information and analysis, it should mean that Taiwan’s legal status is now already fully determined. (L102)  Child: Actually, no. Taiwan’s legal status is still undetermined. This is because for occupied territory, there are only two possible final outcomes. The first is that the territory itself becomes an independent nation. The second is that the territory becomes part of another independent nation. (B14)  Mom: Oh, right. That is the conclusion we reach by examining other situations of territorial cessions over the last 200 years. (L227)  Child: So, for Taiwan, its legal status remains as “undetermined.” This means that it has not yet reached a final political status. (B20)  Mom: In other words, Taiwan remains under a legal condition of military occupation. According to the customary laws of warfare the United States of America is the legal occupier. A close reading of the San Francisco Peace Treaty also confirms this. (L366)  Child: Our conclusion must be that it is the United States that bears final responsibility for the protection of both Taiwan territory and the human rights of the Taiwan people. (B22)  Mom: The professor also stressed another point. She said that after examination of the Taiwan Relations Act, Three Joint PRC-USA Communiques, the One China Policy, US Executive Orders on Taiwan, the San Francisco Peace Treaty, the International Declaration of Human Rights, and the rules/codifications promulgated by the International Standards Organization (ISO), it can be confirmed that –  (L133)  None of these legal sources contain any clauses or content which can be interpreted to provide a legal basis for the establishment of a Republic of China government structure on Taiwanese soil, or the issuance of “Republic of China” passports to the inhabitants of Taiwan.  (L133)  Child: I want to tell all my friends to send letters to the US Secretary of State, and the Chairman of the American Institute in Taiwan. According to everything I have heard and read, they certainly seem to be extremely uninformed of the truth of Taiwan’s historical and legal situation. (B321) |