Taiwan Elections: Political Repression masquerading as the Rule of Law

Officials in the U.S. Executive and Congressional Branches regularly praise the development of democracy in Taiwan and the conduct of elections. Is such praise justified? Let’s look at the facts.

**Election Fundamentals**

Here is a one paragraph introduction to Elections in Taiwan, as posted on the website of the Central Election Commission:

Elections in Taiwan have been conducted by the Central Election Commission (CEC) under the authority of the Republic of China Constitution, since its promulgation in 1947. The municipality, county and city election commissions are also under CEC’s jurisdiction. All elections are processed on the basis of "The Presidential and Vice Presidential Election and Recall Law" and "Civil Servants Election and Recall Act," and under the principles of fairness, universal, direct and free suffrage, and secret balloting.

Now let’s look at the provisions of the

Presidential and Vice Presidential Election and Recall Act

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| Chapter 1 General Principles |

Article 1 This Act is enacted pursuant to Article 46 of the Republic of China Constitution and Article 2, paragraph 1, of the Supplement to the Constitution.

Election and recall of the President and Vice President shall be governed by the provisions of this Act; for any affairs beyond those prescribed in this Act, the other related laws and regulations shall apply.

From this information we can clearly see that elections in Taiwan are held under the authority of the Republic of China Constitution. It therefore stands to reason that Taiwan must be part of the Republic of China.

This seems puzzling. Many U.S. Executive Branch officials have given comments that seem to contradict such an interpretation for Taiwan’s legal status.

*Secretary Powell's Statement*

"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)

“Legal Status of Taiwan” Memorandum

... technical sovereignty over Formosa and the Pescadores has never been settled. That is because the Japanese Peace Treaty merely involves a renunciation by Japan of its right and title to these islands. But the future title is not determined by the Japanese Peace Treaty nor is it determined by the Peace Treaty which was concluded between the Republic of China and Japan.

(source: Starr Memorandum, July 13, 1971, Dept. of State)

*Director Wilder's Statement*

"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, U.S. National Security Council Senior Director for Asian Affairs, Aug. 30, 2007)

Chinese Propaganda and Taiwan History

So when did Taiwan become a part of the Republic of China? After WWII, the announcement of the incorporation of Taiwan into China’s national territory was made by the Chiang Kai-shek regime on Oct. 25, 1945, and supposedly based on previous proclamations of the Allies. The ROC military officials named this day “Taiwan Retrocession Day.” An order effecting mass naturalization of native Taiwanese persons as ROC citizens was made on Jan. 12, 1946, and the Republic of China Constitution was promulgated on Dec. 25, 1947. These announcements, orders, promulgations, etc. all form a part of Chinese propaganda which has been expounded for over 70 years, which claims that Taiwan belongs to China. We may call it the “Retrocession Day” version of Taiwan history.

**The Allies and Taiwan History**

But what was the view of the Allies? None of the Allies recognized any transfer of Taiwan’s territorial sovereignty to China at any time in the 1930s, 1940s, 1950s, 1960s, or any other time. In their view, the Oct. 25, 1945, surrender ceremonies in Taipei only marked the beginning of the military occupation. How did they arrive at such conclusions? Of course, they were aware of the framework of international law in the post-Napoleonic era, including the Hague Conventions, Geneva Conventions, and other established precedent which we can classify under the broad general heading of “the customary laws of warfare.” We may call this the “Military Occupation” version of Taiwan history.

Importantly, we must remember that it was United States military forces that conducted the military attacks against Taiwan in the WWII period and “liberated” the island. The ROC played no role in these military efforts. As a result, and at the most basic level, it can be strongly argued that after the surrender of Japanese troops, it is the United States that has a 1st tier jurisdictional authority over Taiwan.

So, as presented above, there are two versions of Taiwan history which are commonly discussed. Which version is correct? We can confirm our answer by looking at the post war treaties. The San Francisco Peace Treaty came into force on April 28, 1952. The Sino-Japanese Peace Treaty came into force on Aug. 5, 1952. Did either or both of these treaties award the territorial sovereignty of Taiwan to China? The answer is No.

Such an interpretation is confirmed by a 1959 U.S. court case. The judges’ decision **did not** recognize Taiwan as being part of the Republic of China. The case was Sheng v. Rogers, D.C. Circuit, Oct. 6, 1959. The judges examined the legal status of Taiwan in depth, 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.)

(source: Sheng v. Rogers, D.C. Circuit, Oct. 6, 1959)

So, after overviewing the decision of the judges in this court case, would you say that elections in Taiwan under the authority of the Republic of China Constitution are legitimate? And that such elections fully respect the democratic aspirations all the native Taiwanese people?

Let's clarify our answer by asking a rhetorical question. What if Syria sent its military troops into Jordan, announced the annexation of Jordan’s territory, the mass naturalization of the Jordanian people as Syrian citizens, the extension of the Syrian Constitution over Jordan, etc. Under such circumstances, would the United States and other leading world nations have any objections? Or would that be considered quite fitting and good? A few years later, if elections were then held in Jordanian territory under the authority of the Syrian Constitution, would the election results be considered valid?

[ SCREEN ] Syria land area: 184,051 sq km (71,062 sq mi)

Jordan land area: 88,802 sq km (34,286 sq mi)

Taiwan land area: 32,261 sq km (12,456 sq mi)

Many people have a sort of general feeling that such arrangements would not be proper. But most civilians don’t have the technical legal knowledge to explain the exact details of what violations or improprieties have been committed. Fewer still can expound upon the international legal framework under which such actions must be viewed.

In fact, it may be true that the Syrians can offer up all types of cultural, political, geographic, historical, etc. rationale as to why Jordan should belong to them. How can we evaluate the accuracy or validity of such claims?

Now, as an added complication, what if the (original) Syrian government collapses and flees to Jordan? What is the significance of such a set of circumstances under international law? Can we conclude that Jordan has now become Syria??

This can be quite confusing. But, is it to our advantage to sort this matter out thoroughly? Or does it lack any significant reference value for a discussion of Taiwan’s international legal status and the conduct of elections under the Republic of China regime?

**Human Rights Practices in Taiwan**

In regard to Taiwan, the most recent “Country Report on Human Rights Practices” by the U.S. State Dept. Bureau of Democracy, Human Rights and Labor mentions the word **constitution** twelve times, but does not discuss the issue of how the ROC Constitution came to be regarded as the organic law of Taiwan. The U.S. State Dept., apparently, has not considered that in truth, elections in Taiwan are only held under a superficial façade of “democracy,” and are not truly representative of the hopes, the will, and the desires of the Taiwanese people.

[ SCREEN ] The Sept. 2008 “Mandatory Guidance from Department of State Regarding Contact with Taiwan” clearly states that:

Consistent with the unofficial nature of U.S. - Taiwan ties, the U.S. government does not refer to Taiwan as the “Republic of China,” the “Republic of China on Taiwan,” or a country.

Let us not forget some facts which are not mentioned on any governmental websites in Taiwan, namely that the ROC Constitution was not drafted based on any deliberations or negotiations by locally selected Taiwanese delegates. It was promulgated at the point of a gun by the KMT-led ROC government, during a period of violent political suppression, which had begun in late Feb. 1947. Most significant, perhaps, is to realize that putting the ROC Constitution into effect in Taiwan was based on the false premise of Oct. 25, 1945 being “Taiwan Retrocession Day.”

However, in its annual “Human Rights Practices” reports, the U.S. State Dept. Bureau of Democracy, Human Rights and Labor does not concern itself with such matters. Their research for writing those reports apparently only goes back to the early 1990s.

Of course, some people would say that the native Taiwanese people have already lived under the Republic of China Constitution for nearly 70 years, and they are accustomed to it, and enjoy the campaigning activities and many levels of elections which are regularly held under the constitution’s overreaching authority.

If this is truly the case, there is a simple solution. Not including the title, the words “Republic of China” appear in the ROC Constitution eighteen times, and the word “Chinese” appears seven times. These could be changed to “Taiwan territory” and “Taiwanese” respectively. This correctly amended constitution could then be continued in force temporarily until a new Taiwan constitution could be drafted.

As mentioned above, in the post-war San Francisco Peace Treaty of April 28, 1952, the territorial sovereignty of Taiwan was not awarded to China. Hence, there is no legal basis for the use of the Republic of China constitution in Taiwan. The promulgation of a new legal code for Taiwan, as was done in 1947, during a period of belligerent occupation, is a war crime.

War Crimes of the Republic of China regime

Preliminary Listing

Illegal Actions Description

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| **Annexation of Territory** | Announcement of “Taiwan Retrocession Day” was a clear indication of the intent to annex occupied Taiwan territory |
| **Seizure, Expropriation, and Confiscation of Property** | Beginning in the Fall of 1945, the ROC repeatedly violated the rules of “usufruct” applicable in occupied territory, and began full-scale seizure, expropriation, and confiscation of Japanese public and private property in Taiwan |
| **Implementation of the mass naturalization of local inhabitants** | A military order of Jan. 12, 1946, provided for the mass naturalization of native Taiwanese persons as ROC citizens |
| **Introduction of a entirely new legal code** | The ROC Constitution was promulgated in occupied Taiwan on Dec. 25, 1947, and an entirely new legal structure for Taiwan was progressively instituted |
| **Military conscription and travel restrictions, etc. for local inhabitants** | Broad-based military conscription policies were implemented in occupied Taiwan in 1949, and travel restrictions promulgated for local citizens |
| **Trials of civilian personnel by military courts, arbitrary arrest, massacres, torture, etc.** | Tens of thousands of Taiwanese were massacred beginning in the “2-28 Incident” beginning Feb. 28, 1947, and its aftermath. Further human rights abuses occurred during the “Formosa Magazine Movement” of 1979, and its aftermath, plus the “Kaohsiung Incident” of Dec. 10, 1979, and its aftermath, etc., and the period of “White Terror” that continued up to the end of the martial law in July 1987 |
| **Immigration into occupied territory** | After the communist victory in China’s civil war in the Fall of 1949, over two million ROC officials and other refugees fled to occupied Taiwan. In the 21st century, the ROC regime has further expanded the immigration of PRC spouses, in order to build support for its pro-PRC policies. |

Based on the above listing of war crimes, it should be easy to see why “Taiwan” or the “Republic of China” on Taiwan cannot be regarded as a sovereign state. Some people would argue that the ROC on Taiwan meets all of the Montevideo Convention’s criteria for statehood. However, in fact, all of its “qualifying criteria” are bogus: It exercises effective territorial control over Formosa and the Pescadores, but there has been no official transfer of title; the native Taiwanese population was mass-naturalized as ROC citizens in 1946, based on the false premise of “Taiwan Retrocession Day,” and in direct violation of the Hague Convention’s stipulations regarding the treatment of the populace of occupied territory; It has a government, but it is a government in exile, etc.

**The Disposition of Taiwan under the SFPT**

But how can we understand the correct international legal position of “Taiwan territory”? As we know, Japan renounced its sovereignty over Taiwan in the treaty, so how can we make a determination of what the treaty intended as the final disposition of Taiwan?

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The "Taiwan" entry in the U.S. Dept. of State publication Treaties in Force clearly states that "The United States does not recognize the Republic of China as a state or a government."

With reference to the laws of war, we can see that the treaty did not specify any “final disposition,” but it did specify a “temporary disposition.” In Article 4(b), Taiwan was placed under the jurisdiction of a U.S. federal agency, the United States Military Government (USMG). Many people argue about how to interpret the meaning of Article 4(b), but such an argument is easily settled by examining what actions the United States took in the Ryukyu Islands.

Yes, this same article that gave USMG jurisdiction over the Ryukyu island group, also gave USMG jurisdiction over Taiwan. Hence, after reading the SFPT, our first impression would be that elections in Taiwan territory should be held under the jurisdiction of the USMG. That would mean that a U.S. military governor should be appointed, the U.S. flag should be flying, and local inhabitants should be enjoying fundamental rights under the U.S. Constitution, similar to the inhabitants of other U.S. overseas territories. The U.S. military governor would then announce procedures for selecting delegates to a local Taiwanese constitutional convention, and the constitution of Taiwan territory would be drafted. Of course, this should have been done in 1952, if not earlier. However, it is still not too late for to take the necessary remedial actions to deal with these matters.

Which U.S. government agency should do this? Still being under USMG, Taiwan does not fall under the jurisdiction of the U.S. Dept. of the Interior. Clearly, it is the responsibility of the U.S. Department of Defense to deal with Taiwan’s legal reorganization issues.

Does this mean that Taiwan would become an independent nation? Or the 51st state in the USA? The answer to these questions is No. Under the specifications of the SFPT, Taiwan is correctly regarded as a *quasi USA trusteeship* under military government within the U.S. insular law framework. Trade relations with the USA would be coordinated based on an “Insular Trade Agreement” or other similar free trade arrangement.

In summary, elections in Taiwan should be held under the mandate of a new Taiwan Constitution, drafted under the overall administrative authority of the United States of America.

Two Territorial Cessions of WWII in the Pacific

Locality End of Hostilities Peace Treaty End of Military Government Final Status

Ryukyus June 23, 1945 April 28, 1952 May 15, 1972 overseas territory

of Japan

Taiwan Oct. 25, 1945 April 28, 1952 [ not announced yet ] [ -- none -- ]

Current (“final”) legal status of Ryukyu Islands: overseas territory of Japan

Current (“interim”) legal status of Taiwan territory: *quasi USA trusteeship* under military government within the U.S. insular law framework

By following the specifications of the SFPT to regularize Taiwan’s legal status, it would be then fully fitting and proper that the Republic of China officialdom be allocated some land area in a corner of the island to conduct their own affairs, until such time as they could return to their beloved homeland of mainland China. As exiles, it would not be expected that they would have voting rights in local Taiwan elections.

In conclusion, looking at the record from early 1940s to the present, much significant legal evidence can be assembled to show that the local Taiwanese people are being held hostage by the ROC regime, and forced to live under the ROC legal framework, in direct violation of international laws and treaties. Elections in Taiwan are based on the “constitutional framework” of a country that does not exist, and the inhabitants of Taiwan are trapped in political purgatory. That the international media is not taking notice of this entire situation is quite surprising as well. A series of in-depth articles on “The Taiwan Cession Scandal” should have an excellent chance of winning the author a Pulitzer Prize.

Please see the following three videos on our Youtube Channel at

www.youtube.com/twclarify

The Truth of Oct. 25, 1945

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