US Insular Areas: the Taiwan Connection

MAKE AMERICA GREAT AGAIN

We welcome the U.S. Army, Navy, and Air Force to establish military bases, harbors, airports, etc. in Taiwan.

Such arrangements can be easily made if proof of Taiwan’s true status as an

*overseas territory of the United States*

can be given.

Please continue watching to see the content of such a proof.

But before we examine the relationship between Taiwan and the USA based on “US insular law” principles, let’s look at some important Background Information

BACKGROUND INFORMATION

Does the content of the Taiwan Relations Act forbid Taiwan as being recognized as an overseas territory of the United States?

It certainly doesn’t.

Let’s do a brief overview of Taiwan’s recent history and true legal situation.

First, let’s define the term

*insular*

The definition of “insular” is --

(a) of or relating to an island or islands,

(b) dwelling or situated on an island.

POPULATED U.S. INSULAR AREAS

In this report, we will confine our discussion of U.S. insular areas to those which have their own native population, and have not yet achieved “statehood” in the United States.

Another name for “insular areas” is “overseas territories.”

Let’s look at the insular areas of the United States

U.S. INSULAR AREAS

As a result of the Spanish American War of 1898, a number of populated insular areas came under United States' jurisdiction. We may describe them as Type 1 Insular Areas.

These areas were Puerto Rico, Guam, the Philippines, and Cuba.

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| --- |
| DEFINITION  TYPE 1 Insular Areas: Insular Areas Acquired as the Result of Military Conquest |

What were the qualifying criteria for these areas to become Type 1 Insular Areas of the United States? For each area, we quickly note the following common characteristics.

1) There was a formal declaration of war,

2) Each area had been conquered by U.S. military forces,

3) After the surrender ceremonies, there was a formal peace treaty,

4) The USA is the legal occupier,

5) The territorial sovereignty of the original "mother country" was ended via the terms of the peace treaty,

6) The jurisdiction of the United States over each area has been specified in the peace treaty,

These may be called the Six Qualifying Criteria for recognition as a Type 1 Insular Area of the United States.

We must stress that:

Due to the acts of conquest, and the coming into force of the Spanish-American Peace Treaty on April 11, 1899, Puerto Rico, Guam, the Philippines , and Cuba were all under the military jurisdiction of the United States.

*“By the law of nations a conquered territory is subject to be governed by the conqueror during his military possession . . . . “*

In other words,

Before the establishment of "civil government" authorized or recognized by the United States, all of these areas were under the jurisdiction of the United States Military Government (USMG).

Additionally,

When speaking of military jurisdiction, it is important to understand the concept of “military government.”

“Military government” is defined as *the form of administration by which an occupying power exercises government authority over occupied territory*.

Another phrasing of the above definition is to say that --

Territory over which “military government” has jurisdiction is territory under military occupation.

A detailed definition of “military government” was originally given in an early U.S . Supreme Court case --

Ex Parte Milligan (1866)

Let’s look again at our Six Qualifying Criteria for recognition as a Type 1 Insular Areas of the United States, and confirm the situations of Puerto Rico, Guam, the Philippines, and Cuba.

US Insular Areas, TYPE 1

Six Qualifying Criteria

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| *Criteria* | Puerto  Rico | Guam | Philippines | Cuba |
| 1) There was a formal declaration of war |  |  |  |  |
| 2) Each area was conquered by U.S. military forces |  |  |  |  |
| 3) After the surrender ceremonies, there was a formal peace treaty, |  |  |  |  |
| 4) The USA is the legal occupier |  |  |  |  |
| 5) The territorial sovereignty of the original "mother country" was ended via the terms of the peace treaty |  |  |  |  |
| 6) The jurisdiction of the United States over each area has been specified in the peace treaty |  |  |  |  |

TAIWAN

Now let’s look at the situation of Taiwan. The Qing Dynasty of China had ceded Taiwan to Japan in an 1895 treaty. The United States recognized Taiwan as an “insular area of Japan” in the 1922 Washington Naval Treaty, thus confirming the validity of the 1895 cession.

TAIWAN

US Insular Area Type 1 Qualifying Criteria

*Overview*

Criteria Commentary

|  |  |  |
| --- | --- | --- |
| 1) There was a formal declaration of war | The United States declared war on Japan on Dec. 8, 1941 |  |
| 2) The area was conquered by U.S. military forces | Examining the historical record of the WWII period, over 98% of military attacks against Taiwan were made by US military forces. Hence, the United States’ role in Taiwan is the “conqueror” and therefore “the legal occupier” |  |
| 3) After the surrender ceremonies, there was a formal peace treaty, | The San Francisco Peace Treaty came into force on April 28, 1952 |  |
| 4) The USA is the legal occupier | The treaty identifies the United States of America as the “principal occupying power” in Article 23 |  |
| 5) The territorial sovereignty of the original "mother country" was ended via the terms of the peace treaty | According to the specifications of Article 2(b) of the treaty, Japan’s sovereignty over Taiwan was ended as of April 28, 1952 |  |
| 6) The jurisdiction of the United States over the area has been specified in the peace treaty | Article 4(b) of the peace treaty clearly specifies USMG jurisdiction over the Article 2 territory of Taiwan |  |

It is important to note that in the situations of Puerto Rico, the Philippines, Guam, Cuba, and other areas, the end of USMG jurisdiction was formally announced by the US Commander in Chief. For Taiwan, there has been no similar announcement from the period of April 1952 to the present.

Hence, we can see that Taiwan’s fulfillment of the requirements to be recognized as a TYPE 1 US insular area is

100%

TAIWAN’S LEGAL STATUS

& THE US CONSTITUTION

But many people wonder if we can find justification or verification for such an interpretation in U.S. constitutional law?

The answer is yes. In the American Insurance Company case (1828), the US Supreme Court held that:

"The Constitution confers absolutely on the government of the Union the powers of making war and of making treaties; consequently, that government possesses the power of acquiring territory, either by conquest or by treaty."

Some people will still ask:

Is such rationale still valid in the current era?

This is an important question. Most significantly, in order to understand this American Insurance Company ruling in light of the Geneva Conventions (1864, 1906, 1929, & 1949) and the Hague Conventions (1899 & 1907), we must fully recognize that –

International law of the post-Napoleonic period does not recognize any criteria whereby territory can be **annexed** immediately after the surrender of the local military troops.

Hence, the “acquirement” of territory as the result of “conquest,” as spoken of in this 1828 Supreme Court ruling, must be understood to indicate that *there is a period of military occupation.*

Military occupation, as was stated above, is conducted under military government.

We will review this as follows --

“Military government” is defined as *the form of administration by which an occupying power exercises government authority over occupied territory*.

Additionally, the Hague and Geneva Conventions specify a wide range of activities which are forbidden in occupied territory.

One notable activity which is forbidden in occupied territory is –

the enforcement of military conscription policies over the local populace

TAIWAN’S LEGAL STATUS

& THE REPUBLIC OF CHINA

Unfortunately, in the current era, many people mistakenly believe that Taiwan belongs to the Republic of China (ROC). For over seventy years, the ROC government officials have publicly proclaimed that WWII in the Pacific ended in the Fall of 1945, and the territorial sovereignty of “Formosa and the Pescadores” (now commonly called “Taiwan”) was transferred to the ROC upon the completion of the Japanese surrender ceremonies on Oct. 25, 1945, in Taipei.

Let’s look at the following Questions and Answers.

QUESTIONS & ANSWERS

Q1: Did the Republic of China military forces participate in military attacks against Taiwan in the period of December 1941 to the Fall of 1945?

Yes

No

Q2: Did the Republic of China military forces participate in military attacks against the four main Japanese islands in the period of December 1941 to the Fall of 1945?

Yes

No

Q3: Does international law of the post-Napoleonic period recognize any criteria whereby the territorial sovereignty of an area can be transferred immediately upon the surrender of the local military troops?

Yes

No

Q4: Based on the above, what was the situation of Taiwan territory after the Oct. 25, 1945, Japanese surrender ceremonies?

1. Chinese national territory
2. Occupied Japanese territory
3. United Nations’ trusteeship
4. None of the above

Q5. The surrender ceremonies in Taiwan Oct. 25, 1945, were conducted on behalf of the Allies. However, the ensuing military occupation is being conducted on behalf of

a) The legal occupier

b) China

c) UN Peacekeping forces

d) none of the above

BRIEF HISTORICAL AND LEGAL SUMMARIES

Query Item 1: If the United States of America is the legal occupier of Taiwan, then what is the legal status of the Republic of China on Taiwan?

Analysis: the role of the Republic of China military forces in the military occupation of Taiwan beginning Oct. 25, 1945 can best be described as “proxy occupying forces.”

Query Item 2: Historically, the Republic of China traces its founding back to 1912. Did the United States recognize the ROC as the sole legitimate government of China in that era, or some years later?

Analysis: According to US State Dept. records, the United States recognition of the Republic of China as the sole legitimate government of China occurred in July 1928, when the ROC central government was already located in Nanjing.

QUESTIONS & ANSWERS  *(continued)*

Q6: For the Allies fighting in the Pacific and nearby areas, when did WWII in the Pacific end?

1. Upon the unconditional surrender of Germany, May 8, 1945
2. Upon the formal Japanese surrender ceremonies, Sept. 2, 1945
3. Upon the coming into force of the San Francisco Peace Treaty, April 28, 1952
4. None of the above

Q7: The ROC central government undertook a relocation in December 1949, moving to occupied Taiwan. This must be regarded as

a) Moving to another location INSIDE China’s national territory

b) Moving to a location OUTSIDE China’s national territory

c) Moving to a location of unspecified ownership

d) None of the above

Q8. In international law, a government which moves outside of its national territory is called a government in exile

True

False

Q9: Can a government in exile sign a treaty with other sovereign governments?

Yes

No

Q10: Was Taiwan was awarded to the Republic of China in the post war San Francisco Peace Treaty?

Yes

No

CLOSING SUMMARY

for Part 1

In an earlier edition of this video, many viewers asked for a clarification of the following point:

Q11: What is the legal basis for the establishment of a “Republic of China” government structure on Taiwanese soil, and in particular a Ministry of National Defense (including its General Staff Headquarters, Army, Navy, Air Force, Combined Services Forces, Armed Forces Reserve Command, Coast Guard Command, Military Police Command, etc.) Please clarify this.

A11: After examination of the Taiwan Relations Act, Three Joint PRC-USA Communiques, 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 --

***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.***

THE REPUBLIC OF CHINA ON TAIWAN

In summary, the Republic of China on Taiwan is fulfilling the role of

* proxy occupying forces, beginning Oct. 25, 1945, and
* a government in exile, beginning Dec. 10, 1949

TAIWAN TERRITORY

A correct recognition of the legal status of Taiwan territory is as follows –

Taiwan is a TYPE 1 insular area of the United States under United States Military Government (USMG) jurisdiction.

THEREFORE

1. According to the “common defense” clause of the U.S. Constitution, the United States must bear full responsibility for the “national defense” needs of Taiwan, including the establishment of U.S. military bases on Taiwan, and the assignment of U.S. military personnel thereto,
2. According to the precedent established in dealing with other U.S. insular areas, and the specifications of the U.S. Constitution, the United States government

* must bear full responsibility for “foreign affairs” of Taiwan, including the issuance of passports to local Taiwan persons,
* should nurture local civic groups in Taiwan with the goal of establishing a “Taiwan Civil Government,” which is solely qualified to fulfill the role of “Taiwan governing authorities” (TGA) under the Taiwan Relations Act,
* should coordinate with the TGA regarding the handling of foreigners who apply for asylum or refugee status in Taiwan.