The Spratly Islands Dispute and the “Six Claimants”

The Spratly Islands dispute is an ongoing territorial ownership dispute between Brunei, Malaysia, the Philippines, the People's Republic of China (PRC), the Republic of China (ROC) on Taiwan, and Vietnam. The Spratly Islands is a group of islands and associated "maritime features," such as reefs, banks, cays, etc., located in the South China Sea.

The Spratly Islands are important for economic and strategic reasons. The Spratly area holds potentially significant, but largely unexplored, reserves of oil and natural gas; it is a very productive area for world fishing, and it is one of the busiest areas of commercial shipping traffic. In most cases, surrounding countries would obtain an extended continental shelf if their claims were recognized.

More importantly perhaps, in addition to numerous economic advantages, the Spratlys are situated alongside the major maritime trade routes to Northeast Asia. This fact gives them added significance as positions from which to monitor maritime activity in the South China Sea, and to establish a military presence, including the placement of army, navy, air force, and other personnel, outposts, camps, stations, bases, bunkers, airport landing strips, naval docks, repair facilities, etc.

Brunei, Malaysia, Philippines, the PRC, the ROC on Taiwan, and Vietnam can be referred to as the “Six Claimants.” They have all made claims to the entirety, or significant portions of, the Spratly island group. The officials in the Executive and Legislative branches of these Six Claimant countries frequently spend significant amounts of time collecting evidence to show that their territorial claims to the Spratlys are valid, and that the claims of the other countries have a poor legal or historical basis. Sometimes the Executive and Legislative branch officials of one, two, or more nations even pool their resources to gather proof that the territorial claims of one other party in the dispute are very weak, and should be dismissed entirely. The officials of Indonesia are also concerned about the Spratly island dispute, and do not want to see this controversy damage peace and stability in the Asia-Pacific region. The Indonesian President has offered to serve the role of "honest broker" in sorting out the validity of the different countries’ claims.

As we know, there are many powerful countries in the world. One grouping includes the seven major advanced economies of Canada, France, Germany, Italy, Japan, the United Kingdom, and the United States. Since 2014, the European Union has also been added into this group now known as G8. None of these countries currently have made any territorial claims in the Spratly islands.

However, it might be interesting to ask the question: In the national laws of these G8 members, are there any specifications regarding the "territorial boundaries" of any of the above mentioned Six Claimants? If so, it might be possible for the Executive and/or Legislative branch officials of the other Claimant countries, or even of nearby ASEAN member countries, to file a formal legal complaint with the G8 member government involved.

After a cursory examination, we do find that one of the G8 members does indeed have a law which actually specifies the territorial boundaries of one of the Six Claimants to the Spratly island group. That Claimant is the Republic of China on Taiwan.

Before we examine the legal details, let’s review the most recent 125 year history of Taiwan. As a result of the First Sino-Japanese War, there was an 1895 treaty in which Qing China ceded Taiwan to Japan. The Qing Dynasty ended in the early 1900s, and was followed by the Republic of China, which was founded in 1912. Of course at that time, Taiwan belonged to Japan. During the WWII period, all military attacks against the Japanese colony of Taiwan were conducted by US military forces. After the US military dropped two atom bombs on the Japanese cities of Hiroshima and Nagasaki in early August 1945, the Japanese Emperor agreed to surrender.

As the conqueror of Taiwan, the United States has both the right and the responsibility to conduct the military occupation of this conquered territory. The US Supreme Court has ruled on this topic many times. However, due to manpower and other considerations, the United States delegated the surrender ceremonies in Taiwan, and the ensuing military occupation, to the Chinese Nationalists (also known as the “Republic of China”) under Chiang Kai-shek.

International law states that military occupation does not transfer sovereignty. Not surprisingly, after the end of hostilities in 1945, many US government officials went on record as stating that Taiwan continued to be Japanese territory until a formal peace settlement could be made. In other words, the presence of the ROC in Taiwan was simply that of “custodian.” Then, effective April 28, 1952, Japan renounced all right, title, and claim to Taiwan in the San Francisco Peace Treaty, signed by 48 nations. However, no “receiving country” was specified for this renunciation, or “cession,” of Taiwan. Nevertheless, the treaty did specify the jurisdiction of a US federal agency, the United States Military Government (USMG), over Taiwan. That type of USMG jurisdiction was very similar, in many respects, to the situation in the Ryukyu island chain, which includes Okinawa.

After this brief overview of recent Taiwan history, let’s look at the US Executive Branch’s position regarding the Republic of China on Taiwan. This may be summed up in a few sentences. The US government does not consider the ROC or Taiwan to be a sovereign entity. The so-called national flag, national emblem, national anthem, etc. of the Republic of China are not recognized as belonging to a sovereign nation. Taiwan is not independent. A 1959 court case in Washington D.C. found that Taiwan was **not** a part of the “national territory” of the Republic of China, even though it was under the jurisdiction of the ROC. Moreover, the Republic of China is **not** regarded as a state or a government.

Additionally, numerous reports by the Congressional Research Service (CRS) to the US Congress have confirmed that the US government has never recognized PRC sovereignty over Taiwan, and the international legal status of Taiwan is undetermined.

The United States has an announced Pivot to Asia strategy. Yet, the US government officials frequently state that they take no position on the territorial disputes in this area. We want to ask, is such a statement fully reasonable under US law?

Let’s turn to the law which the US Congress passed in 1979, which is known as the Taiwan Relations Act, or “TRA”. This law has a territorial clause.

Taiwan Relations Act (territorial clause) 22 U.S.C. 3314

(2) the term "Taiwan" includes, as the context may require, the islands of Taiwan and the Pescadores, the people on those islands, corporations and other entities and associations created or organized under the laws applied on those islands, and the governing authorities on Taiwan recognized by the United States as the Republic of China prior to January 1, 1979, and any successor governing authorities (including political subdivisions, agencies, and instrumentalities thereof).

But we must not forget that under US law, there is a treaty which is of a higher legal weight than the Taiwan Relations Act. That is the San Francisco Peace Treaty (SFPT) mentioned earlier. Let’s review the SFPT and the TRA together, and see what conclusions we can reach. Some historical comparisons with the United States’ administration of the Ryukyu island group can also be provided, because they are useful for reference.

After obtaining these conclusions, we can review the Spratly islands controversy, and specifically outline what demands the Executive and/or Legislative officials in any of the other Six Claimant countries, or even nearby ASEAN member countries, could make to the US government, through their official Ambassador to the United States.

A PETITION

Based on an Overview of the San Francisco Peace Treaty,

the Taiwan Relations Act, and Recent History

the Following Conclusions and Principles

regarding the position of Taiwan under US law

have been reached

RECITALS:

WHEREAS

#1) Taiwan remained as Japanese territory until the coming into force of the SFPT on April 28, 1952. Hence, it follows directly that when the Republic of China moved its central government to occupied Taiwan in Dec. 1949, it was moving outside of Chinese territory, and immediately became a government in exile.

#2) Under US law, the "Republic of China" nomenclature is not recognized after Jan. 1, 1979.

#3) The geographical scope of “Taiwan” as defined in the Taiwan Relations Act does not include the Spratlys, Senkakus, or Paracels.

#4) No clauses in the SFPT or the Taiwan Relations Act give an entity calling itself the “Republic of China” any authority (1) to establish an ROC Ministry of National Defense on Taiwanese soil, or (2) to maintain a fleet of military vessels, and fly the ROC flag thereon, or (3) to enforce mandatory military conscription policies over the local Taiwan populace. Indeed, the US Supreme Court has found that the legitimacy of “military conscription” policies must be based on national sovereignty.

WHEREAS

#5) At the most basic level, Taiwan is “conquered territory” of the United States of America which has not reached a final political status. The US Supreme Court has ruled on the responsibility of the United States over conquered territory numerous times. Such responsibility includes providing for the “defensive needs” of such territory, under the common defense clause of the US Constitution. For Taiwan, many parallels may be drawn with the situation of the Ryukyu island group, during the period of United States Military Government (USMG) administration.

#6) The SFPT has given a US federal agency, USMG, the jurisdiction over Taiwan and the Ryukyus. As we know, the Ryukyus were administered directly, as a formal trusteeship. In regard to Taiwan, with no formal trusteeship arrangement in place, we are forced to conclude that Taiwan constitutes a quasi-trusteeship under USMG, within the US insular law framework. The so-called “Republic of China” (a non-signatory to the SFPT) is merely serving as a “proxy occupying force” for the United States in the continuing military occupation of Taiwan, in addition to fulfilling the role of a “government in exile.”

#7) For all intensive purposes, with the coming into force of the SFPT, on April 28, 1952, the Allies have disbanded, however the jurisdiction of the principal occupying power continues. It is noted that effective May 15, 1972, according to an announcement by US President Richard Nixon, USMG jurisdiction over the Ryukyu island group ended. However, no similar announcement by any US President has been made in regard to USMG jurisdiction over Taiwan.

THEREFORE, PREMISES CONSIDERED

We respectfully entreaty that

US government officials must stop treating the San Francisco Peace Treaty as a lost treaty.

In regard to Taiwan, US government officials have effectively ignored the treaty’s provisions for over sixty years. Taiwan has neither been placed under direct USMG jurisdiction, nor has the US President made any announcement concerning the end of USMG jurisdiction over Taiwan territory.

By failing to enforce the provisions of the SFPT, US Executive Branch officials, including the US President, are guilty of multiple counts of “dereliction of duty.” This is because the US Constitution stipulates that Senate-ratified treaties are part of the “supreme law of the land” (Article 6, clause 2), and that the law of the land must be “faithfully executed” (Article 2, Sec. 3, clause 5). Moreover, any territory remaining under USMG jurisdiction must necessarily fall under the US Constitution’s common defense clause (Article 1, Sec. 8, clause 1), with all defensive needs (personnel and equipment), provided for directly by the US Dept. of Defense.

Accordingly, we respectfully request that US government officials must take immediate steps to rectify their mismanagement of Taiwan in the post WWII period. Such actions should include, but are not limited to, the following --

A) Under the provisions of the TRA and the SFPT, US government officials must demand that the Taiwan governing authorities relinquish all claims to the Spratly Islands, and immediately remove all personnel, ships, and other equipment from this area;

B) Under the provisions of the TRA and the SFPT, a US’ moratorium on arms sales to Taiwan must be instituted, until the basis for the following, under international law, can be established –

(1) The existence and functioning of a ROC MND on Taiwanese soil,

(2) The flying of the ROC flag over Taiwan territory in general, and on Taiwanese ships and aircraft in particular,

(3) The enforcement of mandatory military conscription policies in the Taiwan area under the authority of a Republic of China legal framework (including Constitution, civil, criminal, & administrative laws etc.)

C) According to the precedent established in other overseas areas conquered by US military forces and separated from the “motherland” via the specifications of a peace treaty after war, US federal government officials should grant the local populace the right to hold competitions for a new flag, new emblem, new anthem, new basic law, etc. under the authority of USMG.

*Respectfully submitted to* \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*On this day of* \_\_\_\_\_\_\_ \_\_, *20*\_\_\_

 Sincerely,

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