Taiwangate and Illegal Arms Sales

*"Taiwangate" was a scandal which erupted in the world press in April 2002, involving a huge US$ 100 million "slush fund" put together by the ROC government. The fund was reportedly used to finance a wide variety of lobbying, propaganda, and influence peddling schemes, with the goal of manipulating U.S. policy on arms sales to the Republic of China Ministry of National Defense (ROC MND) on Taiwan.*

*As reported in the media, the fund’s major concern was to obtain expanded military sales to Taiwan, including the acquisition of newer models of fighters, attack helicopters, submarines, frigates, missiles, radar, and other military hardware. A secondary concern was to keep the operations of the ROC MND out of the line of U.S. Congressional inquiry.*

*Media reportage regarding Taiwangate cooled off considerably after three years, only to begin simmering again in the summer of 2013, with the revelations of the mistreatment and even torture of new draftees in Taiwan. Increasing numbers of disclosures on social media websites stimulated Taiwan and U.S. reporters and investigators to begin delving into the operations of the ROC MND in more detail. Some of their important findings are summarized in this video for the benefit of the English speaking audience.*

The ROC in Taiwan has mandatory military conscription for males aged 19 and above. Estimates of the number of new draftees called up for this mandatory military conscription exceed 155,000 per year. According to the best information available, mandatory military conscription by the ROC regime in Taiwan began in 1949, the same year that the ROC moved its central government to Taiwan.

In 1949, Taiwan was still under military occupation. Is it permissible for the governing authorities in occupied territory to impose military conscription policies over the people residing within their territorial boundaries? Article 51 of the *Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War* confirms that the answer to this question is “No.”

Did Taiwan later become *de jure* Chinese territory? As most people know, Japanese sovereignty over Taiwan only ended with the coming into force of the San Francisco Peace Treaty (SFPT) of April 28, 1952. However, Taiwan was **not** awarded to China. In speaking of the SFPT, U.S. Dept. of State documents of Oct. 14, 1954 stated that:

Japan has renounced its own right and title to the islands, but their future status was deliberately left undetermined, and the U.S. as a principal victor over Japan has an interest in their ultimate future.

By moving its central government outside of China’s national territory in December 1949, the ROC had become a government in exile, which is by definition, a non-sovereign entity. Moreover, international law does not recognize any actions, methods, or procedures whereby a government in exile can become recognized as the lawful government of its current locality of residence.

Is it permissible for non-sovereign nations to impose military conscription policies over the people residing within their territorial boundaries? U.S court decisions have confirmed that the answer to this question is “No.”

The historical background to these court decisions is given as follows:

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In America before 1862, combat duty was always voluntary. When President Lincoln enacted a military draft in 1863, it had let to riots, and Chief Justice Taney drafted an opinion (never delivered; there was no case before the Court) denying that such legislation was constitutional. Taney reasoned that the Constitution did **not** give Congress the authority to draft men into service. Instead, in the Chief Justice’s view, the Constitution said the Congress could raise and regulate armies, and it gave the federal government authority over the states’ militias in certain circumstances. As the Continental and Confederation Congresses had raised armies by requisitions on the states and through economic inducements, Taney reasoned, that was the extent of Congress’s power to “raise” armies.

In the Selective Draft Law Cases (1918), the defendants made arguments similar to Taney’s. They also made reference to the Thirteenth Amendment, which had been ratified since Taney’s death and which said that only convicts could be subjected to involuntary servitude.

Chief Justice Edward D. White’s decision for the Court used a very expansive interpretation of the Constitution to argue that because foreign governments conscripted soldiers, this power was obviously one of the attributes of a national sovereign government. White said that citizenship entailed the “supreme and noble duty of contributing to the defense of the rights and honor of the nation.”

This was modified somewhat by a 1971 Supreme Court decision, *Gillette v. United States*, which established comprehensive criteria for being classified as a conscientious objector.

SCREEN: Gillette v. United States (1971)

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The ROC in Taiwan is a government in exile, and not a sovereign nation. Moreover, as Taiwan was not awarded to the ROC in the post WWII SFPT of 1952, and as Taiwan has never been incorporated into ROC national territory via the procedures in the ROC Constitution (see Article 4), it would be very difficult to say that military conscription laws in Taiwan, based on the authority of the ROC Constitution, are legal.

Indeed it can be argued that there are no clauses in the SFPT, the Taiwan Relations Act, the Three Joint PRC-USA Communiques, the One China Policy, or any pronouncements or Executive Orders issued by the U.S. Commander in Chief since the late 1940s up to today which can be interpreted (1) to authorize the operations of a Republic of China government structure in Taiwan, or (2) to respect the Republic of China Constitution as the true “organic law” of Taiwan.

These are very serious issues. The Taiwan Relations Act (TRA) stipulates that the United States should “provide” or “make available” military hardware to the Taiwan governing authorities. For a non-sovereign entity like Taiwan, it would make sense for the United States to provide all necessary personnel and military hardware directly, and to establish U.S. military bases throughout the island. Such arrangements could be based directly on Article 4(b) of the SFPT, which gives a U.S. federal agency, the United States Military Government (USMG), *de jure* jurisdiction over Taiwan. A strong U.S. military presence in Taiwan would also protect U.S. interests in the western Pacific area.

SCREEN: SFPT Article 4(b)

United States Military Government (USMG), has *de jure* jurisdiction over Taiwan

As one example of the activities of the ROC’s Ministry of National Defense that threaten the economic interests and foreign relations of the United States, the Spratly Islands’ dispute may be mentioned.  All of the Spratly Islands are claimed by the People’s Republic of China and Vietnam; parts of them are claimed by Malaysia and the Philippines.  The interests of the United States in avoiding a military conflict in this area, and/or in negotiating the peaceful settlement of territorial claims of the different nations are continually frustrated by the fact that the ROC regime on Taiwan claims sovereignty over these islands as well, even though the Spratly Islands fall outside of the geographical definition of “Taiwan” in the TRA.

With the United States’ announced Pivot to Asia strategy, and with reference to the content of the SFPT, there should be no hesitation in moving U.S. military personnel and equipment into Taiwan. Otherwise, we need to step back for a moment and consider how to justify the “sale” of military hardware to the ROC regime based on all relevant criteria. Most importantly, it must be established that MILITARY CONSCRIPTION in Taiwan rests on a firm legal basis.

SCREEN: The legality of military conscription in Taiwan

In other words, all those concerned with Taiwan’s future are currently faced with the question of:

*How can the United States sell military hardware to a non-sovereign entity which is not authorized to conduct military recruitment efforts and not authorized to maintain a military presence in its headquarters locality?*

Torture of Conscriptees?

In July 2013, the 24-year-old draftee Hung Chung-chiu died following an arduous punishment drill in Taiwan's searing summer heat. Corporal Hung was just three days short of completing his military service when he was reportedly put in solitary confinement. He was later subjected to a series of tough punishment exercises, and doctors say he died of organ failure brought on by severe heatstroke.

Newspaper reports estimate the number of deaths of new draftees in the ROC military at 300 per year. Some reporters have claimed that this rate of deaths, calculated in percentage terms, is greater than the yearly losses suffered by US troops in Afghanistan. (These reporters' claims have not yet been completely verified.)

Typically, no formal investigation into the deaths of new draftees is conducted. The investigation regarding the death of Hung Chung-chiu was quite unprecedented.

Obviously, the emotional distress for the families of the new draftees entering the ROC military every year is also significant. They worry that their sons may also be sent home in an urn, as a mere pile of ashes.

Strategic Ambiguity

Since the early 1950s the legal status of Taiwan has been continually characterized as “undetermined,” and beginning in the 1970’s US government policy toward Taiwan has been characterized as “strategic ambiguity.” But, does this “strategic ambiguity” apply to the human rights of the native Taiwanese people as well?

SCREEN: Taiwan’s legal status: undetermined

US policy regarding Taiwan: strategic ambiguity

Let us not forget that the Taiwan Relations Act (TRA) discusses "human rights" in some detail, see 22 USC 3301 (c) **Human rights**

*Nothing contained in this chapter shall contravene the interest of the United States in human rights, especially with respect to the human rights of all the approximately eighteen million inhabitants of Taiwan. The preservation and enhancement of the human rights of all the people on Taiwan are hereby reaffirmed as objectives of the United States.*

In terms of human rights, the question we continually come back to is:

*Where is the legal basis for the Republic of China in Taiwan to maintain a Ministry of National Defense on Taiwanese soil, and to impose mandatory military conscription policies over the local Taiwan populace?*

Certainly, military conscription into a rebel Chinese regime (of questionable legal validity) is a gross violation of the human rights of all native Taiwanese persons. It is therefore clear that the native Taiwanese people are entitled to a detailed answer to this military conscription question.

Conclusion

U.S. Executive Branch officials and members of Congress should call for a moratorium on all military conscription activities by the ROC regime in Taiwan ASAP until the exact legal basis for such policies (under international law) can be firmly established.