Commonly Seen Mistakes when discussing the Legal Status of Taiwan

Part 4

討論台灣的法律地位

常見的誤解

第4部分

As the wars in Iraq and Afghanistan have wound down, the Pentagon has embarked on a plan to shift more of its forces to the Asia-Pacific area to deal with a rising China and other security challenges. The move is often referred to as the “rebalance” or “pivot” to Asia.

當在伊拉克和阿富汗之戰爭逐漸趨緩時，美國五角大廈就開始執行將較多的軍力轉移至亞太地區之計劃以應對崛起的中國與其他安全上之挑戰。此舉通常被稱之為「重返亞洲」或「亞太再平衡」。

However, there is one prime location which is often overlooked in discussing where to station U.S. military troops, and to establish new airbases, naval docking facilities, etc. Where is that? It’s Taiwan.

然而，在討論該於何處派駐美國軍隊並建立新的軍事基地時，有一個最好的地理位置經常被忽略。那是哪裡呢？就是台灣。

But wait a minute, doesn’t Taiwan have its own Ministry of National Defense? Are there any rationale to say that that Ministry is operating improperly? Would U.S. defense companies be able to sell more military arms for the “defense” of Taiwan if the Pentagon took over these responsibilities directly? Well, of course, the answer is yes, but . . . . . . these kinds of things are never discussed in Washington D.C.

但是等一下，台灣不是有它自己的國防部嗎? 有沒有任何邏輯依據可以說該部門運作不當？如果五角大廈直接接管防衛台灣的責任，美國防衞武器公司是不是就可以出售更多的軍事武器? 當然，答案是肯定的。但是 . . . . .這類事情從未在華盛頓特區 (Washington D.C.)討論過。

In fact, the idea that the United States should bear full responsibility for the “national defense” of Taiwan, both in regard to personnel and equipment, is occasionally discussed in the Taiwan press. But the USA press, this topic seems off limits.

事實上，美國應該在有關人員和配備上為台灣的「國防」擔負起全部責任的這種想法，偶爾會在台灣的報章雜誌上被討論到。但是在美國的新聞界，這個話題則似乎被禁止。

If the ROC on Taiwan is a sovereign entity, we need proceed no further. A sovereign nation will have to bear responsibility for its own national defense. However, as we have learned on this Youtube channel, the ROC on Taiwan is a non sovereign entity. It is a government in exile.

如果 “中華民國” 在台灣是一個主權實體，我們不需要繼續討論。一個主權國家將必須為它自己的國防擔負責任。然而，正如我們已在這個YouTube頻道上所了解到的，”中華民國” 在台灣是一個非主權實體。它是一個流亡政府。

At this juncture, it appears worthwhile for us to examine the legal basis for the functioning of an ROC Ministry of National Defense in Taiwan in more detail. Allow us to dispel further misconceptions as we continue our series of “Commonly Seen Mistakes when discussing the Legal Status of Taiwan.”

在此重要關頭，似乎值得我們來更詳細地檢視ROC在台灣的國防部其運作之法律基礎。現在我們繼續我們這個「討論台灣的法律地位時常見之錯誤」之系列報導，以便更進一步消除一些錯誤的觀念。

13) The Taiwan Relations Act mandates the sale of military equipment and hardware to Taiwan.

台灣關係法授權出售軍事配備和硬體設備給台灣。

False

這是錯誤的。

The Taiwan Relations Act uses the terminology of “provide” or “make available to.” The word “sell,” or anything similar, cannot be found in the Taiwan Relations Act.

台灣關係法使用「提供」或「使其可得到」之術語。在台灣關係法中無法找到「售賣」這個字或任何類似的字眼。

So, what are the implications of this? We know that the Taiwan Relations Act contains a clause which specifies that the “. . . . . determination of Taiwan's defense needs shall include review by United States military authorities . . . . . ”

所以，這個的言外之意是什麼呢？我們知道台灣關係法包含一個條款具體指定「. . . . 台灣的防務需求之決定，應包括美國軍事當局之評論 . . .”

Clearly, the United States Dept. of Defense would not be violating the terms of the TRA if it assumed full responsibility for the “national defense” needs of Taiwan.

很清楚地，如果美國國防部承擔了台灣「國防」需要的全部責任, 它並不是在違反台灣關係法的條款。

Ideally, this would be done by directly stationing US military personnel in Taiwan and building military airports, naval ports and shipyards, and all other necessary facilities.

在理想的情況下，可以在台灣直接派駐美國軍事人員並建設軍用機場、軍港和造船廠，以及所有其他必要的設施。

14) Under the One China Policy, the maintenance of an ROC Ministry of National Defense on Taiwan is fully authorized.

14) 在「一個中國政策」下，維持中華民國在台灣之國防部是有完全的授權。

False

這是錯誤的。

The US Congressional Research Service has confirmed that the US Executive Branch has never recognized PRC sovereignty over Taiwan. Moreover, under the One China Policy of the United States, there is no country called “Republic of China.” The San Francisco Peace Treaty of 1952 did not award Taiwan to the Republic of China.

美國國會研究服務中心(CRS)已確認美國行政部門從未承認中華人民共和國對台灣的主權。此外，在美國的一個中國政策底下，並沒有任何國家叫做“中華民國”。而且，1952年舊金山和約也未將台灣授與中華民國。

Additionally, the Taiwan Relations Act does not recognize the existence of an entity called “Republic of China” after January 1, 1979.

更進而有之，台灣關係法並不承認1979年1月1日以後稱之為「中華民國」的這個實體之存在。

Based on the above, we are hard pressed to find any legal rationale to justify the existence of a military establishment on Taiwan organized under the authority of a “Republic of China” Constitution, and which requires all personnel to swear allegiance to the Republic of China. We are forced to conclude that such arrangements are clearly a gross violation of the One China Policy of the United States and the Senate ratified San Francisco Peace Treaty.

基於上述，我們被迫尋找出有無任何法律上的邏輯依據，可證明在台灣領土上由 ”中華民國憲法”授權而組成之軍事機關之存在，以及要求所有人員宣誓效忠 ”中華民國” 是具有正當性的。我們不得不下結論說，這種安排明明就是對美國的「一個中國政策」和美國參議院所批准之舊金山和平條約的一個重大違背。

15) The legal basis for the establishment of ROC Ministry of National Defense in Taiwan can be found in international law.

15) 在台灣建立中華民國的國防部之法律依據可以在國際法中找到。

False

這是錯誤的。

The highest ranking document of international law dealing with the disposition of Taiwan in the post-WWII era is the 1952 San Francisco Peace Treaty.

在二戰後年代，有關台灣之處置的最高階國際法文件是1952年的舊金山和約 (SFPT)。

A thorough examination of the post-war peace treaty fails to find any clauses which can be interpreted to authorize the existence of a Republic of China government structure on Taiwanese soil, or the functioning of a Ministry of National Defense under the authority of a so-called “Republic of China Constitution.”

對戰後和平條約 (SFPT) 的澈底檢視後，並未能找到任何條款可以被解讀為授權讓 ”中華民國” 的政府架構可以在台灣的土地上存在，或是在一個所謂的”中華民國憲法”授權下其國防部之運作。

In consideration that Taiwan was sovereign Japanese territory until the coming into force of this treaty, when the Republic of China moved its central government to occupied Taiwan in December 1949, it was moving outside of China’s national territory, and immediately became a government in exile. Under international law, a government in exile is not permitted to have an actively functioning Ministry of National Defense, or any similar agency.

考量到當中華民國於1949年12月將其中央政府遷移至被佔領之台灣時，台灣仍然是日本的主權領土，直到此條約(SFPT)生效為止。在1949年12月，ROC中央政府確實是搬遷到中國國土以外,也因此立即成為流亡政府。在國際法之下，流亡政府是不允許有積極運作的國防部，或任何類似機構。

16) As a non sovereign nation, the ROC on Taiwan is qualified to have military conscription policies.

16) 作為非主權國家，”中華民國” 在台灣有資格採用徵兵制度。

False

這是錯誤的。

As a fundamental point of reference, the US Supreme Court has ruled that military conscription policies must be based on “national sovereignty.” The Republic of China on Taiwan is a non-sovereign entity, and hence, by definition cannot have any form of military conscription policies. Without such policies of course, there is no manpower available for the staffing of a Ministry of National Defense. (Such an analysis indicates that the USA should take full responsibility for Taiwan’s defensive needs.)

一個十分重要的參照依據是，美國最高法院曾給予裁定，徵兵政策必須建立在「國家主權」之上。中華民國在台灣是一個非主權實體，也因此，根據定義，不能有任何形式的徵兵制度。當然，沒有這樣的制度，也就沒有人力可用為國防部人員。(像這樣的分析就指出美國應該對台灣的防衛需求負起全責。)

The often heard statement that the international legal status of Taiwan is “undetermined” or “unsettled” corresponds to the reality that Taiwan remains under a condition of military occupation in the current era. To put this in historical perspective, it cannot be repeated often enough that at the most basic level, Taiwan is territory conquered by the United States which has not yet reached a “final political status.”

常聽到聲明說台灣的地位是 “未定” 或 “懸而未決”，是與台灣當今時代仍然停留在軍事佔領之狀況相符合。從歷史的觀點來看，我們可以不厭其煩地說，從最基本的層面來看，台灣是被美國征服的領土，但到今天為止，仍未達到「最後的政治地位」。

So, what does this mean? Is Taiwan independent? Or is Taiwan a part of China, either the ROC or the PRC? Or is Taiwan part of some other country? The answer to all of these questions is No. In the current era, Taiwan remains as occupied territory.

那麼，這是什麼意思？是說台灣是獨立的？或是說台灣是中國（中華民國或是中華人民共和國）的一部分？或是說台灣是其他國家的一部分？所有這些問題的答案是「非也」。在當今時代，台灣仍然是被佔領中的土地。

With this understanding, it is then important to note that both the Hague and Geneva Conventions forbid military conscription in occupied territory.

有了這樣的了解，那麼很重要的是要注意到，海牙公約和日內瓦公約都禁止在被佔領地徵兵。

The SFPT has placed Taiwan under the jurisdiction of USMG. In relation to Taiwan’s defensive needs, our conclusion must be that under the “common defense” clause of the US Constitution, the United States Dept. of Defense should take full responsibility for Taiwan’s “national defense.” This would include personnel, equipment and all other matters.

舊金山和約 (SFPT)已經把台灣放在美國軍政府 (USMG) 的管轄下。有關台灣防衛的需要，我們的結論必須是：根據美國憲法的“共同防禦”條款，美國國防部應該擔負起台灣 ”國防” 的全部責任。這也包括人員、配備和所有其他相關事宜。