The reportage and commentary on your website calls for better treatment of Taiwan and its government.

But in regard to this CIA report from 1949, how would the analysis change if these facts were taken into the equation?

The reportage and commentary on your website makes the statement, or strongly implies, that Taiwan was legally returned to China in 1945.

Item #1: An official Central Intelligence Agency report from March 1949 confirms that Taiwan is territory under military occupation. But the Chinese have continually claimed that Taiwan was returned to China in late October 1945, at the completion of the Japanese surrender ceremonies. Does the information in the CIA report affect our recognition of that?

How does that recognition affect the commentary on your website which assumes that Taiwan was returned to China in 1945?

Response: Well, after the Chinese took control over Taiwan, there were a number of years where the situation was unstable. The situation deteriorated to a point where many commentators described the situation as a “military dictatorship,” so the CIA report reflects that. That military dictatorship situation continued for nearly forty years, but ended in 1987. Taiwan began to democratize in the early 1990s. Since that time, the continuing democratic development in Taiwan has won a lot of praise from the international community. In the present era, Taiwan is often praised as a good example of a Chinese democracy. No one speaks of a military dictatorship any more, and you don’t see any significant numbers of military officers on the streets when you visit Taiwan.

Doctrine of military occupation arising from Vattel (it is not an ancient doctrine), and is in opposition to “annexation”

Item #2: Today the officials in the US State Dept continually say that the legal status of Taiwan is “unsettled” or “undetermined”. Can we find any examples in the last 200 years of United States history which can give us any insight into what constitutes an “unsettled” or “undetermined” legal status? Or can we look to some sort of established precedent in dealing with situations of this type in order to obtain a fuller understanding of Taiwan’s international standing?

Response: This is the very problem about the strategic ambiguity. Some people say that is good for Taiwan, some say it is bad for Taiwan. But in any event, in international relations, Taiwan is something of a unique situation. I don’t think you are going to find any precedent for dealing with Taiwan’s situation. Also, I would point out that there are many people who disagree with this type of description of Taiwan’s legal status. They feel that Taiwan has already established itself as a member of the international community, and should be granted full rights in that respect.

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| Introduction to  Military Occupation  The concept of “military occupation” does not come down to us from ancient times, but rather from the writings of Vattel, a Swiss legal expert and diplomat who lived from 1714 to 1767. Among other topics which he explored, Vattel continued in the tradition of some previous writers in making extensive commentaries on the conditions when war could be waged, and the restrictions which should be applied on how civilized nations could conduct war.  Since ancient times, it was common to see that the conquest of territory in battle allowed for immediate annexation by the conquering army. However, Vattel felt that such a tradition did not conform with modern notions of justice. He therefore advanced the new legal theory that after the conquest of territory there should be an interim period, known as “military occupation” should be followed by a formal decision as to the disposition of the territory, preferably in a formal peace treaty.  This came to be recognized ……. From the second half of the 1700's onwards, international law came to distinguish between the military occupation of a country and territorial acquisition by invasion and annexation, the difference between the two being originally expounded upon by Emerich de Vattel in his opus The Law of Nations (1758). The distinction then became clear and has been recognized among the principles of international law since the end of the Napoleonic wars in the 1800's.  More formally codified in the Hague Conventions  From this simple introduction, we can see that “annexation” and “military occupation” are two opposing concepts. According to the precedent established since the end of the Napoleonic Wars (circa 1815), even after the conquest of territory, there are no criteria whereby the immediate annexation of the territory can be accomplished. The situation after the cessation of hostilities is known as military occupation, which can be defined as follows –   1. invasion, conquest, and control of a nation or territory by foreign armed forces, (2) a condition in which territory is under the effective control of foreign armed forces.   The United States government fully recognizes these principles, although it is not always so forceful in stating them. Even in late 1950, it was known that there had been no transfer of Taiwan’s sovereignty to China in 1945. The following documentation is noteworthy.  In September and October 1950, the United States proposed in a brief statement to the members of the Far Eastern Commission general principles for a Peace Treaty with Japan.  Later, in an aide memoire dated December 27, 1950, the United States expressed the views that  . . . The Cairo Declaration of 1943 stated the purpose to restore 'Manchuria, Formosa and the Pescadores to the Republic of China.' That declaration, like other wartime declarations such as those of Yalta and Potsdam, was in the opinion of the United States Government subject to any final peace settlement where all relevant factors should be considered . . .  On February 11, 1945, at Yalta, Churchill, Roosevelt, and Stalin agreed that the USSR would enter the war against Japan on condition, among others, that the southern part of Sakhalin and all the islands adjacent to it "shall be returned to the Soviet Union" and that the Kurile Islands "shall be handed over the Soviet Union." The Yalta agreement like the Cairo declaration has been considered by the United States to be a statement of intention rather than as creating binding international commitments.  -- U.S. Dept. of State, Czyzak Memorandum, February 3, 1961  We can look to historical data to discover the established precedent for how the transfer of sovereignty of conquered territory proceeds.  Sp. Am. War Chart |

Item #3: Qing Dynasty of China ceded Taiwan to Japan in 1895. Did the United States ever recognize the validity of that treaty? Taiwan was part of the Japanese Empire in WWII, but how can we determine when Japanese sovereignty over Taiwan formally ended?

Response: I don’t believe that there is any constitutional process whereby the United States would recognize the validity of a treaty between foreign governments, but perhaps we could examine relevant statements in the Congressional record or something.

( … part of Japan in WWII, Washington Naval Treaty 1922)

Near the end of the war, there were agreements by the Allies, so to look at the end of Japanese sovereignty over Taiwan, I believe that with the surrender of Japan those agreements then came into effect. Taiwan would be transferred to China at that point.

Item #4: Does the determination in the 1949 CIA report have any significance for how we look at the promulgation of the Republic of China Constitution in Taiwan in late 1947? Or does it have any significance for discussing the situation in Taiwan today?

Response: Well, we know that the use of the ROC Constitution was severely restricted during the martial law years, and there were many reports of human rights abuses. However, at the present time I believe that Taiwan has a very good constitutional structure. (check commentary on ROC Constitution) There were many complaints that this ROC Constitutional structure was designed for mainland China and \_\_\_\_ provinces, but since \_\_\_ there have been a series of constitutional revisions so I believe most of these concerns have been addressed.

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| Taiwan’s Situation  Taiwan was fully recognized as part of the Empire of Japan during WWII, and in fact the United States launched many military attacks against Taiwan during the WWII period.  But going further back, Taiwan was recognized as an “insular area of Japan” in the 1922 Washington Naval Treaty, to which the United States was a party.  We can go back to our table of the Spanish American War cessions, and even look at the cession of California territory in the Mexican American War, and we clearly see that the surrender ceremonies mark the beginning of the military occupation. The territorial sovereignty of each area was held by the original sovereign until the coming into force of the peace treaty.  So, applying this analysis to Taiwan, it is undebateable that Taiwan was under Japanese sovereignty until the San Francisco Peace Treaty came into force on April 28, 1952. Notably, this is additional proof that there was no transfer of Taiwan’s territorial sovereignty to China in late Oct. 1945.  It is also important to note that when the ROC moved its central government to Taiwan in early December 1949, it was moving outside of China’s national territory and immediately became a government in exile. This confirms for us that the commonly heard statement that “the PRC and the ROC split amid civil war in 1949” thus creating a divided Chinese nation, is fundamentally incorrect. What happened is that the ROC fled into exile on occupied Taiwan, which was not Chinese territory.  Also, with the recognition that Taiwan is occupied territory, we must pay attention to the customary laws of warfare, which have prohibitions against many types of activity in areas under military occupation.  Among these is the promulgation of a new constitution as the basis for a new legal code. |

Item #5: Are you aware that there was a U.S. Senate-ratified post war treaty that did not award Taiwan to China? Your website makes no mention of that treaty. Can we look to the treaty to determine when Japan’s sovereignty over Taiwan actually ended? And when Chinese sovereignty began?

Response: No reason to give Taiwan to China if it was already returned to China in 1945. According to my understanding the agreements of the Allies already took care of this situation. Chinese sovereignty would naturally begin when the Chinese took over administration of the island. I believe the Japanese were gradually repatriated beginning in the mid to late 1940s.

Item #6: Should the United States move toward adopting more of a “Two China Policy”? The United States established formal diplomatic relations with the People’s Republic of China in early 1979. After that time, the concept of the ROC on Taiwan as a “legitimate government” appears to have come under question. So, many people are saying that Taiwan is fundamentally a “divided nation.” With a new U.S. President elected in 2016, should we formally recognize the Republic of China on Taiwan as a sovereign state, and move to a Two China Policy?

Response: Many people continue to criticize the One China Policy as a kind of elaborate fiction.

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| Give analysis of Montevideo criteria  Many researchers claim that the ROC on Taiwan meets the four Montevideo Convention criteria for statehood, while completely ignoring the facts that the mass naturalization of native Taiwanese persons as ROC citizens in Jan. 1946 is illegal under the laws of war, there are no international treaty references which can lead any credence to the assertion that the ROC has the title to Taiwan territory, and that as of late 1949 the ROC has already become a government in exile.  Significantly, there is no doctrine under international law whereby certain actions taken by a government in exile can cause it to become the internationally recognized legal government of its current locality. By definition, a government in exile is spoken of in terms of its native country, hence it must return to its native country and regain power there in order to obtain legitimacy as the legal government of that geographic area. In other words, in order for the ROC to obtain legitimacy in the international community, it would have to return to Nanjing, China, and resume governance there. |

It is easily seen that there are only two possible outcomes for the “final political status” of the occupied territory. In the first case, the territory becomes a sovereign nation in its own right, otherwise, the territory becomes "part" of another sovereign nation.