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| Taiwan Historical NewsReporting on Important Historical Topics which affect our understanding of Today’s News  |

Honolulu, New York, Washington D.C., Seattle, Los Angeles

CIA REPORT: The Republic of China does not have sovereignty over Taiwan

ANCHOR 1: The Chinese have continually claimed that Taiwan was returned to China in late October 1945, at the completion of the Japanese surrender ceremonies. However, an official Central Intelligence Agency report from March 1949 confirms that Taiwan is territory under military occupation.

ANCHOR 5: Many of the websites of leading think-tanks in the United States have specific commentary to the effect that Taiwan was returned to China after the close of hostilities in WWII. Or at least, their reportage on Taiwan’s history gives the strong impression that China gained (or “re-gained) sovereignty over Taiwan in late October 1945. This view appears to be very widespread, and is the commonly held interpretation.

ANCHOR 2: So, the issue we want to look at is this: The commonly held interpretation is that Taiwan was returned to Chinese sovereignty in 1945. Does the information in the CIA report affect our recognition of this in any way?

ANCHOR 1: We asked one of our reporters to interview a number of experts in the Washington D.C. area who regularly write on Taiwan issues. She filed this report:

ANCHOR 4: I recently attended a number of conferences on Asian political and legal issues. The topic of Taiwan was discussed in some detail. I asked the views of over ten people, and I can offer a summary of what they said as follows –

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| After the Chinese took control over Taiwan in late October 1945, there were a number of years where everything was unstable. The circumstances deteriorated to a point where many commentators described the situation as a “military dictatorship.” The CIA report clearly reflects that. That military dictatorship situation, often called the “martial law period,” continued for nearly forty years. However, it 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 admiration 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.  |

ANCHOR 1: Well, unfortunately, trying to explain the content in the 1949 CIA Report on Taiwan this way is entirely incorrect. The doctrine of “military occupation” under international law has a very specific meaning and application. It has no direct correspondence to the general notion of a “military dictatorship.” Military occupation has different stages, and one is commonly called “friendly occupation” or “civil affairs administration.”

ANCHOR 2: Our production team made a short film clip to introduce the subject of military occupation to our audience. Let’s watch that now.

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| An Introduction to Military OccupationSince ancient times, it was common to see that the conquest of territory in battle allowed for immediate annexation by the conquering army. However, during the period of the Napoleonic Wars, the international community began to change its views on this method of dealing with conquered territory, and the concept of “military occupation” was gradually established as a norm of international law. Where did the concept of “military occupation” come from? It is generally attributed to the writings of Vattel, a Swiss legal expert and diplomat who lived from 1714 to 1767. Among other subjects, Vattel made extensive commentaries on the conditions when war could be waged, the restrictions which should be applied on how nations could conduct war, and the considerations necessary for dealing with the aftermath of war. He was influenced by the writings of Hugo Grotius, a Dutch jurist and ambassador, whose most famous work, The Laws of War and Peace, was published in 1625, and also by other authors, who had written on these types of topics as far back as the early 1400s. Vattel’s most famous book was The Law of Nations, published in 1758. Vattel felt that the invasion and immediate annexation of territory did not conform to 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.” This should be followed by a formal decision as to the disposition of the territory, which should be clearly written down in a formal peace treaty.This distinction then became clear and has been recognized among the principles of international law since the end of the Napoleonic wars in the early 1800's. Such principles are included in the scope of what are known as “the customary laws of warfare.” These customary laws were more formally codified in the Hague Conventions of 1907.From this simple introduction, we can see that “annexation” and “military occupation” are two opposing concepts. In the modern era, after the conquest of territory, and according to the precedent established since the end of the Napoleonic Wars (circa 1815), and codified in the Hague Conventions, there are no criteria whereby the immediate annexation of conquered territory can be accomplished. Now let’s discuss this in a bit more detail. The condition in which territory is under the effective control of foreign military personnel is known as “military occupation,” and this may be more formally defined as invasion, conquest, and control of a nation or territory by foreign armed forces. In regard to the military occupation of any particular area, it is important to distinguish three elements: (1) the legal occupier, (2) the beginning date of the occupation, and (3) the ending date of the occupation.As stated above, the legal occupier is the conqueror, who has both the right and the responsibility to conduct the administration of occupied territory. But of course the law of agency is always available, and the administration of occupied territory can be delegated to other military forces. The criteria for establishing the beginning and ending dates for the occupation can be determined by examining historical precedent. The Spanish American War cessions provide some good examples. Sp. Am. War ChartIt is clear from the examples in this table that the surrender ceremonies only mark the beginning of the military occupation.This is the only interpretation which fully complies with the customary laws of warfare, which include the Hague Conventions. There is no transfer of territorial sovereignty on this date, indeed the original sovereign maintains sovereignty until the peace treaty comes into force. As these examples are from U.S. history, the end of the military occupation, which is the end of United States Military Government jurisdiction over each area, was formally announced by the U.S. Commander in Chief. Some people point to various documents such as the Cairo Declaration, Potsdam Proclamation, etc. as supposedly authorizing the transfer of Taiwan’s territorial sovereignty to China at the surrender ceremonies of October 25, 1945. However, such an interpretation is impossible. The people who advance such interpretations do not understand the full scope of what is called “international law.” These people may understand PRIVATE LAW, and they may understand PUBLIC LAW as applied in normal peacetime situations. But these do not comprise the full scope of international law. Here is a table which illustrates this. Int. law ChartThese scholars do not understand the legal implications of “surrender ceremonies” and the concept of military occupation. This is because they are unaware of the full scope of international law, which includes the laws of war, the laws of occupation, military jurisdiction in its broadest sense, etc. All of these topics fall under the general category of “The Law of Armed Conflict.”Int. law ChartIn relation to Taiwan, there was an official Memorandum regarding Taiwan’s legal status, which was issued on February 3, 1961, by the U.S. Dept. of State. This is commonly known as the Czyzak Memorandum. Among the many references given therein, there were quotations from U.S. documents presented to the United Nations in late December 1950, which asserted 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 . . .. . . 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. |

ANCHOR 1: So, we can firmly establish that Taiwan was not returned to China in late October 1945. That date only marks the beginning of the military occupation, and international law states that “military occupation does not transfer sovereignty.”

However, the websites of many of the leading think-tanks take it for granted that the territorial sovereignty of Taiwan was returned to China in 1945, and then base all of their analysis on that premise.

ANCHOR 2: Yes, we commonly see the statement that the People’s Republic of China (PRC) and the Republic of China (ROC) split amid civil war in 1949, with the ROC taking refuge in the Chinese province of Taiwan. So, this is supposed to have created a condition of “Two Chinas.”

ANCHOR 3: But for Taiwan, we can extrapolate from this table of the Spanish American War cessions. We quickly see that the original sovereign (which was Japan) held sovereignty until the peace treaty came into effect, which would be April 28, 1952. So, in 1949, Taiwan was still sovereign Japanese territory.

ANCHOR 4: Well, a close examination of the legal record shows that Taiwan was still sovereign Japanese territory until the April 1952 peace treaty came into force. So, this means that in late 1949, when the ROC moved its central government to occupied Taiwan, it was moving ***outside*** of China’s national territory. At that point, it immediately became a government in exile. Legally speaking, there is no way to interpret this as “Two Chinas,” because the ROC is neither a legitimate government for mainland China, nor for Taiwan.

ANCHOR 2: Also, there is no way to interpret this in a manner which holds that China is a “divided nation.” This is because the so-called Republic of China government is located ***outside*** of China’s national territory.

ANCHOR 3: Nevertheless, despite all of these arguments, the question that always arises is: Does the ROC on Taiwan meet the international legal criteria for statehood?

Please stay tuned for our continuing report in Part 2.

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The Republic of China and the Montevideo Convention

ANCHOR 1: We have produced a short film clip which reviews the history of Taiwan and offers a new perspective for discussing the Republic of China’s qualifying criteria for “statehood” under international law.

ANCHOR 3: Many people are confused about this topic, and many websites of the leading think-tanks in the United States and other countries also contain much incorrect or misleading information. Let’s look at our next film clip.

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| Territorial Cession as the Result of WarLet’s look again at our table, which we discussed in Part 1 of this news report. We want to pay special attention to the positioning of Cuba. In the Treaty of Paris after the Spanish American War, Spain relinquished the sovereignty of Cuba, but no receiving country was specified. This is a very similar situation to Taiwan.So, we may want to ask, what is the condition of Cuba after the peace treaty came into force on April 11, 1899, and before Cuba became independent? During this period, Cuba was not yet a state in the international community, nor was it a part of any other country. We can say that its final political status was “unsettled” or “undetermined.” Notably, Cuba remained under military occupation after the peace treaty came into force. This is a very good precedent and good comparative example for discussing Taiwan’s situation. The military occupation of Taiwan began in late October 1945, and the peace treaty came into force on April 28, 1952. In the peace treaty, Japan renounced sovereignty over Taiwan, but no receiving country was specified. We must also note that there are only two possible outcomes for the “final political status” of any 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.Hence, the often heard statement that the legal status of Taiwan is “unsettled” or “undetermined” is further proof that Taiwan remains in a condition of military occupation in the present day. Moreover, by recognizing that that Taiwan is under military occupation, we have additional verification that Taiwan has not been transferred to Chinese sovereignty. It remains under the jurisdiction of the “legal occupier,” which is the conqueror. With reference to the record of military attacks on Taiwan territory during the WWII period, that is the United States of America. So, from the 1949 CIA report, we can immediately understand that there was no transfer of Taiwan’s territorial sovereignty to China in 1945. The surrender ceremonies only mark the beginning of the military occupation. Additionally, with the recognition that Taiwan is occupied territory, we must pay special attention to the customary laws of warfare, which have prohibitions against many types of activity in areas under military occupation. Such prohibited activities are all serious violations of international law. The ROC’s violations of international law in occupied Taiwan territory include: * the mass naturalization of native Taiwanese as ROC citizens in January 1946,
* the confiscation of Japanese public and private property,
* the implementation of military conscription policies over the local populace,
* the promulgation of a new legal code, legal structure, or constitution in December 1947, etc.

Of particular importance is to note that the amendment of the ROC Constitution by adding additional Articles does nothing to change the fact that the promulgation of this Constitution in Taiwan should be considered *void ab initio*.Now let us turn to the Republic of China’s supposed “qualifying criteria” for statehood under international law. The Republic of China and the Montevideo ConventionMany researchers claim that the ROC on Taiwan meets the four Montevideo Convention criteria for statehood. They completely ignore the facts that (1) the mass naturalization of native Taiwanese persons as ROC citizens in Jan. 1946 is illegal under the laws of war, (2) there are no international treaty references which can lead any credibility to the assertion that the ROC has the title to Taiwan territory, and (3) 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.In Taiwan, the ROC has been exercising control for over 70 years. However, it cannot invoke the international law doctrine of “prescription” in an attempt to claim the ownership of Taiwan territory. This is because international law states that “military occupation does not transfer sovereignty.” <https://www.fiverr.com/roklan/>https://www.fiverr.com/lonedz0121/ |

ANCHOR 2: Military occupation is conducted under “military government.” Are there any other areas which were confirmed to be under United States Military Government (USMG) jurisdiction as a result of WWII in the Pacific?

ANCHOR 4: Yes, the Ryukyu island group is one specific example. United States Military Government jurisdiction over the Ryukyus and Taiwan are both confirmed by Article 4(b) of the treaty. Based on the records of military attacks on the Ryukyus and Taiwan in the WWII period, this is what we would expect.

ANCHOR 5: Did the Republic of China gain any rights to jurisdiction over Taiwan under the terms of the treaty?

ANCHOR 4: No, none.

ANCHOR 5: Has there been any end to USMG jurisdiction over these areas?

ANCHOR 1: Well, for the Ryukyu island group, the U.S. Commander in Chief Richard Nixon announced the end of USMG jurisdiction effective May 15, 1972. However, for Taiwan, no U.S. President has made any similar announcement.

ANCHOR 5: So, in the current era, the United States has continued to delegate the military occupation of Taiwan to the Republic of China, which is to say the Chinese Nationalists.

ANCHOR 4: That is correct.

ANCHOR 3: So, a correct assertion of Taiwan’s international legal position is to say that it is an overseas territory of the United States under military government. However, the administrative authority for day-to-day management tasks has been delegated to the Chinese Nationalists.

ANCHOR 1: Yes. In closing today, what is important for us to realize is this:

The solution to Taiwan’s problems must be found in Washington D.C., it will not be found in Taiwan.

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