Does Taiwan = ROC ?

Is it proper to say that Taiwan is a synonym for the “Republic of China”? Or, in more common language, does Taiwan belong to the Republic of China?

Many political commentators frequently point out that Taiwan is a potential “flashpoint” in Asia. Their comments seem to suggest that the next world war could arise due to a dispute over Taiwan, or due to some developments affecting Taiwan.

So, clearly, the determination of whether Taiwan actually belongs to the Republic of China is important for continued world peace. But, at the same time, such a determination is important for discussing the human rights of the native Taiwanese people.

Many so-called experts on the Taiwan question, when asked to explain modern Taiwanese history of the last 150 years, state that the legal significance of many of the historical events are still under dispute up to the present day. But are they really? [listing of modern events on screen]

In order to put Taiwan’s situation into perspective, let’s imagine a series of events somewhere else in the world. Specifically, let us suppose that military troops of France went to Africa, and launched an attack against the geographic area which we know as Tunisia. Due to the superiority of the French weapons, the local Tunisian troops soon surrender. So, does the territorial sovereignty of Tunisia now become transferred to France?

Most people don’t have a difficult time answering such a question. But it seems that we only have to introduce two or three levels of complications into this entire scenario, and many people immediately lose their sense of direction, and their ability to reason.

For example, we may say that it is necessary to consider that Tunisia was formerly a protectorate of France. We might even say that some important world leaders had previously held some international conferences saying that Tunisia should be “returned” to France, and formal press releases were made to this effect. And, perhaps France and its Allies had the local Tunisian military commanders sign a surrender proclamation which agrees that the contents of such press releases should be carried out.

How do all these additional factors change the overall picture of France’s military operations in Tunisia? Well, under international law, there are no additional effects whatsoever.

When we bring up the subject of Taiwan however, several layers of mental blocks immediately start to develop. For sixty or more years, we have seen many so-called experts on Asian affairs unquestioningly accept the rationale that the territorial sovereignty of Taiwan was transferred to China on the date of the Japanese surrender ceremonies in Taiwan, which was October 25, 1945.

Let’s look at what some of the prestigious thinks tanks in Washington DC have to say on this issue.

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Backgrounder on Taiwan

 legal fiction of a "one China" policy

Brookings

With the withdrawal of the ROC government from the Chinese Mainland to Taiwan starting from 1947 and the establishment of the PRC in Beijing in 1949, two rival governments claimed their status as the rightful international representative of China.

The Brookings Institution is a private nonprofit organization devoted to independent research and innovative policy solutions.

Non-sovereign

Skip over the question of what happened in late Oct. 1945 altogether

<http://csis.org/programs/international-security-program/asia-division/cross-strait-security-initiative-/background-a>

(doesn’t mention what happened in late Oct. 1945)

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So, in regard to the legal significance of the October 25, 1945, surrender ceremonies in Taiwan, what we typically see is that the reportage and analysis offered by leading think-tanks fall into two categories: (1) they gloss over the subject entirely, and don’t give any definitive analysis, or (2) they accept the view of the Chinese historical revisionists that there was an immediate annexation of Taiwan on that date.

Obviously these scholars have not done detailed research into the development of world history, or they would know that the “immediate annexation” concept went out of date with the close of the Napoleonic Wars.

With this analysis, we can attain a very high degree of certainty that Taiwan was not returned to Chinese sovereignty in late October 1945. But what about the peace treaty which ended WWII in the Pacific? An examination of this treaty also shows that while Japan renounced her sovereignty over Taiwan, giving up all right, title, and claim to the island group, but no “receiving country” was specified. So, under the terms of this US Senate ratified treaty, Taiwan does not belong to the Republic of China.

What other evidence can be assembled? Surprisingly, the website of the Central Intelligence Agency is very accurate. For Taiwan, under the “Government” section, the following information is listed –

NAME

conventional long form: none

conventional short form: Taiwan

local long form: none

local short form: Taiwan

former: Formosa

A court case in Washington DC also supports the reasoning that the Republic of China is not a synonym for Taiwan. The decision found –

that the government of the Republic of China exercises authority over the island; that the sovereignty of Formosa has not been transferred to China; and that Formosa is not a part of China as a country, . . . . . Formosa may be said to be a territory or an area occupied and administered by the Government of the Republic of China, but is not officially recognized as being a part of the Republic of China.

Some civilian scholars may have trouble understanding the wording in this decision. How can the Republic of China have control and administration over Taiwan, when Taiwan is not a part of the ROC’s national territory?

However, many similar situations have occurred in world history, especially as an outgrowth of wartime situations. Two example might be the Soviet Union’s invasion and control of Afghanistan from 1979 to 1989, or the United States administration over Iraq from 2003 until 2011.

Accordingly, if Taiwan is not a part of the ROC’s national territory, then the legal status of the ROC in Taiwan is that of a “foreign regime.” More specifically, an examination of the situation of territorial cessions in history quickly shows that, despite the intentions expressed by various countries or other international actors, the original territorial sovereignty remains in place until the treaty comes into force.

Such a principle is beyond debate. So, we must recognize that Taiwan remained under Japanese sovereignty until the post-war San Francisco Peace Treaty came into force on April 28, 1952. When the Republic of China moved its central government to Taiwan in December 1949, it was moving outside of China’s national territory, and immediately became a government in exile.

Importantly, international law does not recognize any actions, methods, or procedures whereby a government in exile can become the legal government of its current locality of residence.

So, we are left with a number of disturbing questions. Among the most important of these are: Why is it proper to support the democratic development of Taiwan under the ROC Constitution, when Taiwan is not a part of ROC territory? Shouldn’t the local Taiwanese people be entitled to draft their own Constitution, under the Taiwan Relations Act nomenclature of the “Taiwan Governing Authorities” ? Does this mean that Taiwan would become independent? No, it appears that Taiwan would remain as occupied territory, under the direct jurisdiction of the principal occupying power of the post-war San Francisco Peace Treaty.

That is the United States of America.