Good Morning Taiwan

[ Maybe two Anchors ] [ anchors/reporters should not editorialize ]

[ Reporting live from the US Naval Base in Pearl Harbor Hawaii ]

ANCHOR 1: Does the United States have jurisdiction over Taiwan? A new study by a team of university students at an east coast Ivy League University strongly suggests that it does, and criticizes that the US Executive Branch is not fulfilling its obligations to Taiwan under the Senate-ratified post war treaty.

In their report, the students also forcefully pointed out that there are no international legal documents which prove that Taiwan was legally returned to China after WWII. Here is a brief introduction.

[SHORT FILM WITH VOICEOVER]: The traditional view on Taiwan's legal status is that it was returned to China in the Fall of 1945. That return was supposedly based on the content of the Cairo Conference, Potsdam Conference, and the Japanese surrender ceremonies. The meeting notes of those two conferences, expressing the views of British Prime Minister Winston Churchill, Soviet leader Joseph Stalin, Chinese Generalissimo Chiang Kai-shek, etc., along with US Presidents Franklin Roosevelt and Harry Truman, all expressed the intention to give Taiwan back to China, from which it had been separated by the treaty ending the Sino-Japanese War in 1895. So, in this view, the completion of the Oct. 25, 1945 surrender ceremonies in Taipei brought these arrangements into effect, and resulted in a transfer of Taiwan's territorial sovereignty to China.

ANCHOR 1: I have travelled in tour groups to Asia, and visited Taiwan twice. According to everything I saw, and all the information I collected, Taiwan is an integral part of an entity called the Republic of China. Certainly, walking down the street in a city in Taiwan, you have a very different feeling from being in some US city. Based on my experience, I would say that Taiwan is under the jurisdiction of the Republic of China. Our first Asian correspondent is in Nagasaki. Let’s go to him now.

NAGASAKI: Well, I have been to Taiwan as well, and I agree that those kinds of impressions appear in some sense. But at the same time, let us not forget that impressions can be misleading. For example, you are currently reporting from Pearl Harbor, Hawaii. Now, suppose I kidnapped you, blindfolded you, and took you to Holland Village, here outside of Nagasaki. When the blindfold was removed you would probably think you had been transported to some location near Amsterdam. You would not immediately recognize that you were in Japan.

ANCHOR 1: You mentioned being kidnapped. Are these university students suggesting that the Taiwanese people have been kidnapped by the ROC regime to think that Taiwan is a part of the Republic of China, when in reality it isn't?

NAGASAKI: That is a good summary of the students' point of view. As they have indicated in their report, there are no examples in the last 200 years or more to say that the "surrender" of local troops results in a transfer of territorial sovereignty to the country of the troops accepting the surrender. Let’s go to our second Asian correspondent in Saipan.

SAIPAN: I have studied Asian history for many years, and attended many conferences on historical and legal issues. Last year I went to a conference on "international humanitarian law" in Geneva, Switzerland, and this specific topic was discussed, so I can confirm that that is true. There is no way to say that the surrender ceremonies result in a transfer of territorial sovereignty.

ANCHOR 1: But maybe there are other ways to transfer territorial sovereignty. After all, isn't the government structure in Taiwan based on a "Republic of China Constitution" ? Perhaps our international relations expert can offer some comments on this.

SCHOLAR 1: As I understand it, the students' report also questioned the legal basis for using the Republic of China Constitution in Taiwan. They said that neither the post war treaty, the Taiwan Relations Act, or any Executive Orders promulgated by the US president provide any legal basis for the use of an ROC Constitution in Taiwan.

ANCHOR 1: So, do these students deny that Taiwan is under the jurisdiction of the Republic of China?

SAIPAN: They don’t deny that. What they are saying is that the United States has another level of “jurisdiction” over and above that. In other words, the ROC is only exercising a secondary level of jurisdiction over Taiwan. The ROC is a “proxy” if you will.

ANCHOR 1: I must admit that this exceeds my knowledge of international law.

SCHOLAR 1: After a thorough investigation of the historical and legal record, the students concluded that at the most basic level, Taiwan is conquered territory of the United States which has never reached a final political status. Taiwan doesn't belong to China, and that fact was confirmed in a 1959 court case here in Washington D.C.

ANCHOR 1: Well, if these students are correct, and Taiwan is under the jurisdiction of the United States, then there must be some example of that. Did they provide any examples of such US jurisdiction?

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[ SHORT FILM WITH VOICEOVER ] Yes. We can look at a selection of sentences in the Shanghai Communique of Feb. 28, 1972. Admittedly, most people have always found these sentences to be perplexing and circuitous. .

*The United States acknowledges that all Chinese on either side of the Taiwan Strait maintain there is but one China and that Taiwan is a part of China. The United States Government does not challenge that position. It reaffirms its interest in a peaceful settlement of the Taiwan question by the Chinese themselves.*

According to the conclusions reached in this report, those sentences are just an attempt to make a final disposition of the occupied territory of Taiwan. As the principal occupying power of the post-war San Francisco Peace Treaty (SFPT), the United States has disposition rights over the areas of Formosa and the Pescadores.

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ANCHOR 1: So, according to this report, in the current era, Taiwan remains as occupied territory of the United States. Is that correct? Let me ask, are there large numbers of United States troops currently stationed in Taiwan?

SCHOLAR 1: Under international law, it is commonly seen that the final political status of occupied territory is often described as “undetermined” or “unsettled.” The status of territory being “occupied” is a legal issue, there is no requirement of a certain number of uniformed military personnel being present.

ANCHOR 1: And you are saying that the historical record supports all of this? And what about the post-war San Francisco Peace Treaty?

SAIPAN: We will discuss more of the details in Part 2, coming up next.

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ANCHOR 1: Why is a student report at east coast Ivy League University attracting so much news attention? Is it just because the students are advancing a new explanation regarding Taiwan's undetermined legal status?

ANCHOR 2: Well, as I understand it, the report was actually commissioned by a prominent Washington D.C. thinktank, and they asked the students to find some sort of "fresh perspective" to look at the Taiwan question, and to try to find some sort of "framework" whereby it would be possible to talk about Taiwan in a more logical fashion. At the same time, they want to be able to extrapolate some new knowledge from the “analytical framework” which was developed.

ANCHOR 1: Doesn’t the United States maintain that the legal status of Taiwan is undetermined? Doesn’t that contradict the findings in the students’ report?

\\\\\\\\ ? \\\\\: If this is all true, it is certainly major news. Looking at this from another angle, what the students have done is very surprising. They have clarified a number of important parameters regarding Taiwan’s undetermined legal status.

ANCHOR 2: Yes. That is a significant breakthrough. According to the interviews I have conducted, no other researchers have attempted to do this before.

ANCHOR: Where does one begin in doing such research?

SCHOLAR 1: Well, most importantly we have to delve into the rather obscure subject of “Military jurisdiction under the US Constitution.” Although there were several early US Supreme court cases which touched on this subject matter, the most definitive explanation of this topic is found in

Ex parte Milligan (1866)

US Supreme Court

ANCHOR: What do we learn from that case?

ANCHOR: Most important is to consider the subject of military government.

ANCHOR: I am not totally familiar with that. But, as most people know, in General Order No. 1 of Sept. 2, 1945, General Douglas MacArthur directed Chiang Kai-shek of the Republic of China to go to Taiwan to accept the surrender of Japanese troops.

SCREEN: *The senior Japanese commanders and all ground, sea, air and auxiliary forces within China (excluding Manchuria), Formosa and French Indo-China north of 16 north latitude shall surrender to Generalissimo Chiang Kai-shek.*

ANCHOR: If the surrender ceremonies cannot be interpreted to result in a transfer of territorial sovereignty, then what is the status of Taiwan territory after the surrender ceremonies have been completed?

ANCHOR: That is the crucial question. Here is a table from the students’ report that gives a large number of possible descriptions for the territory at this point.

{ Chart/Table Spanish American War file

Description of territory as result of war }

ANCHOR: Which ones are most relevant?

ANCHOR: That is the first question that the students dealt with.

ANCHOR: And their conclusion was?

Conquered occupied

ANCHOR: So, Taiwan is conquered territory.

ANCHOR: Yes, but it is conquered territory of the United States of America. Therefore according to all relevant international precedent, the United States of America is the legal occupier. With this recognition, we need to review the concept of military government. A modern definition, taken from the US Army Field Manual, is as follows:

*Military government is the form of administration by which an occupying power exercises governmental authority over occupied territory.*

ANCHOR: So, if the United States of America is the legal occupier, then legally speaking we have a default status which puts Taiwan under the jurisdiction of the United States Military Government. But what exactly is the significance of the arrangements with Chiang Kai-shek of the Republic of China?

ANCHOR: The specifications in General Order No. 1 are just a delegation of the administrative authority for the military occupation of Taiwan territory to a co-belligerent. So, with this analysis, a crucial fact emerges. A principal agent relationship for the administration of Taiwan has begun. The United States is the conqueror of Taiwan, and therefore is the principal occupying power. The United States has delegated the military occupation of Taiwan to an ally. That ally is the Chinese Nationalists under Chiang Kai-shek.

ANCHOR: But, wasn’t General Order No. 1 formulated by the Allies?

ANCHOR: That is a common misconception. In fact, General Order No. 1 was written and compiled by the Joint Chiefs of Staff at the Pentagon, and approved by President Truman on August 17, 1945.

ANCHOR: Moreover, the students stress that all of these arrangements are fully confirmed by the post-war San Francisco Peace Treaty. United States Military Government jurisdiction over Taiwan is confirmed in Article 4(b). Hence, Taiwan is occupied territory of the United States, whose role as the principal occupying power is confirmed in Article 23(a).

ANCHOR: Is there more historical data in the supporting analytical framework which the students developed?

[ CHART/TABLE ] SPANISH AMERICAN WAR four cessions

ANCHOR: This table clearly shows the different stages of military occupation for conquered territory. Again, it cannot be stressed often enough that there is no international law precedent to say that the surrender of local troops results in the immediate transfer of territorial sovereignty.

ANCHOR: But, the Chinese always say that October 25, 1945, was Taiwan Retrocession Day.

ANCHOR: No, legally speaking, such an interpretation is impossible. We’ll look at the students’ analytical framework more closely in Part 3. Please stay tuned.

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SUPPORTING FACTORS MEXICAN AMERICAN WAR

THEN USE THIS FRAMEWORK TO LOOK AT WWII IN THE PACIFIC

ANCHOR: So, the result of this type of "analytical framework" analysis is to say that Taiwan is an overseas territory of the USA under military government. That is a correct statement of Taiwan’s legal status in the current era. Do I have this right?

[SCREEN] *Military government is the form of administration by which an occupying power exercises governmental authority over occupied territory.*

ANCHOR: Yes, that is correct. The key point is that there is nothing in the post-war San Francisco Peace Treaty, or in the Taiwan Relations Act, etc. which gives any authority to an entity which calls itself the Republic of China to administer Taiwan. In fact, the San Francisco Peace Treaty specifically gives that authority to the United States.

ANCHOR: So, there is established precedent in this area. According to the situations in other overseas territories during the period of military administration, the local Taiwanese people should be enjoying fundamental rights under the US constitution.

ANCHOR: That is an important point. Certainly, there is no legal justification for considering the Republic of China Constitution as the “organic law” of Taiwan. In fact, the ROC Constitution was promulgated in December 1947, during a period of belligerent occupation. The students have pointed out that the promulgation of a new legal structure in occupied territory is forbidden under the Hague and Geneva Conventions.

ANCHOR: Certainly Secretary of State Powell should have known about this.

ANCHOR: Well, he publicly stated that Taiwan did not enjoy sovereignty, and supported the idea that Taiwan’s status was undetermined. But, he never did specifically discuss the war crimes committed by the Republic of China in occupied Taiwan territory.

ANCHOR: So, at this point, is the correct path for Taiwan’s future development to seek independence?

ANCHOR: No, the first priority should be to fully clarify Taiwan’s position as an overseas territory of the USA under military government. Then you can draft a new constitution under the authority of the Taiwan Governing Authorities. Independence is much further down the road.

ANCHOR: OK, moving along, I need to clarify something. Technically speaking, you are **not** saying that Taiwan belongs to the USA, is that correct?

ANCHOR: Yes, that is correct. This is not ownership in the strict legal sense, but more of a "quasi trusteeship within the United States' insular law framework." It is a topmost level of jurisdiction. And that is “military jurisdiction.”

ANCHOR: Yes.

ANCHOR: I understand that these students also outlined many ways in which the United States actually treats Taiwan as a quasi-trusteeship.

ANCHOR; Yes, here are ten elements --

ANCHOR: I understand that a April 7, 2009 Court of Appeals decision in Washington DC held that –

*America and China's tumultuous relationship over the past sixty years has trapped the inhabitants of Taiwan in political purgatory. During this time the people on Taiwan have lived without any uniformly recognized government. In practical terms, this means they have uncertain status in the world community which infects the population's day-to-day lives.*

Based on this, what advice would you give the Taiwanese people?

ANCHOR: I think the Taiwanese people need to develop more of an international perspective. Protests, sit-ins, and mass petitioning inside Taiwan territory will not be effective. Take your complaints to Washington DC That would be my advice.

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UNUSED

[ In the students’ view, it would be more accurate to regard Taiwan as an overseas territory of the United States under military government. ]

ANCHOR: Well, I am sorry to say that the Chinese view is at odds with that. Our east-coast correspondent recently talked to Chinese officials in Washington D.C.. They informed him that the most accurate scholarly view was to recognize that the 1895 treaty was cancelled, so Taiwan was never ceded to Japan in the first place. He filed this report --

WASHINGTON: Chinese officials in the United States stress that the Republic of China regime in mainland China, led by Chiang Kai-shek, announced the cancellation of the 1895 Treaty in the late 1930s, early 1940s, and early 1950s. That was the treaty in which the Qing Dynasty ceded Taiwan to China. According to view of these officials, the cancellation of that treaty means that Taiwan was never ceded to Japan in the first place, and remained as Chinese territory continually, and in an unbroken fashion, from the late 1800s up to today. The seeming 50 or more years of Japanese governance of Taiwan, up to the close of WWII, was actually nothing more than an illusion.

ANCHOR: According to a Chinese diplomat that I met in New York last spring, an alternative view is to say that since the Republic of China regime has exercised continuous control over Taiwan from 1945 to the present, so the international law doctrine of "prescription" dictates that the Republic of China has full sovereignty over Taiwan territory.

ANCHOR 2: Our east coast correspondent visited some universities recently and did some on-the-campus interviews to gauge student reaction to these viewpoints. Let's look at those interviews now.

= = Interview #1 = =

[ annexation, new constitution, mass naturalization ..... prescription ]

We will have more interviews when our "Good Morning Taiwan" news continues in a moment.

PART 2

[ Interview #2 ]

[ Interview #3 ]

[ it doesn’t. as we reported previously, the concluded that aTaiwan is conquered territory of the United States which has never reached a final political status. This is a confirmation that Taiwan’s legal status is undetermined or unsettled. ]

[ And the students developed some sort of analytical framework to arrive at this conclusion?

ANCHOR 2: Yes, they did. ]

I understand our producer has several of the Tables from their report. I believe that this is the beginning of their analytical framework.

ANCHOR: Yes, this is the first Table that we need to look at.

ANCHOR: What exactly are we looking at here?

ANCHOR: So, did the think-tank hold a press conference to announce the research results?

ANCHOR: No, apparently the Chairman felt these results too sensitive. The rumor floating around Washington D.C. now is that all copies of this report were seized by the National Security Agency.

ANCHOR 2: So, do we have anything to show our viewers at this point?

ANCHOR: We did manage to download some tables and charts from this report, along with some of the summaries. These involve the "analytical framework" which that I just spoke of.

ANCHOR: Those can be downloaded from the National Security Agency's website?

ANCHOR: No, we had to contact Wikileaks.