ANCHOR 1: For over seventy years, the history books compiled in Taiwan have stressed that Taiwan belongs to the Republic of China. Is there any flaw with that argument? Beginning in 1993, for over 15 years, Taiwan made applications to participate in the United Nations as a member country, either under the name of “Taiwan,” “Republic of China,” “Chinese Taipei,” etc. But no positive results were attained. What is the problem? Our reporters in New York talked to retired officials from the United Nations’ Legal Affairs Office, and tried to get some answers.

===== Taiwan and the United Nations

[ screen: Show names used for applications ]

From 1993 to 2008, Under various names, Taiwan made applications for membership in the United Nations, but without success. Many people point to pressure from the People’s Republic of China as the major reason why no favorable action was taken on Taiwan’s applications. But interviews with retired officials of the Legal Affairs Office at the UN reveal other substantial problems. Specifically, none of those applications included any international legal documentation or evidence that the territorial sovereignty of Taiwan has ever been transferred any governing authority on the island. And with no clear transfer of territorial sovereignty, it can be argued that the mass naturalization of native Taiwanese persons as “Republic of China citizens” in January 1946 was illegal. These are all important issues that Taiwan’s application to join the United Nations would need to address.

Does the United States support Taiwan’s intention to join the United Nations? The answer is No. As most people are aware, here in the 21st century the US Secretary of State and other officials have made pointed comments about Taiwan’s lack of sovereignty on many occasions. But looking at the historical record, those types of comments are nothing new. Over fifty years ago, President Eisenhower also made similar comments about Taiwan and its adjacent islands. He stated that the post-WWII San Francisco Peace Treaty: “ . . . . . ended Japanese sovereignty over the islands but did not formally cede them to ‘China,’ either Communist or Nationalist."

[SCREEN - Eisenhower graphic ]

ANCHOR 1: This war of words regarding Taiwan’s legal status continues up to the present day. The US President and Executive Branch officials stress that the resolution of territorial disputes in the Pacific area should be based on international law principles. A group of students at some prestigious east-coast universities are now claiming that the post-WWII treaty provisions need to be fully re-examined. With that premise in mind, they also conclude that United States Executive Branch officials have numerous unfulfilled obligations to Taiwan.

Stay tuned for full details.

[ INTRO SCREENS ]

ANCHOR2: We have arranged interview with some of the US students who participated in his recent research project. We are hoping to get some detailed information. What were some of the important results of your research, and what new facts can we learn about Taiwan’s complicated history?

STUDENT 1: Let me give some background information first. Over the past few years, there have been numerous student-led movements in Taiwan objecting to all types of government actions. Those include many decisions made by the Executive Yuan and Legislative Yuan regarding trade arrangements, labor policies, investment policies, etc. between Taiwan and the People’s Republic of China. The student groups charged that these decisions were essentially made in a black-box fashion. Other government policies, such as the implementation of a very Chinese-centric bias in the teaching of history courses, and the compilation of textbooks in the schools, and the editing of study guides used by teachers, government employees, etc. have also aroused much student anger. There have been many instances of mass sit-ins, rallies, parades, etc. In response to this, a number of American students in east-coast universities, myself included, decided to look at these issues in greater detail, and see what the real problems were. We were also interested to see if we could obtain any new insights on the BIG PICTURE, which is of course the entire topic of Taiwan’s correct position in the international community.

STUDENT 2: ~~The Taiwanese students have been protesting about all of these issues, and anytime you want to discuss these things, you always come back to the question of the legitimacy of the Republic of China government structure existing in Taiwan.~~ The Chinese like to say that based on various meetings of the wartime Allies, and the resulting declarations which were issued, the transfer of Taiwan’s territorial sovereignty became effective with the surrender of Japanese troops on October 25, 1945. But after a thorough overview of the historical record, and interviews with Pentagon officials, we determined that there are no examples in the past 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. So, this kind of rationale by the Chinese is clearly wrong.

STUDENT 3: We ~~looked at this aspect in much detail, and~~ developed a basic table of data. This shows the possible descriptions of territories as a result of attacks by foreign military forces, the conduct of war, and then a surrender or end of hostilities. So this is a broad listing of the possible descriptions of such territory.

|  |  |  |
| --- | --- | --- |
| overrun | liberated | invaded |
| captured | conquered | appropriated |
| seized | occupied | sequestered |
| wholly annexed | tentatively annexed | temporarily annexed |
| taken over | retro-ceded | provisionally ceded |
| transferred | preliminarily transferred | conditionally reassigned |
| newly possessed | confiscated | unconditionally surrendered |
| impounded | under bailment | consigned |
| ceded | surrendered to | newly possessed |

etc.

But the question is: Which descriptions have the most significance and validity under international law?

ANCHOR 2: When I spoke to you last week, I recall that you mentioned that the United States played a prominent role in the Pacific War, and so this entire topic can be directly related to “military jurisdiction under the US Constitution.” But I am not exactly sure how that relates.

STUDENT 3: Right. All of this can be connected together. First we have to recognize that when you have a surrender of troops or a cessation of hostilities, the result is that the territory is best described with the adjectives of “conquered” and “occupied.” Then we need to understand that the occupation of territory is conducted under “military government.” In other words, the exercise of military government jurisdiction over the territory is the default status. That is the basic formulation.

ANCHOR 1\_3: So, that comes back to the concept of “conquest.” But what about the “acceptance of the surrender” ? How does that fit in to this analysis? Many people stress that accepting the surrender of enemy troops is important.

STUDENT \_: Under international law, there are no special rights or privileges given to the military forces that accept the surrender.

ANCHOR \_: So, how can this analysis help us to better understand the legal situation of the Republic of China in Taiwan?

STUDENT 2: Here is another table.

[ SCREEN: TABLE of Sp – Am War cessions

Surrender, Treaty, end of Military Gov., Final Status ]

STUDENT 2 [continued]: These examples from United States history are very representative. The sequence of events follows firmly established international precedent.

STUDENT \_: So, what we have found here is an important principle of international legal precedent. With these tables, we can also precisely define Taiwan’s legal position under international law, and under US Constitutional law.

ANCHOR \_: We will look more closely at this established international precedent in Part 2, coming up next.

================= END OF PART 1 =================

ANCHOR \_: Let’s return to our overview of some representative “military occupations” in US history, to see what they can tell us about Taiwan’s current international legal status.

[ SCREEN: TABLE of Sp – Am War cessions

Surrender, Treaty, end of Military Gov., Final Status ]

STUDENT 4: These are the Spanish American War cessions. The only possible explanation for the significance of the surrender ceremonies is to say that such an event marks the beginning of the military occupation. So, that would mean it is the beginning of the conqueror’s military government jurisdiction. Under international law, the conqueror will be the legal occupier.

ANCHOR 1\_3: So, again this comes back to the subject of “conquest.” As I understand it, “military government” is the government of occupied territory. But this is completely different from “annexation,” is that correct?

STUDENT 4: In the post Napoleonic period, there is no “annexation” at this stage. That is not allowed. With reference to Taiwan, the announcement of “Taiwan Retrocession Day” on Oct. 25, 1945, is a clear violation of the customary laws of warfare. Prohibitions against this type of announcement are also found in the Hague and Geneva Conventions. In simple language, “military occupation does not transfer sovereignty.”

STUDENT 4B: the post-war San Francisco Peace Treaty was signed by 48 nations and ratified by the United States Senate. That treaty did not award Taiwan to China. We believe that U.S. Executive Branch officials should be more forceful in mentioning this fact, and pointing out that there is no legal basis for the promulgation of the Republic of China Constitution in occupied Taiwan in 1947.

STUDENT 4C: What the Executive Branch officials do say is that the legal status of Taiwan is undetermined. That gives part of the picture. What it means is that Taiwan has not yet reached a final political status. Taiwan does not belong to China, and it remains under military occupation in the present day.

[ CHART belligerent occupation friendly occupation

Civil affairs administration of a military government ]

ANCHOR 2: However, the officials of the Republic of China governing structure in Taiwan simply ignore all of this. They are adamant in proclaiming that Taiwan was annexed by China on October 25, 1945, the date of the Japanese surrender ceremonies in Taipei.

ANCHOR 1\_2: Many interviews that I have conducted have given me the impression that the local Taiwanese people have serious grievances against the Republic of China administration of Taiwan. They would like to launch petition drives or to have dialogue with the appropriate “people in power” in international political circles. Hopefully, this would enable them to get their entire situation straightened out. However, they don’t know where to turn.

STUDENT NEW: We also got that impression. The students in Taiwan are complaining about the overly “Chinese centric” bias in government policy making, the editing of school textbooks, and even the content of tests given to people applying to be government employees, etc. But where should such grievances be taken? As we know, Taiwan is not a member of the United Nations, so there will be no help coming from the UN or any of its associated agencies. The answer can only be found by researching the subject of military occupation.

ANCHOR \_: As I understand it, most of the so-called Asian experts, or even the Taiwan experts, totally ignore the subject of military occupation in their scholarly writings on Taiwanese affairs.

[ 3 dates analysis ] BLANK CHART ? ? ?

STUDENT \_: So, if we give them this kind of Chart, they are unable to fill in the blanks.

STUDENT \_: All the so-called experts can say is that these issues are “under dispute.” But in fact they are not under dispute, they are well defined. Indeed, this is one of the reasons that our student group came together to research this entire matter. Our interviews with former US Department of Defense officials convinced us that there are many hidden aspects of this entire “Taiwan Question” that no one ever delves into or talks about. A Chart like this is even too complicated for most US Executive Branch officials.

ANCHOR \_: I read several books on the most recent three hundred years of Taiwan history, but I don’t recall that the subject of “military occupation” was mentioned. But there was mention of an 1895 treaty as I recall.

STUDENT \_: Right. Looking back at the history, after the December 7, 1941 attacks on Pearl Harbor, the U.S. Congress declared war on the Empire of Japan., and that included Taiwan.

ANCHOR \_: So Taiwan was ceded to Japan in 1895 by China’s Qing Dynasty. Is there any question about the validity of that treaty?

STUDENT \_: No, the United States recognized Taiwan as an insular area of Japan in the 1922 Washington Naval Treaty. So, in the view of the United States, the 1895 treaty was valid.

ANCHOR \_: And as I understand it, Taiwan stayed under Japanese rule until the end of WWII. Is that correct?

STUDENT \_: Well, technically speaking, Taiwan was under Japanese sovereignty until the San Francisco Peace Treaty came into force on April 28, 1952. This era beginning in 1895 is best called the “Japanese colonial period,” and that is different from military occupation. General Douglas MacArthur gave a speech in Congress in May 1951, and confirmed that Taiwan was still under Japanese sovereignty at that point in time.

ANCHOR \_: So, when did the military occupation of Taiwan begin?

STUDENT \_: All the important questions related to this topic are answered in the filmclip which your producers and our student group put together. After the film clip, I think we can also introduce our five new graphics.

[ BRIEFLY SHOW FIVE GRAPHICS ]

ANCHOR \_: That would be great. Let’s watch the following filmclip.

================= END OF PART 2 =================

[ Powerpoint ]

Taiwan:

the Principle of Conquest and the

Transfer of Territorial Sovereignty

Background to a Discussion of the Principle of Conquest

At the Norman Conquest of England in 1066, all the land of England was claimed as the personal possession of William the Conqueror under allodial title. The monarch thus became the sole "owner" of all the land in the kingdom, a position which persists to the present day.

allodial [definition]

Free; not subject to the rights of any lord or superior; owned

without obligation of vassalage or fealty;

Hence, in the traditional view, the conquest of territory resulted in immediate annexation

From the second half of the eighteenth century onwards, international law came to distinguish between the modern norms of conducting (1) military occupation of a country and (2) the historical norms of making territorial acquisition by invasion and direct annexation.

The difference between the two concepts was originally expounded upon by Emerich de Vattel in his opus The Law of Nations (1758). The distinction then became clear and was widely accepted by diplomats, scholars, and military personnel throughout the world. As a result, since the end of the Napoleonic wars (1803 – 1815) the concept of military occupation has become firmly recognized among the important principles of international law which must be respected by all peoples and all nations.

To put this another way, after the close of the Napoleonic period, when military troops entered any area, it was no longer legally permissible for the outright confiscation, expropriation, annexation, etc. of the territory. Such actions ceased to be recognized by international law as a legitimate means of territorial acquisition. These rules were more formally codified in the Convention respecting the Laws and Customs of War on Land of 1907, which is commonly called “Hague IV.” This Convention also contains explicit provisions concerning the protection of civilians and their property in occupied territories.

In relation to the military occupation of a particular area, we are faced with three central questions. These are

Question #1: When did the military occupation begin?

Question #2: Who is "the occupying power," aka “the legal occupier”?

Question #3: When did the military occupation end?

Answer #1: In order to answer the first question, it is necessary to have a definition of “military occupation.” Military occupation may be defined as:

(1) invasion, conquest, and control of a nation or territory by foreign armed forces, or

(2) a condition in which territory is under the effective control of foreign armed forces.

Answer #2: In order to answer the second question, it is necessary to understand which party in the conflict has the right and the responsibility to conduct the military occupation. There are many U.S. Supreme Court cases which discuss such topics, and the following quotation from a 1901 case is representative.

"The right of one belligerent to occupy and govern the territory of the enemy while in its military possession is one of the incidents of war, and flows directly from the right to conquer. ….. Such authority and such rules are derived directly from the laws of war, as established by the usage of the world and confirmed by the writings of publicists and decisions of courts,- in fine, from the law of nations. . . .

Dooley v. United States of America (1901)

U.S. Supreme Court

A close reading of this passage clearly shows that it is the “conqueror” that has jurisdiction over the conquered territory. The conqueror has the right, and indeed the obligation, to conduct the military occupation. We should also note that the surrender ceremonies and the ensuing military occupation are two different things. Arrangements for the surrender ceremonies may be delegated to allies.

Next, we must understand that military occupation is conducted under “military government.”[[1]](#footnote-1) Arguably, the earliest clarification of this concept was made by the U.S. Supreme Court justices in the 1866 case of Ex Parte Milligan. But in the current era we turn to U.S. Army Field Manual FM 27-10 for a definition in modern language.

Paragraph 362

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

The book Military Government and Martial Law, written by William E. Birkhimer,further clarifies this to say that –

The US Constitution has placed no limit upon the war powers of the government, but they are regulated and limited by the laws of war. One of these powers is the right to institute military governments.

Answer #3: Finally, in order to answer the third question, we need to understand that

Military government continues until legally supplanted.

But, how is military government legally supplanted?

[ SCREEN: TABLE of Sp – Am War cessions

Surrender, Treaty, end of Military Gov., Final Status

ADD Mexican American War cession data ]

In each case, military government is legally supplanted by a civil government structure fully recognized by the legal occupier.

We must note several important points.

First, for territories separated from the “motherland” via the specifications of a peace treaty after war, the military occupation does not end with the coming into force of the treaty, but continues until legally supplanted (by a recognized civil government for the territory.

Second, 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.

~~ANCHOR 5\_7:~~ According to US government pronouncements, Taiwan fits neither of these classifications. Since the end of the Second World War, it has been the official policy of the United States government that the status of Taiwan is "an unsettled question . . . . " This is clear proof that the military occupation of Taiwan has not ended. It is also a confirmation that Taiwan has not yet reached a final political status, hence, Taiwan remains in interim status under the law of occupation.

More plainly speaking, in the current era Taiwan is still occupied territory. According to the Senate ratified San Francisco Peace Treaty, the United States of America is the principal occupying power.

= = = = = = = = END OF FILM CLIP = = = = = = = = = =

ANCHOR 3\_5: Well, this is a very comprehensive video, and most audience members will probably have to view in more than once. Most importantly, what are our conclusions for Taiwan?

STUDENT 5: We overview the history of Taiwan, and put all of this information together by looking at some Charts which our group developed.

1945 beginning of military occupation.

Japanese sovereignty continued until 1952

USA legal occupier ( all military attacks )

USA delegation of administrative authority

Chart USA ROC two tiers

STUDENT \_: with the coming into force of the SFPT, the only possible conclusion which can be reached is that the ROC in Taiwan is fulfilling two roles: (1) it is a proxy occupying force for the USA in the continuing military occupation of Taiwan, and (2) it is a government in exile. We can give our final conclusions in the form of a three dates analysis.

[ 3 dates analysis ] CHART fill in CHART

STUDENT \_: So, Taiwanese students who have complaints about the government structure in Taiwan should be making their feelings known to US government officials.

STUDENT \_: Of course, this will not be easy. I suspect that most US government officials are also unfamiliar with the truth of Taiwan’s international legal status.

ANCHOR 1: The US government officials should view some of the informative videos on this channel in order to get the full picture.

ANCHOR 2: This concludes our report for this morning.

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1. In the situations of the Spanish American War, Mexican American War, the Pacific War, etc. we commonly see that military occupation before the peace treaty came into effect is termed “belligerent occupation.” Contrastingly, in current terminology, military occupation after the peace treaty has come into effect may be referred to as “the civil affairs administration of a military government,” or simply “civil affairs administration.” [↑](#footnote-ref-1)