

# **The Legal Status of Taiwan and the Establishment of the Taiwan Civil Government**

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Good evening.

First of all, let me thank all of our distinguished guests, members of Congress, Executive Branch officials, representatives from leading think-tanks and research organizations, supporters, and other friends for their attendance here on this historic occasion.

Tonight I want to keep my remarks short and to the point. Most importantly, on behalf of the 20 million “people of Taiwan,” I do want to say that we highly respect the fundamental founding principles of the United States of America, along with the ideals of truth, freedom of speech, human rights, etc. This is why we eagerly hope to coordinate together with the US government officials to create a better future for Taiwan.

We are here to celebrate the opening of the Washington D.C. Office of the Taiwan Civil Government. It is therefore appropriate that I recount some of the important events which have led up to our holding of this Cocktail Party on Sept. 8, 2010, the 59th anniversary of the signing of the San Francisco Peace Treaty (SFPT),<sup>1</sup> which ended WWII in the Pacific.

As everyone knows, the international legal status of Taiwan involves two separate but closely related topics:

- (1) What is the legal status of Taiwan territory?
- (2) What is the legal status of the Republic of China on Taiwan?

Indeed, the discussions of these topics have been hotly debated for over sixty years. Additionally, we want to consider --

- (3) the struggles and hardships of the native Taiwanese over the last 65 years,
- (4) the failure of the United States to carry out its responsibilities in respect to the governance of Taiwan,

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<sup>1</sup> Treaty of Peace with Japan, Sept. 8, 1951, Allied Powers-Japan, 136 U.N.T.S. 46 (entered into force Apr. 28, 1952)

(5) The basic views and outlooks of the native Taiwanese people here in 2010.

In order to get everyone oriented, let me first review some important US government documentation regarding the legal status of Taiwan. The State Dept. issued an official Memorandum on this subject on Feb. 3, 1961. After doing a great deal of research, the author of that Memorandum advanced four theories, and discussed the pros and cons of each in some detail. Unfortunately, as he himself admitted in the closing pages, none of these theories is very satisfactory. In other words, he was unable to reach any solid conclusions.

Some ten years later, a Mr. Robert Starr of the State Dept. reviewed and expanded the contents of this earlier document, and issued a new Memorandum. This is commonly called the Starr Memorandum, and is dated July 13, 1971. That is nearly 40 years ago. However, up to the present day, it has not been revised, and it remains the most recent and most widely referenced State Dept. pronouncement on the legal status of Taiwan.<sup>2</sup>

We also know that there have been many hearings in Congress regarding Taiwan, and these often touch on legal matters. On April 21, 2004, in the International Relations Committee of the House of Representatives, the Assistant Secretary of State for East Asian and Pacific Affairs reiterated the core principles of US policy toward Taiwan. Among the most important of these was the recognition that:

- ◆ The United States remains committed to a One China policy based on the three Joint Communiques and the Taiwan Relations Act;
- ◆ The US does not support independence for Taiwan or unilateral moves that would change the status quo as the US defines it;

To say that the native Taiwanese people are dissatisfied with their current ambiguous status would certainly be an understatement. Therefore we feel that the riddle of the Taiwan status should be solved once and for all. In order to do this, we must look at a certain body of law which the State Dept. researchers failed to consider in their 1961 and 1971 Memoranda.

That body of law is “the customary laws of warfare of the post-Napoleonic period,”

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<sup>2</sup> *Quote:* “Article 2 of the Japanese Peace treaty, signed on Sept. 8, 1951 at San Francisco, provides that “Japan renounces all right, title and claim to Formosa and the Pescadores.” The same language was used in Article 2 of the Treaty of Peace between China and Japan signed on April 28, 1952. In neither treaty did Japan cede this area to any particular entity.” See Starr Memorandum of the US Dept. of State, July 13, 1971, *excerpts:* <http://www.taiwanbasic.com/state/usg/starr-mem.htm>

or in more common usage, simply “the laws of war.”<sup>3</sup>

From this perspective, we can overview a great deal of legal precedents and court decisions of the past 200 years and obtain some important insights. In fact, I can say with certainty that the key to solving the riddle of Taiwan's status can be found in the writings of US Supreme Court Chief Justice Marshall, who offered this penetrating analysis in the famous American Insurance Company case (1828): ***"The Constitution confers absolutely on the government of the Union the powers of making war and of making treaties; consequently, that government possesses the power of acquiring territory, either by conquest or by treaty."***

And more explicitly, in *United States v. Huckabee* (1872), the Court speaking through Mr. Justice Clifford, said: ***"Power to acquire territory either by conquest or treaty is vested by the Constitution in the United States. Conquered territory, however, is usually held as a mere military occupation until the fate of the nation from which it is conquered is determined...."***<sup>4</sup>

Looking at the historical record, after the Japanese attack on Pearl Harbor, the United States declared war on the Empire of Japan on Dec. 8, 1941. During the war, all military attacks<sup>5</sup> on (Japanese) Taiwan were conducted by United States military forces,<sup>6</sup> so it is clear that the United States has acquired Taiwan under the principle of conquest.<sup>7</sup>

The United States is the "conqueror," and according to the customary laws of warfare in the post-Napoleonic period, the United States will be the (principal) occupying

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<sup>3</sup> The laws of war are derived from two principal sources: (a) *Lawmaking Treaties (or Conventions)*. These include the Hague Conventions and the Geneva Conventions. (b) *Custom*. Although some of the law of war has not been incorporated in any treaty or convention to which the United States is a party, this body of unwritten or customary law is firmly established by the custom of nations and well defined by recognized authorities on international law. See <http://www.civil-taiwan.org/laws-war.htm>

<sup>4</sup> For a particularly subtle analysis of the “territorial clause,” see Joseph Story, *Commentaries on the Constitution*, 1833. Indeed, the American Insurance Company (1828) case is directly cited in Story's opus in his explanation of the scope of application of the US Constitution's "territorial clause" (Article 4, Section 3, Clause 2), which states:

***The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States....***

and has been repeatedly cited in later US Supreme Court cases such as *Fleming v. Page* (1850), *Downes v. Bidwell* (1901), *Dorr v. United States* (1904), and others.

<sup>5</sup> In *Formosa Betrayed*, George H. Kerr indicates the beginning of such US aerial bombardment as Thanksgiving Day 1943, and gives further information on bombing raids throughout 1944. See *Formosa Betrayed*, Chapter 2, by George H. Kerr, Houghton Mifflin Co., Boston, Mass. (1965), republished Taiwan Publishing Co., Irvine, Calif. (1992).

<sup>6</sup> In *Untying the Knot*, Richard Bush also states that US airplanes had begun bombing targets on Taiwan in Nov. 1943. See *Untying the Knot*, Chapter 2, by Richard C. Bush, Brookings Institution Press, Washington, D.C. (2005).

<sup>7</sup> From the second half of the eighteenth century 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 (circa 1820). See <http://www.civil-taiwan.org/prin-conq.htm>

power. The SFPT confirms the United States as “the principal occupying power” in Article 23(a), and the scope of application of this status is given in Article 4(b),<sup>8</sup> which discusses military government.

As defined by US Supreme Court justices in *Ex parte Milligan* (1866), "military jurisdiction" under the US Constitution is of three kinds. In particular, so-called "military government" is: ***"to be exercised in time of foreign war without the boundaries of the United States . . ."***

Or, in more modern terminology, "military government" is the form of administration by which an occupying power exercises government authority over occupied territory.<sup>9</sup>

In General Order No. 1 of Sept. 2, 1945,<sup>10</sup> the United States delegated the military occupation of Taiwan to Chiang Kai-shek (aka Chinese nationalists or Republic of China). The surrender ceremonies for Japanese troops in Taiwan were held on Oct. 25, 1945, thus marking the beginning of United States Military Government (USMG) jurisdiction in Taiwan. Importantly, the authority for this occupation was handled separately from that of the four main Japanese islands.

Under international law, and indeed under United States law, it is impossible to understand why the flag of the Republic of China has been prominently displayed everywhere in Taiwan beginning in late Oct. 1945, and why the flag of the "conqueror" and "principal occupying power" (the United States) is not flying on any flagpole.<sup>11</sup>

As the Chinese Civil War continued to rage in those turbulent years, the People's Republic of China (PRC) was founded on Oct. 1, 1949, and the remnants of the Republic of China regime fled to Taiwan, an area over which their military troops

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<sup>8</sup> In order to fully understand the SFPT's specifications regarding Taiwan, a necessary first prerequisite is to do a complete overview of the treaty's provisions for the handling of the Ryukyu Island chain, and then to research how these provisions were carried out. This comparison is important because according to the treaty, both Taiwan and the Ryukyus are "Japanese property," the disposition of which is subject to the directives of the United States Military Government (USMG). See <http://www.taiwanbasic.com/key/>

<sup>9</sup> The Hague Conventions of 1907 specify that "territory is considered occupied when it is actually placed under the authority of the hostile army." On page 21 of his book Military Government and Martial Law, United States Army Brigadier General William E. Birkhimer specifies 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."*** See <http://www.civil-taiwan.org/mil-gov.htm>

<sup>10</sup> Supreme Commander for the Allied Powers General Order No. 1, Sept. 2, 1945, J.C.S. 1467/2.

<sup>11</sup> Chinese scholars have traditionally placed much emphasis on the fact that "the Japanese troops in Taiwan surrendered to the Republic of China," while ignoring the United States' role as the conqueror and the principal occupying power. In fact, neither the Hague nor Geneva Conventions give any special rights or privileges to "the troops that accept the surrender." The (principal) occupying power is, by definition, the conqueror.

were exercising military occupation under the delegated authority of the United States Military Government.

Then in the post-war SFPT, Japan renounced the territorial sovereignty of Taiwan, but no recipient country was named. Hence, Taiwan has remained under the jurisdiction of USMG, as an interim status condition.<sup>12</sup>

Under such a situation, and considering the established precedent in dealing with other territorial cessions in the history of the United States,<sup>13</sup> the native Taiwanese people are entitled to come together to form their own Civil Government.<sup>14</sup>

### Criticism of United States' Handling of Taiwan from the 1940's to the Present

I believe that five criticisms can be made of the United States' handling of the complicated relationship between the USA, Taiwan, Japan, and China during the last seventy years.

First, there has been the complete failure to clearly define or delineate Taiwan's true legal status.

Second, there has been the failure to adequately understand the military resources of Japan, as well as the culture, habits, and religion of the Japanese people.

Third, there has been the failure to objectively recognize the use of a wide variety of political tactics and strategy by Chinese officialdom in order to advance their country's political goals.

Fourth, there was a failure to accurately assess the directions that China and the Soviet Union would develop after the close of WWII, and to see how those changes would create a totally new geo-political balance in the 21<sup>st</sup> century.

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<sup>12</sup> A close reading of the Spanish-American Peace Treaty (Treaty of Paris) of April 11, 1899, shows a similar situation with regard to the disposition of Cuba. Specifically, Spain ceded the island without specifying a "receiving country," and the United States was designated as the (principal) occupying power. Fortunately for the native Cuban population however, their legal and political situation was not complicated by the parasitic ensconcement of the *government in exile* of a nearby country on Cuban soil.

<sup>13</sup> For comparative analysis of the Spanish American War cessions of Puerto Rico, the Philippines, Guam, and Cuba with the situation of Taiwan, see <http://www.civil-taiwan.org/prcutai6t.htm>

<sup>14</sup> A Chart which explains "Civil Government after Military Government" is available at <http://www.civil-taiwan.org/milgovchart2.htm>

Fifth, there has been a continuing failure to stay up to date in regard to the rapidly changing political and economic developments, as well as the regional restructuring, which is occurring in Asia.

The failure of the United States in these areas is reflected in the April 7, 2009, Court of Appeals decision in *Lin v. United States of America*, where the judges 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. This pervasive ambiguity has driven Appellants to try to concretely define their national identity and personal rights.”

On Taiwan, over the past 65 years, the native Taiwanese people have been denied a wide variety of human rights which people in North America take for granted, and have suffered discriminatory treatment in regard to the promotion of education, culture, economics, broadcasting, social activities, civil service, religion, and human dignity. After the defeat of Japan in WWII, the ROC Chinese held the native Taiwanese people (who were former Japanese subjects) as unworthy of any type of respectful treatment, and even unworthy of any human rights. As a result, the native Taiwanese suffered disaster after disaster under the governance of the ROC Chinese. These disasters have included numerous violations of the laws of war (which have gone unpunished up to the present day),<sup>15</sup> currency manipulations, illegal land expropriation, trials of civilians by military courts, mass murders, pillage, and other atrocities.

At the most basic level, the Civil War between the Chinese Nationalists and the Chinese Communists had nothing to do with Taiwan. It was only because the Chinese Nationalists (ROC) had been asked by General Douglas MacArthur to accept the Japanese surrender on Taiwan in the Fall of 1945, that Taiwan became involved in the dispute between the Nationalists and the Communists. Of course, this entire situation was further complicated when government officers of Chiang Kai-shek<sup>16</sup>

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<sup>15</sup> Many scholars maintain that the ROC/Taiwan meets all international legal criteria necessary to be recognized as a sovereign state. They fail to comprehend that the Chiang Kai-shek regime’s announcement of the annexation of Taiwan territory on Oct. 25, 1945, the mass naturalization of native Taiwanese persons as ROC citizens in Jan. 1946, the implementation of military conscription policies over the native Taiwanese population in the late 1940s, etc. in occupied Taiwan territory are/were all war crimes. As a result, the ROC/Taiwan actually falls far short of the required criteria necessary to be considered a sovereign state. See <http://www.civil-taiwan.org/tchart1.htm>

<sup>16</sup> Chiang Kai-shek, soldier and statesman, born October 31, 1887, Chekiang province, China; died April 5, 1975, Taipei, Taiwan. He served as head of the Nationalist government in China from 1928 to 1949, and subsequently as head of the Chinese Nationalist government in exile on Taiwan.

fled into exile on occupied Taiwan in 1949. As a result, the world today commonly considers that “Taiwan equals the ROC,” when in fact such a statement is totally untrue.<sup>17</sup> Due to this confusion, the Taiwanese people have been unable to make any strides toward self-government in the last 65 years.

In terms of international relations, Taiwan has faced many problems. It has been unable to be recognized as a normal country, and unable to employ commonly seen international practices to call a constitutional convention and draft its own constitution. Hence, Taiwan has no “national anthem,” “flag,” “national flower,” etc. and the development of Taiwan’s culture and cultural institutions has been extremely hampered. For the most part, these problems are entirely due to the continuing presence of the Republic of China government in exile on Taiwanese soil.<sup>18</sup>

Due to the passive political policies of the United States in dealing with the Taiwan issue, much damage has been done to the Taiwanese national consciousness, and the image of the United States as a champion of human rights has also suffered.

### *Strategic Ambiguity*

The United States adoption of a policy of “strategic ambiguity” in regard to Taiwan has continued over the last sixty or more years, but has not resulted in a satisfactory solution to the Taiwan question. Of course, the efforts of the Taiwanese people in solving this problem have been inadequate to date, however it is the WWII “conqueror” of Japan and her overseas territories in the Pacific which must bear the greatest burden of responsibility, and that is the United States. Most importantly, US government officials disregarded two important aspects of international law: (1) military occupation cannot be regarded as a claim to territorial sovereignty, and (2) a government in exile cannot become recognized as the legal government of its current locality of residence. Quite unwisely, they continued to maintain formal diplomatic relations with the ROC government in exile from the 1940s up until Dec. 31, 1978.

Granted, the US Executive Branch’s decision to continue recognizing the ROC as the *sole legitimate government* of China was a political decision, and up to the US

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<sup>17</sup> It can be argued that the ROC government has never completed any legal procedures to “incorporate” Taiwan into Chinese territory. Art. 4 of the ROC Constitution (entered into force Dec. 25, 1947) specifies that: “The territory of the Republic of China within its existing national boundaries shall not be altered except by a resolution of the National Assembly.” In regard to the alleged inclusion of Taiwan into Chinese territory, there is no resolution of the National Assembly on record.

<sup>18</sup> A government in exile may be defined as “A political group that claims to be a country's legitimate government, but for various reasons is unable to exercise its legal power, and instead resides in a foreign country or area,” or more simply as “A government established outside of its territorial base.” When the ROC moved its central government to occupied Taiwan in Dec. 1949, Taiwan was still sovereign Japanese territory.

President to determine. However, the decisions to allow the ROC to continue its governance of Taiwan, and to ignore the native Taiwanese peoples' rights to self government, have absolutely no legal basis in the Senate ratified SFPT of April 28, 1952.<sup>19</sup> As a ratified treaty, the SFPT must be regarded as a part of "the supreme law of the land." (See US Constitution, Article VI.)

### *Rights and Responsibilities*

The rights and responsibilities of the United States toward Taiwan can be outlined as follows:

(1) In the years of 1848, 1898, 1941-45, and 2003 the United States participated in wars against Mexico, Spain, Japan, and Iraq respectively. During these military actions, the United States conquered California, Cuba, Puerto Rico, Philippines, the Ryukyu Islands, Iraq, and other areas. According to commonly respected international law principles, the laws of war, the laws of occupation, international treaty law, the US Constitution, and the content of relevant US Army Field Manuals,<sup>20</sup> it is clear to see that the United States already has a full set of established procedures for dealing with all related situations, including the operation of USMG in overseas areas. After the surrender of Japan in 1945, the United States has the right and also the obligation to deal with all matters concerning the governance of Taiwan,<sup>21</sup> and after the coming into force of the SFPT in 1952, that would include the recognition that Taiwan is the sixth major insular area of the United States.<sup>22</sup> Unfortunately, all matters concerning the governance of Taiwan were dealt with very roughly, and without comprehensive planning, including the decision to let the Chiang Kai-shek (ROC) regime handle the military occupation of the island beginning in late Oct. 1945.

(2) The Cairo Declaration of 1943 appears to state that Formosa and the Pescadores are territories "stolen from China" by Japan. Such a statement is totally inaccurate, and ignores established legal principles. Indeed, it is hard to believe that such a statement is part of this important declaration issued by the leaders of the United

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<sup>19</sup> The ROC on Taiwan is (1) a subordinate occupying power under USMG, beginning Oct. 25, 1945, and (2) a government in exile, beginning Dec. 10, 1949. The United States of America is the principal occupying power. There has been no change in these statuses to date. (Definition: "*the principal occupying power* exercises military government jurisdiction over territory acquired under the principle of conquest.")

<sup>20</sup> For a listing of relevant US Army Field Manuals, see <http://www.civil-taiwan.org/laws-war.htm>

<sup>21</sup> Importantly, in the post-World War II period up to today, no treaty, law, communiqué, Executive Order, decree, etc. has ever terminated USMG jurisdiction over Taiwan. By contrast, USMG jurisdiction over California, Puerto Rico, Guam, the Philippines, Cuba, etc. were all ended by affirmative (and widely publicized) actions of the United States Government. This is in accordance with the rule that "Military government continues until legally supplanted."

<sup>22</sup> At the most fundamental level, the term "insular" means *relating to, or characteristic of, or situated on an island*. For a more in-depth analysis of Taiwan's qualifications to be a U.S insular area, see <http://www.civil-taiwan.org/us-insular.htm>

States and the U.K. In terms of plotting Taiwan's future destiny, we can mark this as the first major mistake in judgment by the United States.

(3) The disposition of (Japanese) Taiwan after the close of hostilities in WWII did not follow the precedent established in the four main Japanese islands or even in the Ryukyu Islands. Even from the perspective of the military occupation of Iraq, it can be affirmatively stated that Taiwan was dealt with defectively. In fact, Taiwan should have been handled directly by General MacArthur, in a similar fashion to the military occupation of the four main Japanese islands, and certainly not delegated to the Chiang Kai-shek (ROC) regime, which had a record of corruption, inefficiency, and inhumane treatment of the civilian population. We can mark this as the second major mistake in judgment by the United States. It has resulted in the complex situation of the Taiwan question with which we are faced today.

(4) In order to try to stop the spread of communism, the United States cooperated with the Chiang Kai-shek (ROC) regime, and negotiated a Mutual Defense Treaty in 1955. In the eyes of the world community, this gave the ROC regime the appearance of legitimacy, and the United States continued to recognize this ROC government in exile as the sole legitimate government of China up through the end of 1978. We can mark this as the third major mistake in judgment by the United States.

(5) In order to thwart the expansionist goals of the Soviet Union, Mr. Nixon and Mr. Kissinger made arrangements which they expected would lead to Taiwan being absorbed by (or, more succinctly "sacrificed to") the People's Republic of China, and becoming part of that nation. These two officials behaved in a very haughty manner, and totally ignored the rights of the native Taiwanese people to life, liberty, property, and the pursuit of happiness.

(6) In order to effectively construct a solution to the Taiwan problem, the best course of action is to refer directly to the SFPT of 1952. But due to another long list of concerns during the Cold War period, the provisions of this treaty were totally ignored. Beginning in 1972, the United States and PRC officials concluded a series of three joint communiqués. As of Jan. 1, 1979, the United States recognized the PRC as the sole legitimate government of China. Thankfully, the Taiwan Relations Act provides for the continuation of economic and cultural relations between Taiwan and the USA, and assures that the United States makes available the appropriate defensive weapons for Taiwan. However it treats the complex social make-up of Taiwan society in a very passive manner, and fails to make the necessary distinction between the native Taiwanese people and the Chinese exiles. Additionally, by calling

the ROC government the “Taiwan governing authorities” has given many people the mistaken impression that “Taiwan equals the ROC.”

(7) Even in the late 20th century, the United States did not adopt the necessary active measures to deal with the Taiwan problem, preferring instead to place this issue in an “icebox” and forget about it. It has only been with the coming of the 21<sup>st</sup> century, which has seen the “Rise of China,” along with new problems developing in Japan, Korea, and the Philippines, that the United States has re-evaluated its position in Asia and come to the realization that Taiwan is in a very strategic geographic position to serve as an unsinkable “aircraft carrier,” and the United States needs to make appropriate use of this asset.<sup>23</sup>

In summary, now is the best time for the United States to deal with the Taiwan problem and the so-called “strategic ambiguity” of Taiwan’s legal status. If this issue is not dealt with now, it could certainly become a source of eternal regret for future US administrations. In the past, the United States has ignored many of Taiwan’s internal problems which were brought about by the policies of the ROC Chinese exiles, including cultural, human rights, and other violations, and even allowed the Chiang Kai-shek (ROC) regime to maintain thirty-eight years of martial law over the island’s people. All of this mistreatment has become a source of deep dissatisfaction for the native Taiwanese people.

### *Closer Cooperation with the United States is Needed*

Today, the representatives of the Taiwanese people are eager to talk to US government officials and members of Congress to get all of these matters straightened out once and for all. According to the many essays and reports issued by the Taiwan Civil Government,<sup>24</sup> it is now clear that Taiwan and the USA actually enjoy a much closer legal relationship than previously realized. Most importantly, as the “conqueror” and principal occupying power of Taiwan, the United States has a responsibility to rectify certain of its improper actions and policies of the past. Among the most important of these is to deal with the exiled Chiang Kai-shek (ROC)

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<sup>23</sup> With the surrender of Japanese troops on Oct. 25, 1945, Taiwan became an “independent customs territory under USMG on Japanese soil,” with administrative authority for the military occupation delegated to the Chinese Nationalists. (Significantly, none of the Allies recognized any transfer of the territorial sovereignty of Taiwan to “China” on this date.) With the coming into force of the SFPT on April 28, 1952, Taiwan has been elevated to the status of “unincorporated territory under USMG,” which in more common language may be described as “a *quasi-trusteeship* under military government within the US insular law framework.” Importantly, under such a legal construction, and with full respect to US constitutional principles, the native Taiwanese people are entitled to form their own civil government. It must be noted however that the formation of such a civil government under USMG does not affect the fact that the *final political status* of Taiwan remains as “undetermined.” See <http://www.civil-taiwan.org/tai-undeter.htm>

<sup>24</sup> The new Taiwan Civil Government website was launched in early Aug. 2010. See <http://www.civil-taiwan.org>  
For a complete listing of URL references in this paper, see <http://www.civil-taiwan.org/ccm-links.htm>

regime.<sup>25</sup>

The solution of the Taiwan problem requires strict attention to international treaties and covenants, the laws of war, the laws of occupation, the US Constitution, and all relevant precedents.<sup>26</sup>

The San Francisco Peace Treaty can serve as the basis for resolving most of the questions regarding Taiwan's legal status. If read correctly, the treaty can also fully clarify Taiwan's situation in the world today.<sup>27</sup> Most scholars attribute Taiwan's predicament to the Chinese Civil War, but this is incorrect. Taiwan is a piece of unfinished legal business left over from WWII in the Pacific, and neither the ROC nor the PRC has any legal claim over the island.<sup>28</sup>

The organizers of the Taiwan Civil Government (TCG) believe that the native Taiwanese people can benefit much from following the founding principles of the United States as embodied in the motto of "of the people, by the people, and for the people." Over the past decades, the native Taiwanese people have made remarkable achievements in the economic, social, financial, environmental, transportation, communications, engineering, and other fields. At this juncture, we look forward to making the necessary preparations to draft our own constitution, and to develop a more democratic society on Taiwanese soil.<sup>29</sup>

Since the close of the WWII hostilities in 1945, the problem of Taiwan's international

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<sup>25</sup> It is a fact that the United States has never recognized the forcible incorporation of Taiwan into the national territory of "China." Reference may be made to the case of *Sheng v. Rogers*, D.C. Circuit, Oct. 6, 1959, where the judges examined the legal status of Taiwan in detail, and held: "... 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, at least **not** as yet, and **not** until and unless appropriate treaties are hereafter entered into. 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." (Emphasis added.)

<sup>26</sup> For over sixty years, the consistent policy of the U.S. Executive Branch has been that neither "Taiwan" nor the "ROC on Taiwan" is an independent sovereign state. See Chart #1. The organizers of the Taiwan Civil Government agree with this viewpoint.

<sup>27</sup> For a straightforward introduction to the SFPT's disposition of Taiwan, see <http://www.civil-taiwan.org/sfpt-1952.htm>

<sup>28</sup> Many scholars maintain that despite the specifications of the post-WWII treaties, the ROC can claim the sovereignty of Taiwan based on the international legal doctrine of "prescription," which is defined as: (1) the process of acquiring title to property by reason of uninterrupted possession of specified duration, (2) acquisition of ownership or other real rights in movables or immovables by continuous, uninterrupted, peaceable, public, and unequivocal possession for a period of time. It is true that certain countries with a long history have obtained title to their lands based on "prescription." However, Taiwan was a territorial cession in the SFPT of 1952, and there was no transfer of its territorial title to "China," as clearly specified in Article 2(b) and further confirmed in Article 21. The doctrine of "prescription" cannot be invoked under such circumstances. Moreover, Oct. 25, 1945, was the beginning of the military occupation of Taiwan, and international law specifies that "military occupation does not transfer sovereignty."

<sup>29</sup> Over the past several decades, although many US government officials have frequently praised the development of democracy (and in particular "democratic elections") in Taiwan, the organizers of the Taiwan Civil Government believe that such praise is misplaced. As explained in the present paper, Taiwan has never been incorporated into the national territory of "China," and hence it can be forcefully argued that "democratic elections" held under the authority of the government in exile Republic of China are of very questionable validity.

legal status has remained like a festering wound up to the present day, and no one has brought forth the appropriate “medicine.”<sup>30</sup> Here in 2010, the Taiwan Civil Government (TCG) has made the decision to open an office in Washington D.C. This is certainly an important step in advancing toward a greater degree of self government for the Taiwanese people, and is in full compliance with all international laws and international norms. With better communication with the US Executive Branch and the Congress, we are certain that a win-win situation can be created to not only expand the influence of the United States in Asia, and promote other US national interests, but also to advance the standards of human rights, culture, economics, the arts, and other important aspects of the social development of the Taiwanese people in Taiwan.

More information is available both on the handouts which we have prepared here tonight, and our website. Speaking for myself and the other organizers of the Taiwan Civil Government, we welcome your support in moving forward in this effort. I know that many important tasks lay ahead of us.

Thank you very much.

September 8, 2010  
Washington, D.C.

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<sup>30</sup> In order to deal most efficiently with the Taiwan problem, a necessary first prerequisite is to have a firm grasp of all important legal and historical events which have affected Taiwan from 1895 to the present. The Formosa Nation Legal-strategy Association (FNLA) compiled an important paper on this subject in Sept. 2009. See <http://www.civil-taiwan.org/bfacts.htm>

Chart #1

KEY STATEMENTS BY U.S. EXECUTIVE BRANCH OFFICIALS

Statement	Source
The determination of the future status of Formosa must await the restoration of security in the Pacific, a peace settlement with Japan, or consideration by the United Nations.	Harry S Truman, June 27, 1950 (Taiwan's undetermined status)
The Japanese peace treaty of 1951 ended Japanese sovereignty over the islands but did not formally cede them to "China," either Communist or Nationalist.	<u>Mandate for Change 1953-1956</u> by Dwight D. Eisenhower
By the peace treaty of Sept. 8, 1951, signed with the United States and other powers, Japan renounced "all right, title and claim to Formosa and the Pescadores." The treaty did not specify the nation to which such right, title and claim passed.	Starr Memorandum, Dept. of State, July 13, 1971
It is the understanding of the Senate that nothing in the [1955 ROC-USA Mutual Defense] treaty shall be construed as affecting or modifying the legal status or sovereignty of the territories to which it applies.	
... technical sovereignty over Formosa and the Pescadores has never been settled. That is because the Japanese Peace Treaty merely involves a renunciation by Japan of its right and title to these islands. But the future title is not determined by the Japanese Peace Treaty nor is it determined by the Peace Treaty which was concluded between the Republic of China and Japan.	
Article 2 of the Japanese Peace treaty, signed on Sept. 8, 1951 at San Francisco, provides that "Japan renounces all right, title and claim to Formosa and the Pescadores." The same language was used in Article 2 of the Treaty of Peace between China and Japan signed on April 28, 1952. In neither treaty did Japan cede this area to any particular entity.	
As Taiwan and the Pescadores are not covered by any existing international disposition, sovereignty over the area is an unsettled question subject to future international resolution.	
[T]he sovereignty of Formosa has not been transferred to China ....	
The United States (1) would not set a date for ending arms sales to Taiwan; (2) would not hold prior consultations with the PRC regarding arms sales to Taiwan; (3) would not play a mediation role between the PRC and Taiwan; (4) would not revise the Taiwan Relations Act; (5) would not alter its position regarding sovereignty over Taiwan; and (6) would not exert pressure on Taiwan to enter into negotiations with the PRC.	President Ronald Reagan, July, 1982 (The Six Assurances)

<p>We don't support independence for Taiwan; . . . or 'two Chinas'; or 'one Taiwan, one China'; . . . and we don't believe that Taiwan should be a member in any organization for which statehood is a requirement.</p>	<p>President William Clinton, June 30, 1998 (The Three-Noes Policy)</p>
<p>The United States does not support Taiwan Independence.</p>	<p>Vice President Richard Cheney, April 13, 2004</p>
<p>Our policy is clear. There is only one China. Taiwan is not independent. It does not enjoy sovereignty as a nation, and that remains our policy, our firm policy.</p>	<p>Secretary of State Colin Powell, Oct. 25, 2004</p>
<p>We also take very seriously President Chen's repeated commitments not to permit the constitutional reform process to touch on sovereignty issues, which includes territorial definition.</p>	<p>Daily Press Briefing, Dept. of State, Sept. 25, 2006</p>
<p>Taiwan, or the Republic of China, is not at this point a state in the international community. The position of the United States government is that the ROC -- Republic of China -- is an issue undecided, and it has been left undecided, as you know, for many, many years.</p>	<p>National Security Council Senior Director for Asian Affairs Dennis Wilder, Aug. 30, 2007</p>
<p>Well, [the PRC officials] are obviously quite concerned about what they see as possible moves towards de jure independence, and I restated our position that we are opposed to any effort by anyone unilaterally to change the status quo.</p>	<p>Sec. of Defense Robert Gates, Nov. 6, 2007</p>
<p>The United States supports, as appropriate, Taiwan's involvement in international organizations, processes, agreements, and gatherings where statehood is not a prerequisite.</p>	<p>Mandatory Guidance from Department of State Regarding Contact with Taiwan, Sept. 2008</p>
<p>We do not support Taiwan independence. We are opposed to unilateral attempts by either side to change the status quo.</p>	<p>David B. Shear, Deputy Assistant Secretary, Bureau of East Asian and Pacific Affairs, March 18, 2010</p>
<p>The United States is a strong, consistent supporter of Taiwan's meaningful participation in international organizations. We frequently make our views on this topic clear to all members of the international community, including the PRC.</p>	<p>Sec. of Defense Robert Gates, June 5, 2010</p>
<p>... the United States has for years demonstrated in a very public way that we do not support independence for Taiwan.</p>	<p>Sec. of Defense Robert Gates, June 5, 2010</p>