Taiwan’s Status: (Part 1) Exploring the Truth of Oct. 25, 1945

Chinese-style History: The Chinese often claim that Oct. 25, 1945, was “Taiwan Retrocession Day.” In other words, they like to say that the Japanese Surrender Ceremonies held on that date in Taipei amounted to a transfer of sovereignty over Formosa and the Pescadores to China.

In support of this claim, the Chinese typically reference the Cairo Declaration, a non-binding press release, issued unilaterally on Dec. 1, 1943, by a group of three belligerents (President Chiang Kai-shek of the Republic of China, President Franklin Roosevelt of the USA, and Prime Minister Winston Churchill of the United Kingdom).

The Cairo Declaration was the outcome of the Cairo Conference in Cairo, Egypt, in late November 1943. At that time, victory over the Japanese was not at all assured, and the Allies needed various propaganda instruments for short-term mobilizations of support. The Japanese were advancing steadily in mainland Chinese territory, and many U.S. government officials feared that the Chinese military officers might ask for early peace negotiations in the China Theatre. If that scenario came to pass, large numbers of Japanese soldiers would be freed up and redeployed into the Pacific Theatre, much to the detriment of the USA. Hence, keeping Chiang Kai-shek happy was an important short-term priority.

Many scholars would argue that the Cairo Declaration is not, in the formal sense, a "legal" document. It was not ratified and, indeed, the missions of the three representatives probably did not have authorizations to conclude any formal policy revisions of such scope. Yet, still other scholars would argue the opposite. The controversy between the different viewpoints has raged since the early 1950s, which is over 60 years.

What is the correct way to interpret the effect of this declaration on the events of Oct. 25, 1945? What were the announced views of the leading government officials at that time? An examination of the Act of Surrender in the China Theatre (held in Nanking, on Sept. 9, 1945), and all related surrender documents, as well as published statements of the Allies in the 1940s, 1950s, 1960s, etc. can certainly help us to illuminate the situation in a much clearer fashion.

The following are Five Items of Proof to say that October 25, 1945, was not “Taiwan Retrocession Day.”

1. The Surrender was limited to “Japanese Forces”

The Act of Surrender in the China Theatre (held in Nanking on Sept. 9, 1945), and Supreme Commander for the Allied Powers (SCAP) General Order no. 1 (issued in Tokyo on Sept. 2, 1945), authorized the surrender of Japanese forces, not Japanese territories.

The Act of Surrender in the China Theatre and General Order no. 1 were military directives, establishing procedures for demobilizing Japanese forces. They were not meant to settle political issues. The content of these military directives and in particular the assignment of members of the Allied coalition to disarm Japanese forces in certain areas in no way implied that the members had any rights to permanent possession of those areas in the future.

-- *The Surrender of Japanese Forces in China, Indochina, and Formosa*,

Taiwan Documents Project, 2002

1. Japanese v. Chinese Nationality Status

Beginning in 1946, the *Foreign Relations of the United States* series has many entries regarding the legal status of Taiwan and its residents.

**Aide-Memoire:** The U.S. Department of State to the Chinese Embassy, Washington DC
**Date:** Nov. 21, 1946
**Subject:** status of Taiwanese persons in Japan

. . . It should, however, be pointed out that from the legal standpoint the transfer of Taiwan's sovereignty remains to be formalized; assumably a treaty of cession will in due course be negotiated which will effect such transfer and which may contain provisions in regard to appropriate change in the national status of Taiwan's residents.

-- U.S. Dept. of State / Foreign relations of the United States, 1946.

The Far East,   Volume VIII (1946), page 359

1. Taiwan Still Belongs to Japan

The earliest report on Taiwan’s legal status by the United States’ National Security Council was issued in 1949.

**Draft Report** by the National Security Council
**Date:** January 19, 1949
**Subject:** U.S. policy with respect to Formosa and the Pescadores

3. The present legal status of Formosa and the Pescadores is that they are a portion of the Japanese Empire awaiting final disposition by a treaty of peace. The U.S. position regarding the status of the islands is qualified by the Cairo Declaration by the Chiefs of State of the U.S., U.K. and China and the policy which the U.S. has followed since V-J Day of facilitating and recognizing Chinese *de facto* control over the islands.

**--** U.S. Dept. of State / Foreign relations of the United States, 1949.

The Far East: China, Volume IX (1949), page 271

1. The Korean War and Taiwan

After the outbreak of the Korean War on June 25, 1950, President Truman declared that the "neutralization of the Straits of Formosa" was in the best interest of the United States, and he sent the U.S. Navy's Seventh Fleet into the Taiwan Strait to prevent any conflict between the Republic of China and the Red China, effectively putting Taiwan under American protection.

It was known by U.S. government officials that if Taiwan was already recognized as Chinese national territory, there would be no legal basis for the President to authorize such an action by the Seventh Fleet.

[On August 25, 1950] the United States replied to the United Nations Security Council that

 "The action of the United States was expressly stated to be without prejudice to the future political settlement of the status of the island. The actual status of the island is that it is territory taken from Japan by the victory of the allied forces in the Pacific. Like other such territories, its legal status cannot be fixed until there is international action to determine its future. The Chinese Government was asked by the Allies to take the surrender of the Japanese forces on the Island. That is the reason the Chinese are there now."

-- U.S. Dept. of State, Czyzak Memorandum, February 3, 1961

1. Future Arrangements for Formosa

It is also quite notable that U.S. Dept. of State documents from as late as August 14, 1950, contained the following commentary and recommendation:

. . . in 1944 as a result of the work of a policy planning committee in the Department it was decided that Formosa should be handed over to the Chinese National Government immediately following upon the termination of hostilities. . . . I believe that the immediate administrative act affecting the turnover was a military order handing it over to Chinese administration after the surrender of Japan.

From the legal standpoint, of course, title could hardly pass prior to determination of the matter by peace treaty with Japan, the Cairo Declaration being merely a statement of intent.

It is more and more being considered desirable in the existing circumstances that there be taken some plebiscite of Formosan opinion respecting the future form of government and allegiance in Formosa, with the several following alternatives suggesting themselves:

1. Allegiance to Japan,
2. Allegiance to China (regardless of political complexion),
3. Immediate independence, or
4. A UN trusteeship for a stipulated period of years looking toward ultimate independence.

-- National Archives and Records Administration

Youtube video, Part 1

Taiwan’s Status: (Part 2) Exploring the Truth of Oct. 25, 1945

Background to WWII in the Pacific: The U.S. entered the Pacific War against Japan on Dec. 8, 1941. All military attacks against the four main Japanese islands and (Japanese) Taiwan were conducted by U.S. military forces, as confirmed in numerous published sources. The United States is the "conqueror" and hence will be the ***principal occupying power***.

In other words, under international law it is the USA which bears the responsibility for the military occupation (including “rebuilding,” “reconstruction,” etc.) of Taiwan.

In General Order No. 1, issued on Sept. 2, 1945, General Douglas MacArthur gave directions to Chiang Kai-shek of the Republic of China to accept the surrender of Japanese troops in Taiwan. Since there was no functioning Chinese navy or air force in 1945, Chiang’s troops agreed to be transported to Taiwan on U.S. ships and aircraft. Thus, the era of the ROC in Taiwan began in Oct. 1945 with the full assistance and tutelage of the United States.

Contrastingly, Chinese history books state that Chiang’s troops came to Taiwan on their own initiative, but that is simply a face-saving exaggeration. In fact, it is important to recognize that Chiang’s troops were exercising *delegated administrative authority* for the military occupation of Taiwan.

The following are an additional Five Items of Proof to say that the leading Allies did not recognize that October 25, 1945, was “Taiwan Retrocession Day.”

1. United Nations Commission Proposal

In preparation for the final drafting of the post-war peace treaty, the United States planned to encourage the members of the United Nations to thoroughly investigate Taiwan’s legal status and decide the best course for Taiwan’s future.

**Memorandum:** Secretary of State Acheson to Secretary of Defense Marshall
**Date:** Nov. 11, 1950
**Subject:** The Question of Formosa

The question of Formosa will shortly come before the Political Committee of the General Assembly.

. . . Under the procedure we envisage, a United Nations commission would spend the first year in studying the problem, in bringing out all relevant factors and in providing an opportunity for a full exchange of views among the governments concerned. The commission would give careful consideration to the respective Chinese claims to Formosa, to the well-being and wishes of the Formosans themselves, and to the valid interest of the international community in promoting peace and security in the western Pacific area.

Draft Resolution on the Problem of Formosa

*Noting* . . . that no formal act restoring sovereignty over these territories to China has yet occurred; . . .

-- U.S. Dept. of State / Foreign relations of the United States, 1950.

East Asia and the Pacific,   Volume VI (1950), page 554 - 5

7) Statement to the Far Eastern Commission

 In September and October 1950, the United States proposed in a brief statement to the members of the Far Eastern Commission general principles for a Peace Treaty with Japan.

 Later, in an aide memoire dated December 27, 1950, the United States expressed the views that

 . . . 2. 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 . . .

-- U.S. Dept. of State, Czyzak Memorandum, February 3, 1961

On February 11, 1945, at Yalta, Churchill, Roosevelt, and Stalin agreed that the USSR would enter the war against Japan on condition, among others, that the southern part of Sakhalin and all the islands adjacent to it "shall be returned to the Soviet Union" and that the Kurile Islands "shall be handed over the Soviet Union." 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.

-- U.S. Dept. of State, Czyzak Memorandum, February 3, 1961

8) General Douglas MacArthur’s Analysis

General Douglas MacArthur stated at a U.S. congressional hearing in May 1951, "legalistically Formosa is still a part of the Empire of Japan."

-- New York Times, May 5, 1951, at A7; *see also*

Y. Frank Chiang, *One-China Policy and Taiwan*, 28

Fordham International Law Journal 1, 16, n.72 (2004).

9)    British Policy Toward Formosa

Some six months before the ROC central government relocated to occupied Taiwan, the United States Ambassador in the U.K. endeavored to verify British views on the Taiwan situation.

**Memorandum:** U.S. Ambassador in the United Kingdom (Douglas) to the U.S. Secretary of State
**Date:** May 25, 1949, London
**Subject:** Problems of Taiwan

    SIR: I have the honor to report that very little attention has been given in British official and unofficial circles to the various problems of Taiwan, such as the status of the island itself and the status of any Chinese Government which may be set up there, especially in view of the fact that much of China's resources are reported to have been transferred to the island. There is also a report in London that Generalissimo Chiang Kai-shek and his two sons have left Shanghai for Taiwan but the British Foreign Office has not been able to confirm this. In view of the above facts the Embassy has been endeavoring to obtain some indication of British thinking in regard to Taiwan and the following are the results:

*Official -- Foreign Office*
    Mr. Dening, of the Foreign Office, stated that neither the British Cabinet nor officials of the Foreign Office have given much consideration to the problems of Taiwan and no Foreign Office policy has been established as yet. He stated that should a refugee Chinese government or a Chinese government in exile be set up in Taiwan, which is not yet legally Chinese territory, it is probable that the British Government would simply appoint a British Consulate in Tamsui as an office of the British Embassy in China. His own opinions were that any Chinese government established in Taiwan would be in a very ambiguous position and would present difficult problems to the governments of the world and especially to the United Nations . . .

 . . . on May 5, Deputy Chairman Bowles (Labor), made the following statement: "Formosa, I realize, is the seat of the present Nationalist Government of China. But it is not China. I think it was part of Japan . . . Formosa is a part of Japan, and is not really China, though the Chinese government may be there."   . . .

-- U.S. Dept. of State / Foreign relations of the United States, 1949.

The Far East: China Volume IX (1949), pages 341-343

10) The Status of the Chinese Nationalists in Formosa

Certain questions regarding sovereignty issues were debated in the U.K. Parliament in 1955. An important part of the discussion involved Formosa and the Pescadores.

**Oral Answer:** Joint Under-Secretary of State for Foreign Affairs (Mr. R. H. Turton)
**Date:** May 4, 1955
**Subject:** Far East (Formosa and the Pescadores)

The case of Formosa is different. The sovereignty was Japanese until 1952. The Japanese Treaty came into force, and at that time Formosa was being administered by the Chinese Nationalists, to whom it was entrusted in 1945, as a military occupation. In 1952 we did not recognise the Chinese Nationalists as representing the Chinese State. Therefore this military occupancy could not give them legal sovereignty nor, equally, could the Chinese People's Republic, which was not in occupation of Formosa, derive any rights from occupation of that territory.

[OFFICIAL REPORT, 4th February, 1955; Vol. 536, c. 159.] . . . . the fact is that Formosa is not under Chinese sovereignty. That does not mean that the Chinese Nationalists have no right to be there. Their presence springs from their military occupancy in which they were placed by the Allied Powers in 1945, pending future arrangements.

-- *HANSARD 1803 - 2005 / Commons Sitting, 04 May 1955 vol 540 cc1865-74*

SUMMARY for items 1 - 10:

United States Secretary of State John Foster Dulles told the Senate in December 1954, “[the] 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 [ROC] and Japan.”

 -- Dept. of State Bulletin, Dec. 1954, at 896; *see also* Y. Frank Chiang, *One-China Policy and Taiwan*, 28 Fordham International Law Journal 1, 36, n.164 (Dec. 2004); Lung-chu Chen and W.M. Reisman, *Who Owns Taiwan: A Search for International Title*, 81 Yale L.J. 599, 644 (1972).

CONCLUSION:

There was no “Taiwan Retrocession Day.”

Youtube video, Part 2

Taiwan’s Status: (Part 3) Exploring the Truth of Oct. 25, 1945

Advanced Analysis: In General Order No. 1, issued on Sept. 2, 1945, General Douglas MacArthur gave directions to Chiang Kai-shek of the Republic of China to accept the surrender of Japanese troops in Taiwan. The Generalissimo accepted these orders. This has created a "principal - agent relationship." The surrender ceremonies on October 25, 1945, marked the beginning of the military occupation.

Under international law, the occupier (aka “the occupying power” or more specifically “the principal occupying power”) is the **conqueror. I**n consideration of the historical record of military attacks against Taiwan, this will be the United States of America.

Although the surrender ceremonies in Taiwan on Oct. 25, 1945, were ostensibly conducted on behalf of the Allies, it must be recognized that the ensuing military occupation of Taiwan was conducted on behalf of the principal occupying power -- the United States of America.

(Note: Some seven years later, after the coming into force of the San Francisco Peace Treaty, the Allies stopped functioning as a group. However, the operations of the principal occupying power continued.)

Military Occupation

The fact that Chinese Nationalist forces came to Taiwan to conduct a military occupation is confirmed by many published sources.

11) Chiang Kai-shek was sent to Taiwan for a Military Occupation

Many nations have also voiced their reservations regarding the legal status of Taiwan. Sir Anthony Eden, the British Foreign Minister, stated on February 4th, 1955 as follows:

"In [the Fall of] 1945, the administration of Formosa was taken over from the Japanese by the Chinese forces at the direction of the Supreme Commander of the Allied Powers; but this was not a cession, nor did it in itself involve any change of sovereignty. The arrangement made with Chiang Kai-shek put him there on a basis of military occupation pending further arrangements and did not of themselves constitute the territory Chinese. Under the Peace Treaty of April, 1952, Japan formally renounced all right, title and claim to Formosa and the Pescadores; but again this did not operate as a transfer to Chinese sovereignty, whether to the People's Republic of China or to the Chinese Nationalist authorities. Formosa and the Pescadores are therefore, in the view of Her Majesty's Government, territory the de jure sovereignty over which is uncertain or undetermined."

-- **Historical and Legal Aspects of the International Status of Taiwan (Formosa)**

 III. Refutation against PRC and ROC,

6. Legal Aspects of ROC's Rule of Taiwan

by Ng, Yuzin Chiautong

 1972, World United Formosans for Independence (Tokyo)

12) Oct. 25, 1945 marked the beginning of the Military Occupation

A CRS Report for Congress contains the following succinct explanation:

. . . after Japan's defeat in 1945, Taiwan and the Pescadores were assigned to the Republic of China for purposes of post-war occupation. Taiwan was still under this occupation four years later, when the ROC government fled to Taiwan after the communist victory in the civil war on mainland China.

-- **Sino-Japanese Relations: Issues for U.S. Policy**

Congressional Research Service Report for Congress, p. 6

December 19, 2008, Washington, D.C.

13) Military Occupation of Taiwan by the Nationalist Chinese (ROC)

 A comprehensive article in *The* *Yale Law Journal* agreed that the Japanese surrender ceremonies only marked the beginning of the military occupation.

At the conclusion of World War II, the Supreme Commander of the Allied Command in the Pacific, General Douglas MacArthur, authorized the Nationalist Chinese authorities to accept the surrender of Formosa from the Japanese and to undertake temporarily military occupation of the island as a trustee on behalf of the Allied Powers (led by the United States). Chinese occupation proved unfortunate; maladministration, corruption, atrocities, and deprivations of human rights ensued.

-- **Who Owns Taiwan: A Search for International Title**

by Lung-chu Chen and W. M. Reisman,

*The Yale Law Journal*

Vol. 81, No. 4, p. 611 – 612, March 1972

14) Military Occupation following the Japanese Surrender

 In discussing cross-strait relations, an article in the *American Journal of International Law* concluded that the PRC was a legitimate government and Taiwan was under military occupation.

After occupying Taiwan in 1945 as a result of Japan's surrender, the Nationalists were defeated on the mainland in 1949, abandoning it to retreat to Taiwan. In that year the PRC was established.

-- **Resolving Cross-Strait Relations Between China and Taiwan**

by Jonathan I. Charney and J. R. V. Prescott

*American Journal of International Law* July 2000

15) Taiwan is Occupied Territory

A 1949 Central Intelligence Agency (CIA) report on the military occupation of Taiwan was originally classified as secret.

"From the legal standpoint, Taiwan is not part of the Republic of China," a declassified CIA report on Taiwan written in March 1949 says. "Pending a Japanese peace treaty, the island remains occupied territory in which the U.S. has proprietary interests," the report continues.

The report says that communist control of the island would have "seriously unfavorable strategic implications" for the US.  It says that the native population of Taiwan would welcome release from Chinese control, but was not strong enough to stage a successful revolt.

When first written in 1949, the report was classified as "secret."

"There is a strong sentiment in Taiwan favoring autonomy, but the situation is complicated by the conflicting interests of the native Taiwanese and Chinese Nationalist element," the report says. "The Taiwanese bitterly resent the performance of the Nationalist administration on Taiwan since VJ [Victory over Japan]-day," it adds.

According to the CIA, the Chinese rulers had exploited the native population "to the limit" without regard for their welfare or the preservation of the island’s resources.

-- Taipei Times, June 9, 2013, page 1

SUMMARY CONSIDERATIONS

1. Three Central Questions

In relation to the military occupation of a particular area, we are faced with three central questions, (all of which must be answered based on the customary laws of warfare):

1. When did the military occupation begin?

For Taiwan, the answer is Oct. 25, 1945.

1. Who is "the occupying power"?

For Taiwan, the answer is the United States of America. The military occupation will be conducted by a U.S. federal agency – the United States Military Government (USMG). A definition is provided as follows:

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

Importantly, however, the United States has delegated the military occupation of Taiwan to the military forces under Chiang Kai-shek. This is a principal – agent relationship.

1. When did the military occupation end?

To answer this question requires an in-depth knowledge of military occupation issues. For now, let us say that the military occupation of Taiwan did not end with the coming into force of the San Francisco Peace Treaty (SFPT) on April 28, 1952. Further details will be given in later videos.

1. The ROC as a Government in Exile

When the ROC fled to occupied Taiwan in December 1949, it was moving ***outside*** of China’s national territory, and immediately became a government in exile.

The actions of governments in exile may be overviewed as follows.

**Actions of governments in exile**

International law recognizes that governments in exile may undertake many types of actions in the conduct of their daily affairs. These actions include:

* becoming a party to a bilateral or international treaty
* amending or revising its own constitution
* retaining (or "newly obtaining") diplomatic recognition by sovereign states
* issuing identity cards
* allowing the formation of new political parties
* instituting democratic reforms
* holding elections
* allowing for direct (or more broadly-based) elections of its government officers, etc.

However, none of these actions can serve to

1. legitimatize a government in exile to become the internationally recognized legal government of its current locality.
2. legitimatize a government in exile’s constitution to become the true “organic law” 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, for the Republic of China to regain international legitimacy, and to regain the status of a “state” recognized by the international community, it must move back to Nanjing, China, and resume governance there.

Youtube video, Part 3

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