

## Taiwan's Legal Status: An Overview of the San Francisco Peace Treaty

## 台灣的法律地位：舊金山和平條約概觀

Article VI of the U.S. Constitution provides that: 美國憲法第六條規定：

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land . . . . .

本憲法和根據本憲法所制定的合眾國法律，以及根據合眾國的權力已締結或將締結的一切條約，皆為全國的最高法律…..

### SFPT: Important Articles and Annotations

### 舊金山和約：重要條文和注釋

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| **Article 2**  **第二條** |
| 1. Japan recognizing the independence of Korea, renounces all right, title and claim to Korea, including the islands of Quelpart, Port Hamilton and Dagelet.  日本承認朝鮮的獨立，並放棄對朝鮮包括濟州島，巨文島與鬱陵島的一切權利、所有權與請求權。 2. Japan renounces all right, title and claim to Formosa and the Pescadores.  日本政府放棄對台灣、澎湖的一切權利、所有權與請求權。 3. Japan renounces all right, title and claim to the Kurile Islands, and to that portion of Sakhalin and the islands adjacent to it over which Japan acquired sovereignty as a consequence of the Treaty of Portsmouth of 5 September 1905.  日本放棄對千島群島，以及1905年9月5日獲得之庫頁島部分，和鄰近各島嶼的一切權利、所有權與請求權。 4. Japan renounces all right, title and claim in connection with the League of Nations Mandate System, and accepts the action of the United Nations Security Council of 2 April 1947, extending the trusteeship system to the Pacific Islands formerly under mandate to Japan.  日本放棄國際聯盟委任統治相關的一切權利、所有權與請求權，同時接受聯合國安全理事會於1947年4月2日所採取有關日本前述太平洋島嶼委任統治地之信託統治安排。 5. Japan renounces all claim to any right or title to or interest in connection with any part of the Antarctic area, whether deriving from the activities of Japanese nationals or otherwise.  日本放棄因為日本國家或其國民在南極地區活動所衍生之一切權利、所有權或利益之請求權。 6. Japan renounces all right, title and claim to the Spratly Islands and to the Paracel Islands.   日本放棄對南沙群島與西沙群島的一切權利、所有權與請求權。 |

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| **ANNOTATIONS to Article 2**  **第二條注解** |
| In this Article, Japan renounced all rights over Taiwan, but no "receiving country" was designated. Unquestionably, Taiwan was not given to "China." However, the question arises: "How is this Article to be interpreted?"  在本條款中，日本放棄對台灣的一切權利，但是沒有指定“收受國”。毫無疑問，台灣並沒有給予“中國”，然而，問題來了：“本條文該如何解讀？”  Some scholars go so far as to claim that according to the wording of this Article, Taiwan has become terra derelicta or terra nullius, available for any country to annex. However, such an interpretation totally ignores the “laws of war” of the post-Napoleonic period.  一些學者甚至認為，依據本條文的措辭，台灣已成為“遺棄之地”或“無主之地”，可供任何國家併吞，然而，這樣的解讀完全忽略了後拿破崙時代的“戰爭法”。  Notably, the U.S. Dept. of State made a clear statement in the 1961 Czyzak Memorandum and the 1971 Starr Memorandum, quoting from the Senate Committee on Foreign Relations Report on the Treaty, dated Feb. 14, 1952:  值得注意的是，在1961年的齊紮克備忘錄和1971年的斯塔備忘錄裏，美國國務院引用參議院外交關係委員會1952年2月14日的報告，明確指出：  It is important to remember that Article 2 is a renunciatory article and makes no provision for the power or powers which are to succeed Japan in the possession of and sovereignty over the ceded territory.  “很重要的是要記住，第2條是一個放棄的條文，對於台灣這個割讓區，和約中並未作出任何有關哪個權力個體將要繼任日本的所有權和領土主權的規定。”  While it is true that the treaty has made no “final disposition” of Taiwan, it has made a “temporary disposition.” In recognition of the United States' role as the conqueror of Taiwan, Article 4(b) has confirmed that Taiwan is under the jurisdiction of the military arm of the U.S. government. This is USMG.  雖然說，該和約的確沒有做出台灣的“最終處置”，其實它做了“暫時處置”。因認清美國的角色是台灣的征服者，第4條(b)已經確認台灣是在美國政府軍方體系的管轄之下。這就是USMG (美國軍事政府)。  For reference, also see definition of cede. 請參見「割讓」的定義。 |

**cede:** (1) to surrender possession of, especially by treaty, (2) to transfer control of or sovereignty over specific property or territory, especially by treaty, (3) to surrender or give up something such as land, rights, or power, (4) [noun] cession

割讓： (1)放棄所有權，特別是以條約的方式；(2)對於特定的領土或其他財產，轉讓控制權或主權，特別是以條約的方式；(3)放棄某些利益，例如土地，權利或權力；(4) [名詞] 割讓；

**Note:** According to the dictionary definition of cede as given above, there is no strict requirement that a "receiving country" be designated in order to complete the act of ceding, or making a cession.

附注：根據以上字典對於[割讓]一詞的定義，並沒有嚴格的規定要指定一個“收受國＂來完成割讓之行為，或做出割讓。

When territory is ceded without the specification of a "receiving country" it may simply be called a limbo cession.

當領土被割讓，但沒有指定“接收國”時，那就僅稱之為“懸空割讓”。

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| **Article 3**  **第三條** |
| Japan will concur in any proposal of the United States to the United Nations to place under its trusteeship system, with the United States as the sole administering authority, Nansei Shoto south of 29 deg. north latitude (including the Ryukyu Islands and the Daito Islands), Nanpo Shoto south of Sofu Gan (including the Bonin Islands, Rosario Island and the Volcano Islands) and Parece Vela and Marcus Island. Pending the making of such a proposal and affirmative action thereon, the United States will have the right to exercise all and any powers of administration, legislation and jurisdiction over the territory and inhabitants of these islands, including their territorial waters.  日本同意美國對北緯29度以南之西南群島（含琉球群島與大東群島），孀婦岩南方之南方各島（含小笠原群島、西之與火山群島），和衝之鳥島以及南鳥島等地送交聯合國之信託統治制度提議。在此提案獲得通過之前，美國對上述地區，所屬居民與所屬海域得擁有實際行政、立法、司法之權利。 |
| **ANNOTATIONS to Article 3**  **第三條注解** | |
| According to Article 4(b), the Article 3 territory which we may collectively call the "Ryukyu island group" and the Article 2(b) territory of "Formosa and the Pescadores" (aka "Taiwan") are both under the jurisdiction of the United States Military Government (USMG).  根據第4條(b)的規定，第3條中我們可統稱為“琉球群島”之領土以及第2條(b)的“福爾摩沙及澎湖”（亦稱為“台灣”）之領土，兩者都置於美國軍事政府（USMG）管轄之下。  Article 3 territory is to be administered as a United Nations trusteeship under the jurisdiction of USMG. However, under the terms of the treaty, with no formal trusteeship agreement in place by the UN, Taiwan is simply a quasi-trusteeship under USMG.  第3條領土是作為美國軍事政府管轄下的「聯合國託管區」來管理。然而，根據和約條款內容，台灣因為沒有正式的聯合國託管協議在案，就僅是一個美國軍事政府下的準託管區。  "Military government continues until legally supplanted."  “軍事政府一直持續到被合法的取代為止。”(意思是要被 “承認的民政府” 取代。)  After negotiations with Japan, the end of USMG in the Ryukyu island group” was announced by President Nixon to be May 15, 1972 – some twenty years after the coming into force of the SFPT itself.  與日本談判後，尼克松總統於1972年5月15日，即舊金山和約生效二十年後，宣佈結束在琉球群島的美國軍事政府（USMG）。  Contrastingly, from 1952 to date, there has been no announcement of the end of USMG jurisdiction over Taiwan.  與此相反地，從1952至今，一直沒有宣佈結束美國軍事政府對台灣的管轄。 | |

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| **Article 4**  **第四條** |
| 1. Subject to the provisions of paragraph (b) of this Article, the disposition of property of Japan and of its nationals in the areas referred to in Article 2, and their claims, including debts, against the authorities presently administering such areas and the residents (including juridical persons) thereof, and the disposition in Japan of property of such authorities and residents, and of claims, including debts, of such authorities and residents against Japan and its nationals, shall be the subject of special arrangements between Japan and such authorities. The property of any of the Allied Powers or its nationals in the areas referred to in Article 2 shall, insofar as this has not already been done, be returned by the administering authority in the condition in which it now exists. (The term nationals whenever used in the present Treaty includes juridical persons.)  根據本條(b)款之規定，在第2條所列舉區域內，對目前正管理該地區之當局與其居民（包括法人在內），就日本與日本國民之財產、請求權與債務之處分，以及該當局對日本與日本國民，就該當局與其居民在日本之財產與包含債務在內之請求權之處分，應該依據日本與該當局之特別協議為之。第2條所列舉區域內之聯盟國與其國民財產且目前尚未歸還者，應由管理當局依現狀歸還（前項所稱之國民，在本和約中皆包括法人）。 2. Japan recognizes the validity of dispositions of property of Japan and Japanese nationals made by or pursuant to directives of the United States Military Government in any of the areas referred to in Articles 2 and 3.  日本承認前述第2條與第3條裡，美國軍事政府對日本與日本國民財產處分的有效性。 3. Japanese owned submarine cables connection Japan with territory removed from Japanese control pursuant to the present Treaty shall be equally divided, Japan retaining the Japanese terminal and adjoining half of the cable, and the detached territory the remainder of the cable and connecting terminal facilities.   依據本和約，日本所掌握連結至日本之海底電纜將予以等分。日本擁有者為日本端之設備與該電纜之一半，以及分離領域所餘電纜和其端點設備。 |

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| **ANNOTATIONS to Article 4**  **第四條注解** |
| Military government is the form of administration by which an occupying power exercises governmental authority over occupied territory. In other words, military government is the government of occupied territory, and therefore it can be quickly seen that the Article 2(b) territory of Taiwan is occupied territory.  「軍事政府」是佔領軍對被佔領地區行使政府權力的一種管理形式。換言之，「軍事政府」是被佔領地區的政府，因此，很快可以看出，第2條(b)中的台灣是被佔領地區。  According to international law, Oct. 25, 1945 is the beginning of the military occupation of Taiwan, and certainly not "Taiwan Retrocession Day." A firm tenet of international law states that "Military occupation does not transfer sovereignty."  根據國際法，1945年10月25日是台灣軍事佔領的開始，而肯定不是“台灣光復節”。國際法的一個埾固的信條 是：“軍事佔領不移轉主權。”  Due to an unfamiliarity with the laws of war, many researchers who read the SFPT completely fail to recognize an important point: After war, for territory separated from the "mother country" via the specifications of a peace treaty, the military government of the (principal) occupying power **does not end** with the coming into force of the peace treaty, but continues until legally supplanted (by a recognized civil government).  許多閱讀舊金山和約的研究員由於不熟悉戰爭法，完全無法認知舊金山和約的一個重點，亦即戰後，根據和平條約規定從「母國」脫離的地區，其（主要）佔領國之軍事政府並不會因為和平條約生效而結束，而一直持續到被合法取代為止（即被 “承認的民事政府” 取代。）  The territories as specified in Articles 2 and 3 of the treaty have been separated from the "motherland" of Japan, therefore the military governments exercising jurisdiction over these areas do not end with the coming into force of the peace treaty. Most civilian scholars, being unfamiliar with the subject of “military jurisdiction under international law,” have little understanding of such a concept. However such a “legal framework” has been verified by numerous rulings of the U.S. Supreme Court, and can be easily confirmed by examination of the precedent established in dealing with the territories acquired by the USA in the Mexican - American War and the Spanish - American War.  第2條和第3條中所規範的領土已經與日本“母國”分離，因此，在這些地區行使管轄權的軍事政府並不因和平條約的生效而結束。大部分平民學者因不熟悉“國際法中的軍事管轄”這主題，而對這樣的概念理解甚少。然而，這樣的一個“法律框架”已經由美國最高法院的無數次裁決所證實，也很容易在在檢視歷史上的先例中得到確認。此先例乃美國於美國-墨西哥戰爭以及美國-西班牙戰爭後處理所取得領土上所建立。  For a detailed chart which explains this principle, along with authoritative commentary, please see [Areas Conquered by U.S. military forces and therefore under USMG jurisdiction, with later "new disposition" by peace treaty](http://www.twclarify.com/taiwan/pages/milchart/index.html).  茲提供一個可以說明這個原則的詳細圖表附上權威性注釋。請參見「由美國軍方所征服，並因此置於USMG(美國軍政府)管轄下，再由後續的和平條約『做新部署』 之領土」。  Article 4(b) should be read in conjunction with Article 23(a).  第4條(b)應與第23條(a)一併閱讀。  Article 23(a) confirms that the United States of America in the principal occupying power of all territories under the geographic scope of the treaty. In consideration of this along with the specifications of Article 4(b), it is clear that the United States Military Government (USMG) has jurisdiction over all the territories in Articles 2 and 3.  第23條(a)確認美國是和約中地理範圍內所有地區的主要軍事佔領國，鑒於此條款以及第4條(b)規定，美國軍事政府（USMG）對第2條和第3條的所有領土具有管轄權是很清楚的。  For reference, also see definition of property.  請同時參見「財產」之定義以為參考。  The question may be asked: What does USMG's jurisdiction include? To answer this question, we can refer to the United States' administration of the Ryukyu island group beginning in 1945, and thereby gain a full understanding. Of course, one important aspect of this jurisdiction was that the U.S. military authorities issued "Certificates of Identity" as travel documents for the native people of the Ryukyu islands.  可能有人會問：「美國軍事政府（USMG）的管轄權包括哪些方面？」為了回答這個問題，我們可以參考美國自1945年開始對琉球群島的管轄，並由此來得到一個全面的理解。當然，此管轄權的一個重要面向是，美國軍事當局為琉球群島的當地居民發行了身份證明書作為「旅行証明書」。  Therefore it is fully reasonable under the terms of the SFPT to demand that the United States military authorities issue travel documents (aka “passports”) for the native people of Taiwan.  因此，根據舊金山和約的條款內容，要求美國軍事當局為台灣當地居民發行「旅行証明書」（亦稱“護照”）是完全合理的。  Contrastingly, there is no authorization in the Taiwan Relations Act, the Three Joint USA-PRC Communiques, any Executive Orders issued by the U.S. Commander in Chief, or the SFPT itself for an entity calling itself the “Republic of China” to issue passports to native Taiwanese people.  與之相反地，在台灣關係法、美中三個聯合公報、任何由美國總司令發布的行政命令中，或者舊金山和約本身，都沒有授權給予一個自稱“中華民國”的實體來發行護照給台灣當地居民。 |

**property:** (1) something, as land and assets, legally possessed, (2) a piece of real estate, (3) something tangible or intangible to which its owner has legal title, (4) the right of ownership; title.

財產 ：(1) 合法擁有之東西， 如土地和資產 , (2) 一件房地產, (3) 擁有者持有合法產權的一些有形或無形的東西 , (4) 擁有權，即所有權。

**Note:** When speaking of territorial cession(s) between states, land area is certainly considered to be "property."   
附註：當涉及國與國之間的領土割讓時，土地區域當然是被認為是“財產”。

In other words, Louisiana was originally the property of France, but was ceded to the USA in 1803. Florida was originally the property of Spain, but was ceded to the USA in 1821. Other examples are quite numerous, including :換言之，路易斯安那領土原本是法國的財產，但是在1803年割讓給美國。佛羅里達領土原本是西班牙的財產，但是在1821年割讓給美國；還有其他很多的例子，包括：

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| **Name of Cession**  **割讓領土名稱** | **Date**  **割讓日期** | **Originally the property of**  **財產原歸屬國** |
| California 加利福尼亞 | 1848年 | Mexico 墨西哥 |
| Gadsden Purchase 加茲登購地 | 1853年 | Mexico 墨西哥 |
| Alaska 阿拉斯加 | 1867年 | Russia 俄羅斯 |
| Guam 關島 | 1899年 | Spain 西班牙 |
| Puerto Rico 波多黎各 | 1899年 | Spain 西班牙 |
| Virgin Islands 維京群島 | 1917年 | Denmark 丹麥 |

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| **Article 6**  **第六條** |
| 1. All occupation forces of the Allied Powers shall be withdrawn from Japan as soon as possible after the coming into force of the present Treaty, and in any case not later than 90 days thereafter. Nothing in this provision shall, however, prevent the stationing or retention of foreign armed forces in Japanese territory under or in consequence of any bilateral or multilateral agreements which have been or may be made between one or more of the Allied Powers, on the one hand, and Japan on the other.  自本和約生效之後，所有聯盟國佔領軍應儘速自日本撤出，此項撤軍不得晚於本和約生效後90日。若日本與聯盟國締結有關外國軍隊駐紮或保有於日本領土之雙邊或多邊協定者，不受本條規定所限。 2. The provisions of Article 9 of the Potsdam Proclamation of 26 July 1945, dealing with the return of Japanese military forces to their homes, to the extent not already completed, will be carried out.  依據1945年7月26日波次坦宣言第9條有關日本軍隊撤退回國之條款，若尚未完成者，得持續執行。 3. All Japanese property for which compensation has not already been paid, which was supplied for the use of the occupation forces and which remains in the possession of those forces at the time of the coming into force of the present Treaty, shall be returned to the Japanese Government within the same 90 days unless other arrangements are made by mutual agreement.   所有被佔領軍所征用但尚未獲得補償之日本財產，以及本和約生效時佔領軍所占有之日本財產，非經其他雙邊協定之安排，應於90日內歸還日本政府。 |

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| **ANNOTATIONS to Article 6**  **第六條注解** |
| In order to deny that Taiwan is under military occupation, many people make reference to Article 6(a) of the treaty.  為了否認台灣置於軍事佔領下，很多人會參考和約第6條(a)之內容。  However, with the coming into force of the SFPT on April 28, 1952, Taiwan immediately became separated from Japan. Hence, Article 6(a) has no relationship to Taiwan territory whatsoever. 然而，隨著1952年4月28日，舊金山和約的生效，台灣立即從日本分離出來，因此第6條(a)和台灣沒有任何關係。  Additional supporting analysis for this interpretation may be found by researching the historical record. Notably, with the end of USMG jurisdiction in California, Puerto Rico, Philippines, Guam, Cuba, the Ryukyus islands, etc. each has become either (a) a sovereign nation, or (b) "part" of another sovereign nation. Significantly, each area has a fully functioning and fully recognized "civil government," which of course has **supplanted**USMG jurisdiction, and thus ended the military occupation.  對此解讀有更多的佐證分析可以從歷史記錄中研究出來。特別是，隨著美國軍事政府（USMG）結束對加利福尼亞 、波多黎各、菲律賓、關島、古巴、琉球群島等的管轄權之後 ，各個都成為(a)主權獨立國家，或者 (b) 另一主權獨立國家的一部分。很顯然，每一個地區，都有一個充分發揮作用以及完全被承認的“民事政府”。當然，此民事政府也取代了美國軍事政府的管轄，因此結束了軍事佔領。  Taiwan is clearly the exception, and is often described as having an “undetermined political status.” Indeed, since the end of the WWII, it has been the official policy of the United States government that the status of Taiwan is "an unsettled question . . . . " In light of these facts, the only possible conclusion is that in the present day, under the Law of Nations, Taiwan remains as occupied territory after peace treaty cession.  台灣很顯然是一個例外，經常被描述為“懸而未決的政治地位”。的確，自第二次世界大戰結束後，美國政府的官方政策一直是把台灣的地位視為「未解決的問題…」。鑒於這些事實，唯一可能的結論是，時至今日，根據國際法，台灣在和平條約之割讓後，仍維持為被佔領的領土。 |

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| **Article 21**  **第二十一條** |
| Notwithstanding the provisions of Article 25 of the present Treaty, China shall be entitled to the benefits of Articles 10 and 14(a)2; and Korea to the benefits of Articles 2, 4, 9 and 12 of the present Treaty.  中國與朝鮮不受本和約第25條規定之所限，中國應享有本和約第10條與第14條之權益，朝鮮則享有本和約第2條、第4條、第9條與第12條之權益。 |
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| **ANNOTATIONS to Article 21**  **第二十一條注解** | |
| The Republic of China was not a signatory to the SFPT, and therefore cannot claim any rights, benefits, interest, etc. from the treaty (unless specifically stated therein).  中華民國不是舊金山和約的簽約國，因此，不能從條約中主張任何權利、好處、利益，等等（除非在其中有特別規定）。  Under the terms of Article 2(b) it is clear that Japan has renounced all rights over Taiwan, but no "receiving country" was specified. Article 21 specifies the benefits that China is to receive from the treaty, which are primarily in regard to the geographic delineation of certain territory in mainland China, and war reparations. Significantly, Article 21 makes no mention of Taiwan.  根據第2條(b)，很清楚地，日本宣佈放棄所有對台灣的權利，但未指定「收受國」。而第21條則指定中國可以從條約中收受的好處。那主要是關於在中國大陸的某些領土上的地理劃分以及戰爭賠償。很顯然地，條約第21條沒有提到台灣。  Accordingly, it is important to read Articles 2(b) and 21 together, in order to understand the full import of the treaty's specifications, and to clearly understand that Taiwan was not awarded to China (either the PRC or the ROC).  因此，為了理解和約條款的全部含義，把條約第2條（b）及第21條一起讀是很重要的，也才能清楚瞭解台灣並沒有授予中國（無論是中華人民共和國還是中華民國）。  It is also important to recognize that as non-signatories to the SFPT, neither the ROC nor the PRC are included in the meaning of the term "Allied Powers." Such a determination arises directly from SFPT Article 25.  同樣重要的是要認清中華民國和中華人民共和國皆非SFPT之簽約國，皆未被包括在「同盟國」一詞的涵義中。這個決定在本合約之第25條就直接指出了。 | |

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| **Article 23**  **第二十三條** |
| 1. The present Treaty shall be ratified by the States which sign it, including Japan, and will come into force for all the States which have then ratified it, when instruments of ratification have been deposited by Japan and by a majority, including the United States of America as the principal occupying Power, of the following States, namely Australia, Canada, Ceylon, France, Indonesia, the Kingdom of the Netherlands, New Zealand, Pakistan, the Republic of the Philippines, the United Kingdom of Great Britain and Northern Ireland, and the United States of America. The present Treaty shall come into force of each State which subsequently ratifies it, on the date of the deposit of its instrument of ratification.  本和約之簽署國，包括日本在內，應經國會批准。本和約自日本之批准文書，以及包含做為主要軍事佔領權國的美利堅合眾國之下述多數批准國送達之後，將對所有批准國家生效，包括澳洲，加拿大，錫蘭，法國，印尼，荷蘭王國，紐西蘭，巴基斯坦，菲律賓共和國，大不列顛王國與北愛爾蘭，以及美利堅合眾國。本條約應自個別國家之批准書送達後，對該批准國家個別生效。 2. If the Treaty has not come into force within nine months after the date of the deposit of Japan's ratification, any State which has ratified it may bring the Treaty into force between itself and Japan by a notification to that effect given to the Governments of Japan and the United States of America not later than three years after the date of deposit of Japan's ratification.   若本和約在日本批准文書送達後九個月內未生效，在任一批准國之正式通告日本政府與美國政府後，本和約在日本與該批准國間逕自生效。但此正式通告應於日本之批准書送達後三年內為之。 |

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| **ANNOTATIONS to Article 23**  **第二十三條注解** |
| The territories as specified in Articles 2 and 3 of the treaty have been separated from the "motherland" of Japan, therefore as explained in the ANNOTATIONS to Article 4(b) above, the military governments exercising jurisdiction over these areas do not end with the coming into force of the peace treaty.  在和約的第2條和第3條中所提的領土已經從“母國”日本中分離，因此，正如上述第4條(b)中注解中所解釋的一樣，在在這些地區行使管轄權的軍事政府並沒有因為和約的生效而終止。  More detailed explanations regarding this principle can be found in specific U.S. Supreme Court cases, beginning with Cross v. Harrison, 57 U.S. 164 (1853), and with reaffirmation in Dooley v. U.S., 182 U.S. 222 (1901), Santaigo v. Nogueras, 214 U.S. 260 (1909) , etc.  關於這個原則的更多詳細解釋可以參見特定的美國最高法院案例，從Cross v. Harrison, 57 U.S. 164 (1853) 開始，在Dooley v. U.S., 182 U.S. 222 (1901) 及Santaigo v. Nogueras, 214 U.S. 260 (1909) 等等案例中得到確認 。  The above concepts regarding "conquest," "military government," "military occupation," etc. form an important part of the laws of occupation, which are included in the internationally recognized laws of war.  上述關於“征服”，“軍事政府”，“軍事佔領”，等等的概念，構成佔領法中的重要部分，這些都包含在在國際上承認之戰爭法中。  Anyone familiar with these legal concepts will recognize that the SFPT must designate "the (principal) occupying power" in order to ascertain which country bears the final responsibility for the military occupation of the areas specified in Articles 2 and 3.  任何熟悉這些法律概念的人都會了解舊金山和約必須指定“（主要）軍事佔領權國”，以便確定哪個國家對在第2條和第3條中指明的領土負有軍事佔領的最終責任。  Moreover, this Article’s designation of the United States of America as the “principal occupying power” indicates that all States which ratify the treaty are agreeing to the United States fulfilling this role.  並且，本條款指定美國為“主要佔領國 ”，這表明所有批准本和約的國家都同意由美國來履行這個角色。  The term "the principal occupying power" signifies that the military troops of other countries may be directed to undertake the military occupation of particular areas, thus forming a "principal - agent relationship." This is exactly what happened in the situation of Taiwan.  “主要佔領國”這個術語表示其它國家的軍事部隊可以被指派去承擔特定地區之軍事佔領，因此形成了“主要 -- 代理關係”。這正是發生在台灣的情況。  We must not forget that with the coming into force of the SFPT on April 28, 1952, the Allies have, for all effective purposes, disbanded. However, the jurisdiction of USMG continues. Such an interpretation flows naturally from Article 23(a) read in conjunction with Article 4(b).  我們不可以忘記，隨著舊金山和約於1952年4月28日生效 ， 盟軍為所有有效的目的，已經解散了，然而，美國軍事政府（USMG）的管轄權仍然繼續。 從條款23(a)及條款4(b)一併閱讀可以得到如此的理解。  At the most basic level, Taiwan is conquered territory of the United States of America, and in General Order No. 1 of Sept. 2, 1945, (Supreme Commander) General Douglas MacArthur directed the military troops of Chiang Kai-shek to come to Taiwan to handle the surrender ceremonies and subsequent administration.   從根本上講，台灣是美國征服的領土，在1945年9月2日的一般命令第一號中，（最高統帥）麥克阿瑟將軍指派蔣介石的軍事部隊前往台灣處理投降儀式，以及其後的行政管理。  Under international law, this “administration” of Taiwan beginning Oct. 25, 1945, can only be viewed as military occupation. A comparison may be made by saying that in the military occupation of Taiwan, the USA is the "Chairman of the Board," and the ROC (originally led by Chiang Kai-shek) is the "Executive Assistant."  根據國際法，這個從1945年10月25日開始的台灣“行政管理”，僅能被視為軍事佔領。可以用一個比喻來說，在台灣的軍事佔領中，美國是“董事長”，而中華民國（原來由蔣介石領導）是“行政助理”。 |

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| **Article 25**  **第二十五條** |
| For the purposes of the present Treaty the Allied Powers shall be the States at war with Japan, or any State which previously formed a part of the territory of a State named in Article 23, provided that in each case the State concerned has signed and ratified the Treaty. Subject to the provisions of Article 21, the present Treaty shall not confer any rights, titles or benefits on any State which is not an Allied Power as herein defined; nor shall any right, title or interest of Japan be deemed to be diminished or prejudiced by any provision of the Treaty in favour of a State which is not an Allied Power as so defined.  本和約所謂之聯盟國，謂與日本進行戰爭之國家，或依據第23條所列舉先前為該國一部分領土的國家，而此國家已經簽署並批准本和約者。依據第21條本和約不授與任何權利、所有權或利益予非前述聯盟國之任何國家。日本之任何權利、所有權或利益亦不得為非屬前述之聯盟國，而引用本和約之規定以致於有所減少、損害。 |
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| **ANNOTATIONS to Article 25**  **第二十五條注解** | |
| As non-signatories to the SFPT, neither the ROC nor the PRC are included in the meaning of the term "Allied Powers."  由於中華民國和中華人民共和國都不是舊金山和約的簽約國，因此，他們都不被包括在本和約所稱之“同盟國”中。  Some compelling reasons why the ROC was not invited to sign this treaty may be found by examining the historical record. One notable point is to recognize that Taiwan was sovereign Japanese territory before the coming into force of the SFPT on April 28, 1952. Hence, when the Republic of China moved its central government to occupied Taiwan in early December 1949, it immediately became a government in exile.  為什麼中華民國沒有被邀請簽署和約，可以從歷史記錄的檢視中找到令人信服的理由。一個值得注意的重點是要認清在1952年4月28日舊金山和約生效之前，台灣仍是日本的主權領土。因此，當中華民國在1949年12月初將其中央政府遷移到佔領中的台灣時，其實際上已經成為一個流亡政府。  In the early 1950s, the U.K., in particular, having already broken diplomatic relations with the ROC in Jan. 1950, could not agree that the ROC was still fulfilling the role of “the sole legitimate government of China.” As a leading member of the Allies, the U.K. strongly objected to the ROC being invited to participate in the San Francisco Peace Conference in Sept. 1951. Although the ROC officials spent much money lobbying with the officials of the major world nations to obtain an invitation to the Conference, in the end they were unsuccessful.  在1950年代初期，特別是英國，已經在1950年元月與中華民國中斷外交關係，不願同意中華民國仍履行著“中國唯一的合法政府”之角色與。作為同盟國的一個領導成員國，英國強烈反對邀請中華民國參加1951年9月的舊金山和平會議。儘管中華民國官員耗費大量金錢遊說世界主要國家之官員以求獲得參加會議的邀請，但最終還是失敗了。 | |

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