|  |
| --- |
| **Areas Conquered by US military forces and therefore under USMG jurisdiction, with later "new disposition" by peace treaty** |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Area | Treaty | Came into force | End of USMG | USMG supplanted by |
| California | Treaty of Guadalupe Hidalgo, Art. 5 | July 4, 1848 | Dec. 20, 1849 | civil government for California (USA) |
| Puerto Rico | Treaty of Paris, Art. 2 | April 11, 1899 | May 1, 1900 | civil government for Puerto Rico (USA) |
| Philippines | Treaty of Paris, Art. 3 | April 11, 1899 | July 4, 1901 | civil government for Philippines (USA) |
| Guam | Treaty of Paris, Art. 2 | April 11, 1899 | July 1, 1950 | civil government for Guam (USA) |
| Cuba | Treaty of Paris, Art. 1 | April 11, 1899 | May 20, 1902 | civil government for Cuba (Republic of Cuba) |
| Ryukyus | SFPT, Art. 3 | April 28, 1952 | May 15, 1972 | civil government for Ryukyus (Japan) |
| Taiwan | SFPT, Art. 2b | April 28, 1952 | -- ? -- | ? |

|  |
| --- |
| Birkhimer, p. 26  ***Military government continues till legally supplanted*** |

|  |
| --- |
| Notes: (1) With the end of USMG jurisdiction in California, Puerto Rico, Philippines, Guam, Cuba, and the Ryukyus, 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. Taiwan is clearly the exception.  *Since the end of the Second World War, it has been the official policy of the United States government that the status of Taiwan is "an unsettled question . . . . "*  (2) Beginning with the [Truman Statement](http://www.taiwanadvice.com/june_27.htm) of June 27, 1950, (or arguably earlier) the US position on the Taiwan status question has been "undetermined." As clarified by the Truman Statement and the SFPT, the United States has never recognized the forcible incorporation of Taiwan into China.   (3) In the post-war SFPT of 1952, Taiwan was not awarded to China (either the ROC or the PRC).   (4) The Mutual Defense Treaty of 1955 did not change the US position on the Taiwan sovereignty question either. In conjunction with the ratification of the MDT, a report issued Feb. 8, 1955 by the US Senate's Committee on Foreign Relations specified: "It is the view of the committee that the coming into force of the present treaty will not modify or affect the existing legal status of Formosa and the Pescadores."   (5) The Congressional Research Service (CRS) Report for Congress entitled China/Taiwan: Evolution of the "One China" Policy was released on July 9, 2007. In the Summary at the beginning of that report the following points were made --  (1) The United States did not explicitly state the sovereign status of Taiwan in the three US-PRC Joint Communiques of 1972, 1979, and 1982.  (2) The United States "acknowledged" the "One China" position of both sides of the Taiwan Strait.  (3) US policy has not recognized the PRC's sovereignty over Taiwan;  (4) US policy has not recognized Taiwan as a sovereign country; and  (5) US policy has considered Taiwan's status as undetermined.  (6) Moreover, on Aug. 30, 2007 Dennis Wilder, National Security Council (NSC) Senior Director for Asian Affairs said: "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." |

|  |
| --- |
| Reference: **Military Government and Martial Law**, by William E. Birkhimer, Kansas City, Missouri, Franklin Hudson Publishing Co., third edition, revised (1914). |

|  |
| --- |
| Birkhimer, p. 16  Military Government is that which is established by a commander over occupied enemy territory. To entitle it to recognition it is necessary that the authority of the State to which the territory permanently belongs should have ceased there to be exercised.  Birkhimer, p. 21  The erection of such governments over the persons and territory of a public enemy is an act of war; is in fact the exercise of hostilities without the use of unnecessary force. It derives its authority from the customs of war, and not the municipal law. It is a mode of retaining a conquest, of exercising supervision over an unfriendly population, and of subjecting malcontent non-combatants to the will of a superior force, so as to prevent them from engaging in hostilities, or inciting insurrections or breaches of the peace, or from giving aid and comfort to the enemy.  Birkhimer, p. 1  Moreover, military government may be exercised not only during the time that war is flagrant, but down to the period when it comports with the policy of the dominant power to establish civil jurisdiction. |

|  |
| --- |
| Reference: **Madsen v. Kinsella**, US Supreme Court, 343 U.S. 341 (1952) |

|  |
| --- |
| Winthrop's opus, as quoted in the US Supreme Court case of Madsen v. Kinsella:  In speaking of the nature of military government, Colonel William Winthrop, in his authoritative work on Military Law and Precedents (second edition, 1920 reprint), says on page 800: "Military government . . . is an exercise of sovereignty, and as such dominates the country which is its theatre in all the branches of administration. Whether administered by officers of the army of the belligerent, or by civilians left in office or appointed by him for the purpose, it is the government of and for all the inhabitants, native or foreign, wholly superseding the local law and civil authority except in so far as the same may be permitted by him to subsist . . . . The local laws and ordinances may be left in force, and in general should be, subject however to their being in whole or in part suspended and others substituted in their stead -- in the discretion of the governing authority." |

|  |
| --- |
| Reference: **FM 27-10** "**The Law of Land Warfare**," DEPARTMENT OF THE ARMY, WASHINGTON 25, D.C., 18 July 1956. (This manual supersedes FM 27-10, 1 October 1940, including C 1, 15 November 1944. Changes required on 15 July 1976, have been incorporated within this document.)   Chapter 6, OCCUPATION |

|  |
| --- |
| 362. Necessity for Military Government Military government is the form of administration by which an occupying power exercises governmental authority over occupied territory. The necessity for such government arises from the failure or inability of the legitimate government to exercise its functions on account of the military occupation, or the undesirability of allowing it to do so. (See [para. 12](http://www.taiwankey.net/dc/axoverv6.htm#p12), which discusses military government, and [para. 354](http://www.taiwankey.net/dc/axoverv6.htm#p354), dealing with civil affairs administration.)   363. Duty to Restore and Maintain Public Order **The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.** (*HR, art. 43.*) |