Taiwan Perspectives (2): Lessons from the Spanish American War

The Spanish American War began in 1898, and was carried out in the Caribbean and Pacific Theatres. After much fighting between United States and Spanish troops, the Spanish military officials surrendered on the following dates:

Locality End of Hostilities

Cuba July 17, 1898

Puerto Rico Aug. 12, 1898

Guam June 21, 1898

Philippines Aug. 14, 1898

A treaty was signed to mark the end of the war, and it came into force on April 11, 1899. Spain ceded Puerto Rico, Guam, and the Philippines to the United States. In the same treaty, Spain ceded Cuba. However, while Spain's sovereignty over Cuba was relinquished, no recipient was designated.

Let us now introduce a definition of the word cede.

[DEFINITION]
*cede*

**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

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*.

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

Such a definition is helpful in talking about the Spanish American War cessions.

 [ Point A ] [ Point B ]

Locality End of Hostilities Peace Treaty

Cuba July 17, 1898 April 11, 1899

Puerto Rico Aug. 12, 1898 April 11, 1899

Guam June 21, 1898 April 11, 1899

Philippines Aug. 14, 1898 April 11, 1899

It is important to recognize that from the time of the surrender ceremonies in each locality until the coming into force of the peace treaty, these four island groups were under the jurisdiction of the United States, however the sovereignty remained with Spain.

The situation changed as of April 11, 1899. On this date, the sovereignty of the United States over Puerto Rico, Guam, and the Philippines, has been established, however the status of Cuba remains as “unsettled” or “undetermined.”

Let’s do a more complete overview, which we will call an ABCD Analysis. For our dates, we will designate Points. We will also designate an End Result. What this refers to is an End Result after the period of military occupation. Let us not forget that the surrender ceremonies do not mark the end of the war. The end of the war only occurs via some sort of formal peace settlement.

Point A marks the surrender ceremonies. This is the beginning of the military occupation. Who is the legal occupier? Under the customary laws of warfare, the legal occupier is the conqueror.

Point B marks the coming into force of the peace treaty. For the Spanish American War, this was April 11, 1899.

Point C marks the end of the military occupation. Military occupation is conducted under military government. Hence, military government is active from Points A to C.

The Territorial Cessions of the Spanish American War

 [ Point A ] [ Point B ] [ Point C ] [ End Result D ]

Locality End of Hostilities Peace Treaty End of Military Occupation Final Status

 (Surrender) (End of Military Government)

Cuba July 17, 1898 April 11, 1899 May 20, 1902 Republic of Cuba

Puerto Rico Aug. 12, 1898 April 11, 1899 May 1, 1900 US overseas territory

Guam June 21, 1898 April 11, 1899 July 1, 1950 US overseas territory

Philippines Aug. 14, 1898 April 11, 1899 July 4, 1901 US overseas territory

The laws of war apply in occupied territories. Many civilians will ask: For territorial cessions after war, when does the military occupation end? The answer is that for the military occupation to come to an end, the military government of the legal occupier must be supplanted by a recognized civil government in each area.

Looking at the historical data, we find that the dates of the end of United States Military Government (USMG) jurisdiction in these four localities were announced by the U.S. Commander in Chief as follows: Cuba: May 20, 1902; Puerto Rico: May 1, 1900; Guam: July 1, 1950; and Philippines: July 4, 1901.

Jurisdiction v. Sovereignty

Returning to our discussion of jurisdiction and sovereignty, we can see that for these four areas, Point A to Point B is the period of time where the United States had jurisdiction but not sovereignty.

For Cuba, this situation of the United States having jurisdiction but not sovereignty continues up to Point C. This is because in the peace treaty, Spain ceded Cuba, but no receiving country was designated. In other words, Cuba was a limbo cession.

What is the legal status of Cuba from Point B to Point C? During this period of time, Cuba remains under military occupation. It does not belong to any other country, nor is it independent. Having not yet reached a final political status, its condition can best be described as “undetermined” or “unsettled.” We might describe it as a *quasi USA trusteeship* under military government within the U.S. insular law framework.

On May 20, 1902, the United States announced that Cuba had become independent.

As an overview of the situations in these four localities, we can see that there are only two possible types of an “End Result” after a period of military occupation. No. 1 is that the territory becomes an independent sovereign nation. No. 2 is that the territory becomes “part of” another independent sovereign nation.

Taiwan Beginning in 1945

With the above knowledge, we can examine the situation of Taiwan after the close of hostilities in WWII in a more accurate and knowledgeable fashion.

Looking back over the historical record, the statement regarding "Undetermined Taiwan Sovereignty" was first explicitly announced by President Harry Truman. On June 27, 1950, Truman declared that “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.”

An important point of consideration was the Cairo Declaration of Dec. 1, 1943, which although holding that Taiwan would be returned to the Republic of China (ROC) at the end of WWII in the Pacific, did not create a legal procedure to actually accomplish this transfer. The completion of such a legal transfer would involve Japan's formal relinquishment of sovereignty by way of territorial cession, the precise specification of a “receiving country,” and the acceptance of these terms and conditions by the successor state. As most people know, in the post-Napoleonic world, territorial cession is accomplished by treaty.

Let’s do our ABCD Analysis for Taiwan and for the Ryukyu Island group, both of which are territories over which Japan made a new disposition in the San Francisco Peace Treaty (SFPT) of 1952.

Two Territorial Cessions of WWII in the Pacific

 [ Point A ] [ Point B ] [ Point C ] [ End Result D ]

Locality End of Hostilities Peace Treaty End of Military Government Final Status

Ryukyus June 23, 1945 April 28, 1952 May 15, 1972 overseas territory

 of Japan

Taiwan Oct. 25, 1945 April 28, 1952 -------- ? -------- --- ? ---

The United States military forces liberated Taiwan and the Ryukyu islands, and the SFPT designates the United States of America as the principal occupying power. At the same time, Article 4(b) of the treaty gives the United States Military Government (USMG) jurisdiction over Taiwan, the Ryukyus, and certain other areas.

After April 1952, the Ryukyu Island group was elevated to the status of UN Trusteeship, with the United States as the sole administering authority. However, our analysis remains the same. Later, as of May 15, 1972, the Ryukyus were returned to Japan.

It must again be stressed that in the practice of the United States, the end of military government is formally announced by the US Commander in Chief. This was exactly what we saw in the situation of the Spanish American War cessions. In regard to the Ryukyus, President Richard Nixon made the formal announcement, and the termination date was announced to be May 15, 1972.

By way of comparison, no announcement of the end of USMG jurisdiction over Taiwan has ever been made by the US Commander in Chief, from Harry Truman up to the present.

This leads us to the conclusion that Taiwan is currently somewhere between Points B and C in our ABCD Analysis Chart. Having not yet reached a final political status, its condition can best be described as “undetermined” or “unsettled.” Consequently, Taiwan is not regarded as an independent entity in the international community. Indeed this is exactly the type of oratory which the U.S. Executive Branch officials have been proffering for decades. In other words, Taiwan is a term of geography, but this geographic area does not belong to any particular country.

Additionally, as we point out above, there are only two possible types of an “End Result” after a period of military occupation. The fact that the U.S. Executive Branch continually says that Taiwan’s legal status is “undetermined” or “unsettled” is, in itself, strong proof that Taiwan is actually still under military occupation in the present era.

When did this all begin? Since late Oct. 1945, the Republic of China (ROC) has been exercising jurisdiction over Taiwan, but not sovereignty. This is Point A in our ABCD Analysis. As of early December 1949, the Republic of China has moved its central government to occupied Taiwan, outside of China’s national territory. Thus the ROC has become a government in exile even before the peace treaty came into effect, which is at Point B.

However, we must not forget that the ROC (formerly led by Chiang Kai-shek) is not the legal occupier, it is only serving as a proxy force for the legal occupier. The SFPT clearly stipulates that the United States Military Government (USMG) has jurisdiction over Taiwan, which means that Taiwan is occupied territory of the United States.

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