

## US Congress must recognize Taiwan's true status under the Constitution

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The Taiwan Civil Democratic Party, Taiwan Defense Alliance, Taiwan Nation Party, Farmers' Party, and other members of the Taiwan Civil Alliance have called on the members of the US Congress to recognize Taiwan's true status under the US Constitution.

The Congressional Research Service's (CRS) report "China/Taiwan: Evolution of the One China Policy," published in July 2007, was made available to all members of Congress, and is considered authoritative. However, that report does little to end the strategic ambiguity regarding the status quo in the Taiwan Strait, and to sort out the truth among the many competing schools of thought which currently circulate in think-tanks, research organizations, and academia.

While the CRS report offers a lengthy (nearly 90 pages) analysis and recounting of political statements regarding the US - Taiwan - China relationship, it offers very little substantive analysis of the legal fundamentals upon which those relationships are based.

This lack of attention to "legal fundamentals" is common in both Executive and Legislative Branch reports on the Taiwan issue over the past forty years. Primarily, it arises from a complete failure to consider military jurisdiction under the Constitution, including the laws of war recognized by the United States. A grasp of these legal fundamentals can enable us to define the "status quo" in the Taiwan Strait based on US constitutional principles.

The historical record shows that Taiwan was ceded to Japan in the 1895 Treaty of Shimonoseki. All military attacks against (Japanese) Taiwan in the WWII period were conducted by US military forces, hence based on the precedent established in the Mexican-American War and the Spanish-American War, the United States will be the (principal) occupying power of Taiwan.

In order to more effectively promote the clear recognition of Taiwan's legal status, the members of the Taiwan Civil Alliance will join together for a Mass Protest Sit-in in front of the Taipei Office of the American Institute in Taiwan (AIT) on Friday, December 7, 2007, beginning at 10:00 am.

Further background information regarding the Taiwan Civil Alliance's historical and legal research is given as follows:

After the close of fighting in WWII, General MacArthur delegated the handling of the Japanese surrender ceremonies on Taiwan to the Chinese Nationalists, led by Chiang Kai-shek. Despite the continual barrages of Chinese propaganda however, none of the Allies recognized any transfer of the sovereignty of Taiwan to the Republic of China (ROC) on the Oct. 25, 1945, surrender date of Japanese troops in Taiwan.

By late 1945, it must be recognized that the ROC had two "legal statuses," because it was both the sole legitimate government of China, and also a subordinate occupying power in charge of the military occupation of Taiwan. These two statuses are separate and non-equal.

With this recognition, when the ROC moved its central government to occupied Taiwan in mid-December 1949, it must be classified as a "government in exile." While never recognizing the ROC as the legitimate government of Taiwan, the US Executive Branch nevertheless continued to recognize the ROC as the sole legitimate government of China up until Dec. 31, 1978.

Many people in Washington D.C. mistakenly assert that the ROC on Taiwan meets the Montevideo Convention's criteria for statehood, but totally overlook the fact that there are no international legal documents which can prove that the ROC has ever been recognized by the international community as "the legal government of Taiwan."

In depth research on such topics must go back to the laws of war. Most researchers assume that the exercise of "effective territorial control" equals "sovereignty," but that is not true. For a "territorial cession" (such as Taiwan in the post-war peace treaties), there are specific criteria for determining the end of the period of military occupation. For Taiwan, those criteria have yet to be completed, and Taiwan today remains under "military occupation" from the WWII era. As astounding as this may be to the members of Congress, a more surprising fact was given above: the United States of America is the principal occupying power of Taiwan.

Although all of these details are spelled out in the post-war peace treaties, Congressional staffers and other researchers without knowledge of military jurisdiction under the Constitution continually overlook them.

As for the ROC in Taiwan, due to the fact that international law does not allow any possibility of a "government in exile" becoming the legally recognized government of its current locality of residence, the fate of the ROC was sealed by mid-December 1949. In the post-war peace treaties, the sovereignty of Taiwan was not awarded to the government in exile ROC.

As clarified in the opening Summary to the CRS report: (1) The United States did not explicitly state the sovereign status of Taiwan in the three U.S.-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) U.S. policy has not recognized the PRC's sovereignty over Taiwan; has not recognized Taiwan as a sovereign country; and has considered Taiwan's status as undetermined.

Significantly, these conclusions are in full conformity to Taiwan's true status as occupied territory of the United States of America. This is a legal reality which must form the cornerstone of any analysis of "the status quo in the Taiwan Strait," but which the CRS researchers have totally failed to consider.

Members of the US Congress are encouraged to overview the extensive research results posted on the website of the Taiwan Civil Alliance, and the news reports which will be forthcoming following the Mass Protest Sit-in scheduled for December 7, 2007, in Taipei.

Dr. Roger C. S. Lin, Spokesperson  
Taiwan Civil Alliance  
No. 6, Lane 185, Nanjing West Road  
Taipei, Taiwan  
Email: [tda.taiwan@gmail.com](mailto:tda.taiwan@gmail.com)  
Website: [www.taiwanadvice.com/](http://www.taiwanadvice.com/)

About TCA:

The Taiwan Civil Alliance is an organization that promotes the recognition of Taiwan as an insular area of the United States of America. Such recognition is fully supported by international law and US constitutional law.

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