

The Successor Government Theory and the One China Policy

Introduction

Up to the Fall of 2005, the Google Maps section of internet search engine Google labeled all of its Taiwanese maps as “Taiwan, Province of China.” However, after many groups of Taiwanese citizens and officials complained about this policy, Google changed its maps to just read “Taiwan.”

In reviewing this problem, a number of prominent Taiwanese persons have asked many questions such as: “How has this confusion arisen?” and “What international law or which international treaty says that Taiwan is a province of China?”

The answers to these questions will be found by researching the "successor government theory." This is explained as follows.

The people who established the PRC as a country were the Chinese citizens in mainland China, and these same people were indeed the original citizens of the Republic of China (ROC).

The final period of that civil war in Mainland China saw the founding of the PRC on October 1, 1949, with the KMT/ROC government officials fleeing to Taiwan in December of that year. Hence, effectively speaking, the ROC was put out of existence when the PRC was founded on October 1, 1949, and the PRC drafted a new constitution for China.

Under international law this is significant, because it means that the PRC has succeeded the ROC, and therefore the PRC government gains the rights to all assets that the ROC government had.

The "successor government theory" began to be applied in the late 1940's in regard to the domestic Chinese political situation. Obviously, more and more people accepted the legitimacy of this theory when the ROC was expelled from the United Nations in October 1971, and when the United States announced its impending break in relations with the ROC in December 1979.

Today many people would say that this "successor government theory" defines the legal reality of the world situation in which we live here in the 21st century.

A Flaw in the "Successor Government Theory"

Is there a flaw in this argument?? Yes, there is. The flaw is "Taiwan Retrocession Day."

If we recognize that "Taiwan Retrocession Day" does not exist that October 25, 1945, was only the beginning of the military occupation of Taiwan, then we have a good start in defeating the "successor government theory." Under international law, "military occupation" does not transfer sovereignty.

Additionally we have to recognize that the territorial sovereignty of "Formosa and the Pescadores" was not transferred to the ROC in the post war treaty, i.e. the San Francisco Peace Treaty of April 28, 1952. So, the ROC in Taiwan is a government without a "territory" or more correctly speaking it is fulfilling the dual roles of a "subordinate occupying power" (beginning October 25, 1945) and a "government in exile" (beginning December 1949).

International News Agencies Unwittingly Support the "Successor Government Theory"

Over the past ten years or more, it has been commonly seen that the news agencies of AP, Reuters, Dow Jones, AFP, and many others unwittingly support the claims of the PRC over Taiwan. This is because these news agencies, and many others, continually include comments in their news stories about Taiwan to the effect that "the PRC and the ROC split as a result of the civil war of the late 1940's with each holding some portions of Chinese territory " or similar remarks.

By incessantly repeating this type of logic, the news agencies are in fact bolstering the validity of the PRC's "successor government theory" claims!

Should concerned citizens in Taiwan protest against this? Should they send letters, faxes, and email to these news agencies? If we truly want Taiwan to have the right to "follow its own path ", then making such protests would certainly be a good

idea!!!

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Similar to the reportage of the international news agencies, both the ROC and PRC governments have traditionally maintained that current disputes over the determination of the "legitimate government of China" have arisen from the Chinese Civil War period. However, as discussed above, this view is erroneous.

Specifically, a close look at the historical and legal shows that the matter of the "legitimate government of China" is actually an issue left over from WWII in the Pacific. Let us review this entire situation in a bit more detail.

According to General Order No. 1, issued by General Douglas MacArthur, on Sept. 2, 1945, Generalissimo Chiang Kai-shek was directed to go to Formosa and accept the surrender of Japanese troops. The surrender ceremonies were held on October 25, 1945, and the Chinese on both sides of the Taiwan Strait have always commemorated this date as "Taiwan Retrocession Day," saying that on this date the sovereignty of Taiwan was returned to China.

However, under international law, such an interpretation is impossible. All matters concerning the "transfer of title" to territory are handled in a detailed post-war peace treaty. The holding of surrender ceremonies only marks the beginning of the military occupation of the territory. In other words, “Taiwan Retrocession Day” is nothing but an elaborate hoax perpetrated on the Taiwanese people.

Under the Hague and Geneva Conventions, details such as "Who surrendered to whom," or "Who defeated whom," are not particularly significant. The key point is: "Who is the occupying power?" It is a matter of historical record that all military attacks against targets in Formosa and the Pescadores during the WWII period were conducted by United States military forces. Hence, the United States is “the conquerer.” Under the customary laws of warfare of the post-Napoleonic period, the United States will be "the (principal) occupying power."

From this perspective, the military troops under Chiang Kai-shek are only exercising delegated administrative authority for the military occupation of Taiwan beginning October 25, 1945. They have effective territorial control over Taiwan, but there has

been no transfer of sovereignty. Later, when the KMT/ROC government officials fled to Taiwan in late 1949, they became a government-in-exile.

In the San Francisco Peace Treaty of 1952, there was no transfer of sovereignty of "Formosa and the Pescadores" to the Republic of China in the Hence, up to the present day, the Republic of China in Taiwan is merely continuing to fulfill its dual roles of (1) subordinate occupying power (beginning October 25, 1945), (2) and government-in-exile (beginning December 1949).

With a realization of these facts, we can clearly see that the PRC is the "sole legitimate government of China." Taiwan remains under the administrative authority of "the principal occupying power" (the United States), because military occupation is, fundamentally, a transitional period, or a period of interim (political) status. In other words, even in the present day, Taiwan has not yet reached a final political status.

Based on this analysis, we can see that the One China Policy is essentially correct. But we must also realize that at the present time, the One China policy cannot be interpreted to mean that Taiwan is already a part of China.

Nevertheless, Taiwan has been put on a *flight-path* for eventual unification with the PRC by the maneuverings of the "the principal occupying power" (the United States). This is easily seen by reading the Joint USA-PRC Communique (Shanghai Communique) of February 28, 1972. The following wording is particularly important:

The United States acknowledges that all Chinese on either side of the Taiwan Strait maintain there is but one China and that Taiwan is a part of China. The United States Government does not challenge that position. It reaffirms its interest in a peaceful settlement of the Taiwan question by the Chinese themselves. With this prospect in mind, it affirms the ultimate objective of the withdrawal of all US forces and military installations from Taiwan.

In reality, this is a very convoluted way of saying that "Although Taiwan is not a part of China, we want everyone to think that it is." Contrastingly, with no "transfer of title" in the post-war peace treaty, the Republic of China on Taiwan is not a sovereign nation, and cannot enter the United Nations.

In such a complicated international environment, is there a solution for the Taiwanese people which will allow them to continue to develop their democratic institutions? The answer lies in precisely defining Taiwan's relationship with the USA.