

The Achilles' heel of PRC and ROC

Written by Peter Chen 陳彼得

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The Cairo Declaration of Dec. 1, 1943, is often cited as the legal foundation for the People's Republic of China's (PRC) and the Republic of China's (ROC) claims to territorial sovereignty over Taiwan.

The declaration, in international law, was not a binding commitment, but a mere joint communique by then-US president Franklin Roosevelt, then-president Chiang Kai-shek (蔣介石) and then-British prime minister Winston Churchill, and was announced four days after the conclusion of the Cairo Conference on joint war plans.

The declaration was the first articulation of Allied war aims in the Pacific. It pledged "that all the territories Japan has stolen from the Chinese, such as Manchuria, Formosa [Taiwan], and the Pescadores [Penghu], shall be restored to the Republic of China."

This goal was set privately and informally without a binding commitment between Chiang and Roosevelt. Churchill's memoirs do not mention the declaration at all.

During the conference, "without the inhibiting presence of a knowledgeable American at his side," Roosevelt conferred with Chiang "privately about three or four times," with Chiang's wife Soong Mayling (宋美齡) serving as the sole interpreter, said US diplomat John Davies, who was at Cairo as US general Joseph Stilwell's aide.

Roosevelt briefed Stilwell and Davies afterward. Stilwell knew that US strategy for the Pacific War involved a planned invasion of Taiwan in 1944 by US forces without the participation of Chiang's Nationalist army.

However, Davies' notes of Roosevelt's briefing show that "FDR [Roosevelt] believed that a display of generosity, gratuitous offerings of enemy territory to the Chinese ... would persuade Chiang to stay in the war against Japan."

"The [US] president's liberality with other people's real estate was also part of his show of good

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faith and noblesse oblige meant to sweeten the generalissimo's dislike of foreign devils," Davies wrote.

The declaration was a statement of intent, and Roosevelt's successor, former US president Harry Truman, reiterated the Cairo aims on July 26, 1945, in the Potsdam Declaration without explicitly mentioning Taiwan.

After Japan surrendered, the Japanese emperor on Sept. 2, 1945, ordered his commanders in Taiwan to surrender to Republic of China forces who had arrived to occupy Taiwan "on behalf of the allies."

The final determination of the legal status of Taiwan was to be formalized in a general peace treaty with Japan, preparations for which took several years, and were complicated in the interim by the overthrow of the ROC government and its exile to Taiwan.

At the start of the Korean War in 1950 and the PRC's subsequent war against the UN there, then-US president Harry Truman stepped away from the Cairo pledges.

The new security situation in the Far East impelled Truman to state that "the determination of the future status of [Taiwan] must await the restoration of security in the Pacific, a peace settlement with Japan, or consideration by the United Nations."

In a letter to the UN General Assembly, dated Sept. 20, 1950, the US, citing both the Cairo and Potsdam declarations and the Japanese Instrument of Surrender, said: "Formal transfer of Formosa to China was to await the conclusion of peace with Japan or some other appropriate formal act."

On Dec. 8, 1950, Truman and then-British prime minister Clement Attlee were faced with a communist Chinese invasion of Korea against the UN, the US and Britain.

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Attlee and Truman issued a joint statement, saying: "On the question of Formosa, we have noted that both Chinese claimants [Nationalist and Communist] have insisted upon the validity of the Cairo Declaration, and have expressed their reluctance to have the matter considered by the United Nations. We agree that the issues should be settled by peaceful means and in such a way as to safeguard the interests of the people of Formosa ... and that consideration of this question will contribute to these ends."

At the conclusion of the 1951 San Francisco Peace Treaty, the British delegate summarized the treaty's disposition of Taiwan: "The treaty also provides for Japan to renounce its sovereignty over Formosa and the Pescadores Islands. The treaty itself does not determine the future of these islands."

The two major signatories of the Cairo Declaration, the US and Britain, did not regard the declaration as the final word on Taiwan's future.

In October 1971, then-Chinese premier Zhou Enlai (周恩來) vented his anger at the Cairo declarants to US envoy Henry Kissinger.

He criticized the treaty for failing to resolve the matter, saying: "Japan renounces its claim to the southern side of Sakhalin and the Kuriles, and the position of the Ryukyus, including Okinawa, remained open and also Taiwan and the Spratly Islands [Nansha Islands, 南沙群島], but it was not specified in the San Francisco Treaty to whom they belong. It was left to the countries. I don't know who drew that up."

Zhou lashed out at Chiang's acquiescence to the ROC-Japan peace treaty of 1952,

"[Chiang] himself sits on Taiwan, but in the treaty with Japan it does not specify who Taiwan reverts to, only saying Japan gives up all claim. If I call him a traitor, I have every reason to do that," Zhou said.

The declaration was intended only as a statement of war aims, the territorial reassignments of which had to be honored in a formal peace treaty after Japan's surrender. As such, the

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declaration has negligible status in international law as a treaty.

We at the Formosan Association for Public Affairs confirmed the status of the declaration with the US National Archives on June 5, 2007.

They wrote back, saying: "The declaration was a communique and it does not have a treaty series or executive agreement series number."

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