

## ROC has no right to sovereignty

Written by Te Lin 林德

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In a recent letter to the Taipei Times (Letters, March 8, page 8) it was stated that the Cairo Declaration cannot be used as legal backing for the Republic of China (ROC) government's sovereignty claim over Taiwan. The Cairo Declaration aside, there are many other statements and documents which are regularly used by the Chinese Nationalist Party (KMT) government to justify its sovereignty claims.

It can be very instructive to view these statements and documents in a systematic fashion from the viewpoint of the customary law of the post-Napoleonic period.

Some people may assert that a particular document or statement has the legal power to transfer the territorial sovereignty of Taiwan to the ROC.

However, to prove such an assertion, the following data must first be collected: Several historical examples where similar documents or statements have produced such a transfer of sovereignty in other parts of the world, and whether the international community recognized the validity of that transfer.

In this manner, the Cairo Declaration (Dec. 1, 1943), the Potsdam Proclamation (July 26, 1945), the Japanese Instrument of Surrender (Sept. 2, 1945), General Order No. 1 (Sept. 2, 1945), the formal surrender of Japan in Taipei (Oct. 25, 1945) and the relocation of the ROC government to Taipei (Dec. 10, 1949) can all be shown to have had no legal effect on the transfer of Taiwanese sovereignty to a third party — for example, the ROC — whatsoever.

Most significantly perhaps, the surrender of enemy troops only served to mark the beginning of a new military occupation, and international law states that military occupation does not transfer sovereignty.

As for post-war treaty stipulations, it is important to remember that Taiwan remained Japanese territory until the San Francisco Peace Treaty came into effect on April 28, 1952.

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This is the only valid interpretation of historical record, based on the study and interpretation of numerous other post-war situations and treaty arrangements.

The San Francisco Peace Treaty did not award sovereignty of Taiwan to “China,” and “China” was not a signatory of the treaty. Nevertheless, the ROC-Japan bilateral Treaty of Taipei (Aug. 5, 1952) is often cited by pro-KMT academics who say that since one party (Japan) “renounced,” it must be understood that the other party (the ROC) “received.”

However, after renouncing all “right, title and claim” to Taiwan under the San Francisco Peace Treaty, Japan would have no legal power to make any further disposition of Taiwan in later treaties.

A 1959 US court case summarized all relevant details as follows: “Formosa may be said to be a territory or an area occupied and administered by the Government of the Republic of China, but is not officially recognized as being a part of the Republic of China” (Sheng v. Rogers, D.C. Circuit, Oct. 6, 1959, <http://www.taiwanbasic.com/state/usg/shengvsro.htm>).

Today, the ROC on Taiwan holds the dual statuses of (1) subordinate occupying power, beginning Oct. 25, 1945, and (2) government in exile.

Neither of these statuses include a valid sovereignty claim over Taiwan.

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