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Topic: Taiwan's Political Status and Why we are where we are today?

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I.

- Latest poll shows 65% of people in Taiwan supports independence.(1) But most do not know what kind of independence we want or even why do we need it?
- We cannot be firm about what we support unless we know EXACTLY what we support and why should we support it.
- Reality is, Taiwan is currently not an independent country.

II.

History Background:

- 1895 Sino-Japanese War resulted in permanent territorial cession of Taiwan and Penghu Islands to Japan per the signing of Treaty of Shimonoseki. A dispositive treaty and it is not nullifiable.(2)
- During the world war 2, the 3 leaders(Roosevelt, Chiang, and Churchill) met at Cairo and signed Cairo Declaration on December 1, 1943 stating their intention to restore all "stolen territories" such as Taiwan, Penghu islands and Manchuria back to China.(3)
- With Japanese losing grounds, the Allies met again and drafted Potsdam Declaration in 1945 to define the demands the Allies have if Japanese does surrender. One of it states the Cairo Declaration should be carried out and Japanese sovereignty will be limited to Honshu, Hokkaido, Kyushu, Shikoku, and etc.(4)
- Finally, the Japanese lost the war and unconditionally surrendered in 1945 and signed the Japanese Instrument of Surrender. Japanese agreed to do the best they can to fulfill what is required of them according to the Potsdam Declaration until the Allies are satisfied. (5)
- After the issuance of General Order No. 1(6), the Republic of China forces are ordered to go to Taiwan and serve as the designated subordinate occupying power on behalf of the United States Military Government, the principle occupying power.
- After 5 years of effort from Japan to fulfill the requirements, delegates from 48 Allied nations and Japan met at San Francisco in 1951 to discuss about signing of a peace treaty (7). The fact neither People's Republic of China nor Republic of China that time had legitimacy as official representative of China, the Japanese were asked to agree to ONLY renounce their sovereignty on Taiwan and Penghu islands at the end by signing the San Francisco Peace Treaty(8a). ROC and Japan also signed a separate treaty, Treaty of Taipei(8b), which is by statement consistent with the SF Peace Treaty's principle and a reiteration of Japan renouncing their claims on Taiwan, furthermore, declaring people on Taiwan and Penghu islands to be nationals of ROC. However, being nationals or citizens of the ROC does not mean Taiwan is a part of ROC because ROC still serves as administrator of Taiwanese sovereignty and it is allowed to have them grant people of Taiwan citizenship or national status for the sake of sovereignty administration.
- Taiwan and Penghu islands officially became a "limbo cession"(9). And by such arrangement, and under Popular Sovereignty theory(10) Taiwan's sovereignty currently belongs to no country except

for the people on Taiwan. And under international laws such as Charter of UN(11), The Universal Declaration of Human Rights(12) and International Covenant on Civil and Political Rights. (13) , Taiwanese should be qualified to enjoy the right to self determine and choose their own nationality

- ROC acquired Taiwan via military occupation as defined by international laws.(14) Military occupation simply gives the occupying power the right to administer but does not transfer sovereignty to the occupying power as it is stated in the Hague II of 1899 Law and Customs of War on Land(15) and Hague IV of 1907(16) and later reiterated again in Geneva Convention IV in 1949(17). ROC has the rights to exercise and administer the sovereignty of Taiwan on behalf of the Taiwanese, but they do not own the sovereignty. According to William Birkhimer(18), such an temporary status of a trustee government controlling the territory will exist until the natural and rightful people of the target territory can exercise their natural supreme authority of the land and legally remove the occupying power. Which is self-determination.
- Both ROC and People's Republic of China fully know this principle and both sides desperately want Taiwanese to get used to and believe the notion that they are "Chinese" in case of the emergence of one official China so that China will be the choice of Taiwanese.
- UN resolution 2758 passed in 1971 gives PRC the official recognition it deserves. The PRC officially succeeds and replaces ROC as the rightful China. PRC automatically becomes the legitimate choice of "China" if Taiwanese does decide to "unify to China" by self determination.

III.

- Taiwan today is a limbo cession and what is between complete de jure or official independent statehood is an act of self determination. Taiwan would need to exercise our power to establish our own country and let the world know that the owners of Taiwanese sovereignty has determined to let Taiwan be a country of its own. At that point, ROC's legitimacy as representative and administrator of Taiwan will cease to exist.

Reference:

1. TVBS Poll June 2008
2. - A "dispositive treaty" is a treaty regarding property rights and it is not voidable or nullifiable (this doctrine being that treaties specifying particular actions which can be completed, once the action gets completed, cannot be voided or reversed without a new treaty specifically reversing that clause). A new treaty would require 200 million Kuping taels were not returned to China from Japan, and Korea had not become a Chinese-dependent country again. Also, Taiwan and Penghu islands are not "stolen from Chinese by Japanese" because the cession was result of a legitimate conquest with a valid treaty put in place to enforce it.
3. Cairo Declaration. December 1 1943. "It is their purpose that Japan shall be stripped of all the islands in the Pacific which she has seized or occupied since the beginning of the first World War in 1914, and that all the territories Japan has stolen from the Chinese, such as Manchuria, Formosa, and The Pescadores, shall be restored to the Republic of China. Japan will also be expelled from all other territories which she has taken by violence and greed."
4. Potsdam Declaration of 1945 article 8 states "The terms of the Cairo Declaration shall be carried out and Japanese sovereignty shall be limited to the islands of Honshu, Hokkaido, Kyushu, Shikoku and such minor islands as we determine."
5. Japanese Instrument of Surrender signed at Tokyo Bay, September 2, 1945. "We, acting by command of and in behalf of the Emperor of Japan, the Japanese Government and the Japanese Imperial General Headquarters, hereby accept the provisions set forth in the declaration issued by the heads of the Governments of the United States, China and Great Britain on July 26, 1945, at Potsdam, and subsequently adhered to by the Union of Soviet Socialist Republics, which four powers are hereafter referred to as the Allied Powers....We hereby undertake for the Emperor, the Japanese Government and their

successors to carry out the provisions of the Potsdam Declaration in good faith, and to issue whatever orders and take whatever action may be required by the Supreme Commander for the Allied Powers or by any other designated representative of the Allied Powers for the purpose of giving effect to that Declaration."

6. General Order No. 1 was issued September 2 1945 by General Douglas MacArthur, it is his first order to the forces of the Empire of Japan following the Japanese surrender. It instructed Japanese forces to surrender to designated Allied commanders, reveal all current military deployments, and preserve military equipment for later disarmament. The Japanese troops there subsequently surrendered to ROC military forces as directed. Under Field Manual 27-10 Law of land warfare article 353 and 354, the Republic of China is acting as the "agents" for the United States military government in this arrangement.

7. A peace treaty is an agreement between two hostile parties, usually countries or governments, that formally ends an armed conflict. A peace treaty usually is a formalization of victors of a war acknowledging the surrendered parties have fulfilled the demands as stated on the instrument of surrender.

8a. San Francisco Peace Treaty Signed at San Francisco, 8 September 1951

Initial entry into force: 28 April 1952. "(b) Japan renounces all right, title and claim to Formosa and the Pescadores."

8b. Taipei Treaty signed on 4/28/1952 and entered into force, 5 August 1952, "for the purposes of the present Treaty, nationals of the Republic of China shall be deemed to include all the inhabitants and former inhabitants of Taiwan (Formosa) and Penghu (the Pescadores) and their descendants who are of the Chinese nationality in accordance with the laws and regulations which have been or may hereafter be enforced by the Republic of China in Taiwan (Formosa) and Penghu (the Pescadores)". Even if it was stated clearly as a sovereignty transfer, the Japanese could no longer transfer Taiwan's sovereignty for the Japanese have already renounced their rights on Taiwan in 1951.

9. Territorial cessions where no "receiving country" is specified may be called "limbo cessions."

10. Popular sovereignty or the sovereignty of the people is the belief that the legitimacy of the state is created by the will or consent of its people, who are the source of all political power.

11. Charter of UN. Chapter 1, Article 1, part 2 states that purpose of the UN Charter is: "To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace."

12. The United Nations Universal Declaration of Human Rights article 15 states that everyone has the right to a nationality and that no one should be arbitrarily deprived of a nationality or denied the right to change nationality.

13. Article 1 in both the International Covenant on Civil and Political Rights (ICCPR) reads: "All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." China is a signatory of the treaty.

14. The Hague Regulations (1907) specify that "Territory is considered occupied when it is actually placed under the authority of the hostile army."

15. Hague II of 1899, Article 53 "The occupying State shall only be regarded as administrator and usufructuary of the public buildings, real property, forests, and agricultural works belonging to the hostile State, and situated in the occupied country. It must protect the capital of these properties, and administer it according to the rules of usufruct." Article 45 "Any pressure on the population of occupied territory to take the oath to the hostile Power is prohibited."

16. Hague IV of 1907. Art. 55. "The occupying State shall be regarded only as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates belonging to the hostile State, and situated in the occupied country. It must safeguard the capital of these properties, and administer them in accordance with the rules of usufruct."

17. Geneva Convention IV of 1949, Section III and Art. 47. "Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory."

18. According to William Birkhimer, such an interim status of a trustee government controlling the territorial cession will exist until the natural and rightful people of the specified geographic territory can exercise their natural supreme authority of the land and legally supplant the occupying power.

19. UN resolution 2758 passed on Oct 25 1971. "Considering that the restoration of the lawful rights of the People's Republic of China is essential both for the protection of the Charter of the United Nations and for the cause that the United Nations must serve under the Charter,

Recognizing that the representatives of the Government of the People's Republic of China are the only lawful representatives of China to the United Nations and that the People's Republic of China is one of the five permanent members of the Security Council,

Decides to restore all its rights to the People's Republic of China and to recognize the representatives of its government as the only legitimate representatives of China to the United Nations, and to expel forthwith the representatives of Chiang Kai-shek from the place which they unlawfully occupy at the United Nations and in all the organizations related to it."