

Disputes over Taiwan Sovereignty and the Sino-Japanese Peace Treaty Since World War II

Abstract / This study first introduces the background of America's "Undetermined Taiwan Sovereignty" policy. It then discusses the change in America's attitude from rejecting to supporting the ROC's effort to sign a bilateral peace treaty with Japan. Finally, the author undertakes an analysis of the Sino-Japanese peace treaty, arguing that the sovereignty of Taiwan was legally transferred from the Japanese government to the government of the ROC in this treaty. In other words, the legitimacy of this sovereignty transfer is beyond doubt.

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The "Undetermined Taiwan Sovereignty" represented the legal view taken by the US government in June of 1950 in regard to the legal status of Taiwan. The crux of the issue lay in the Cairo Declaration, which although holding that Taiwan would be returned to the Republic of China (ROC) at the end of World War II, did not create a legal procedure through which Taiwan's sovereignty would be passed from Japan to the ROC. The determination of Taiwan's sovereignty could not be completed without a legal procedure involving Japan's formal relinquishment of sovereignty and its acceptance by the successor state. Thus the "Undetermined Taiwan Sovereignty" became linked to the later peace treaty with Japan. The United States in turn became involved in the issue of Taiwan's sovereignty, since it was responsible for the peace treaty and deciding what territories Japan would be allowed to retain.

As soon as the Korean War broke out, the

first thing the US decided to do was to propose that the United Nations govern Taiwan in attempt to prevent People's Republic of China from possessing it. The US accordingly used the negotiations over the peace treaty with Japan to have Japan to renounce any rights to Taiwan. Then, the ROC, Britain, the US, and the Soviet Union would together decide the status of Taiwan. If these four nations could not resolve the issue in a year, then the question of Taiwan would be passed on to the UN.

This procedure rested on the alliance of the four nations that had cooperated to form the Allied policy to Japan in the late World War II period. By advocating that the Taiwan issue should be decided by negotiation, the US followed the earlier model. In fact, however, the alliance system that supported such negotiations collapsed when the Korean War broke out and the Cold War began in the 1950s. America's support for negotiations that were clearly impossible



The Chinese and Japanese delegations took picture after Sino-Japanese Peace Treaty signed. The Chinese Plenipotentiary George K.C. Yeh (left 2), the Japanese Plenipotentiary Isao Kawada (left 3) and Head of Suite Shiroshichi Kimura (right 2) in the front row (1952.4.28). Source: *Modern China Bimonthly*, 148 (2002.4).

was in fact a step toward America creating a unilateral foreign policy. Yet the US obviously sought to make Taiwan a UN trustee. At the time, the US government still had no clear policy on how to deal with the government of Chiang Kai-shek.

However, the PRC's involvement in the Korean War upset US Asian policy, leading the US to support the government of Chiang Kai-shek in Taiwan. To strengthen Chiang's government, the US abandoned its original proposals concerning the UN and the old Allies' negotiations over Taiwan as it pursued the peace treaty with Japan. As a key part of its new strategy, the US thus supported the ROC's efforts to sign a bilateral peace treaty with Japan. This allowed the ROC to follow formal legal procedures in acquiring the legal status to succeed to the sovereignty of Taiwan.

The San Francisco Peace Treaty was signed in September of 1951 without the participation of the ROC government due to strong opposition from other countries. But a bilateral peace treaty with Japan was soon signed in April of 1952, and this Sino-Japanese Peace Treaty was essentially the same as the San Francisco Peace Treaty. Both treaties specified that Japan relinquished sovereignty over Taiwan, but neither specified who succeeded to legal jurisdiction over Taiwan.

The San Francisco Peace Treaty did not specify the sovereignty of Taiwan since the PRC had not been invited to participate and the issue of what government represented China remained unsettled. Indeed, the Sino-Japanese Peace Treaty represented a compromise between the US and the UK. The UK insisted that the PRC should take over Taiwan. To avoid this controversy causing the collapse of the entire peace negotiations, the Sino-Japanese Peace Treaty simply



followed the San Francisco Peace Treaty. Moreover, the US used the "Undetermined Taiwan Sovereignty" in order to stop the Communists from invading Taiwan. The ROC accepted the compromise for the purpose of participating in the peace treaty with Japan.

Even without the sovereignty issue being settled, the peace treaty allowed the ROC government to implement effective administrative control over Taiwan. Article 10 of the treaty stated that the Taiwanese people and the juridical person should be the people and the juridical person of the ROC. Item 2 of the protocol stated that the ships of the ROC should include those registered in Taiwan; the manufactures of the ROC should include those regulated in Taiwan. The above clauses demonstrate the recognition of de facto administrative control of Taiwan. In other words, the Sino-Japanese Peace Treaty included, first, that Japan relinquished its rights to Taiwan, and, second, that Japan recognized that the ROC succeeded to sovereignty over Taiwan.

Moreover, Japanese recognition of ROC sovereignty over Taiwan has remained unchanged since the peace treaty of 1952. Even the Joint Communiqué, signed in 1972 between the PRC and Japan, failed to recognize the PRC's claim over Taiwan.

As for the US government, although it did not abandon the "Undetermined Taiwan Sovereignty" with the signing of the Sino-Japanese peace treaty, since Japan regained its juridical status with the signing of the San Francisco Treaty, in international society only the Japanese and the ROC governments had right to decide the sovereignty of Taiwan. American support for ROC sovereignty in Taiwan stemmed from its strategic desire to prevent the Communists from invading Taiwan. The "Undetermined Taiwan Sovereignty" thus became a means of reserving scope for military action. However, Japan, which held the original sovereignty has consistently regarded Taiwan sovereignty as having passed to the ROC government through formal legal procedure with the



Minister George K.C. Yeh (left 1) and the Japanese Plenipotentiary Isao Kawada (right 1) signed the Sino-Japanese Peace Treaty in Taipei. (1952.4.28). Source: *Modern China Bimonthly* 148 (2002.4).

Sino-Japanese peace treaty. The legitimacy of the transfer of Taiwanese sovereignty is thus beyond doubt.

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