

ABCD Chart of Territorial Cession after War

by Richard W. Hartzell

[Line Drawing #1]



This line drawing is described as follows: On the line there are three dots, labeled A, B, and C respectively. On the right end of the line is a diamond shape, labeled D.

We can use this simple line drawing to discuss territorial cessions which are the result of war.

Point A represents acquirement of the territory by conquest, or "*cession by conquest*."

In other words, historically speaking most countries traditionally recognized that overrunning another country's territory with military forces was directly equivalent to "annexation." However, in the post-Napoleonic period this came to be re-defined as merely "military occupation." As we now recognize, there are different stages of "military occupation," and Point A marks the beginning of the "belligerent occupation" of the entire territory. Military government is in effect.

This customary norm of international law was more precisely codified in the Hague Conventions of 1907, which stipulated that "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."

Territory is considered occupied when it is actually placed under the authority of the hostile army. In layman's terms, Point A often corresponds to the point in time when local military troops surrender.

Point B represents "*cession by treaty*." In the post-Napoleonic period "*cession by conquest*" must be confirmed with a "*cession by treaty*" in order to make a valid

determination of what the final (political) status of the territory should be.

Point C marks the end of the military government of “the (principal) occupying power.” Military government must be supplanted by some other legal arrangement for local government in order for the territory to reach a “final (political) status.”

Area D marks the onset of a “final status” after going through the period of military occupation. Alternatively, this is called the final status under the law of occupation.

The following diagram provides a convenient summary for the territorial cessions of Puerto Rico, the Philippines, Guam, Cuba, and Taiwan.

[Diagram #1]

Relevant Dates					
	Puerto Rico	Philippines	Guam	Cuba	Taiwan
Point A	1898.08.12	1898.08.14	1898.06.21	1898.07.17	1945.10.25
Point B	1899.04.11	1899.04.11	1899.04.11	1899.04.11	1952.04.28
Point C	1900.05.01	1901.07.04	1950.07.01	1902.05.20	-----
Area D	unincorporated territory of USA	unincorporated territory of USA	unincorporated territory of USA	Republic of Cuba	-----

Referring back to Line Drawing #1, the significance of the periods of time from Point A to Point B, from Point B to Point C, and from Point A to Point C are given as follows:

Point A to Point B marks the period of “belligerent occupation.” During this period, in the case of Puerto Rico, the Philippines, Guam, and Cuba, the international position of each was an “independent customs territory under USMG on Spanish soil.” For Taiwan, it was an “independent customs territory under USMG on Japanese soil.”

Point B to Point C marks the period of “friendly occupation,” or what in today’s terminology we would call the “civil affairs administration of a military

government.” During this period, in the case of Puerto Rico, the Philippines, Guam, Cuba, and Taiwan, the international position of each was/is “unincorporated territory under USMG.”

Point A to Point C is called the “interim status” under the law of occupation. The conquering power has a right to displace the preexisting authority, and to assume to such extent as may be deemed proper the exercise by itself of all the powers and functions of government. The local populace passes under a “temporary allegiance” to the conqueror.

Area D is the “final status” under the law of occupation. In a general way, the rule may be stated that final status is achieved when the (principal) occupying power’s military government has “relinquished the occupied territory to the lawful government of the area.”

Notes: Line Drawings for comparative examples of (1) territorial cessions during peacetime, and (2) military occupation where there is no resulting territorial cession in a post-war peace treaty, would be different.

Analysis for Taiwan

Examination of the ABCD Chart provides a structured analysis for the situations of Puerto Rico, the Philippines, Guam, Cuba, and Taiwan. All five of these territorial cessions follow exactly the same pattern.

In the San Francisco Peace Treaty (SFPT) of April 28, 1952, Japan renounced all claims of sovereignty over Taiwan, but no receiving country was specified. An examination of all relevant US government announcements, proclamations, treaties, laws, etc. regarding Taiwan from the period of late April, 1952, to the present, finds no record of a definitive statement of the end of United States Military Government authority over Taiwan. In other words, no civil government operations recognized by the US Commander in Chief or the US Congress have yet begun in Taiwan from late April 1952 to the present. On the ABCD Chart, Taiwan remains somewhere between Point B and Point C, in “interim status” under the law of occupation. Taiwan is “unincorporated territory under USMG”

As such, Taiwan is a TYPE 1 Insular Area of the United States. After the coming into effect of the relevant peace treaty, US insular law applies to Puerto Rico, the Philippines, Guam, Cuba, and Taiwan, because they are **inside** the principle of “*cession by conquest*” which was confirmed by “*cession by treaty*.”

In the situations of Puerto Rico, the Philippines, Guam, Cuba, and Taiwan, the following criteria are met: (1) the United States is the conqueror, (2) the United States is the (principal) occupying power, (3) the territory was indeed ceded in the peace treaty.

For Taiwan, it is important to clarify that while this interim status condition under SFPT persists there is no “Taiwan Republic”, nor any “One China, One Taiwan”, nor “Two Chinas,” nor “a divided Chinese nation.” This is because Taiwan has not yet reached a “final (political) status.”

Therefore, as long as the final (political) status of the Taiwan cession is undetermined as noted in the Truman Statement of June 27, 1950 and legally affirmed by SFPT, it is protected by basic civil rights as a treaty cession under the Taiwan Relations Act.

In summary, under the provisions of the SFPT, United States Military Government authority over Taiwan is still active in the present day, and the allegiance of native Taiwanese persons is to the United States of America.

Notes: Persons in the modern era are perhaps more familiar with the military occupations of Afghanistan and Iraq, as well as the general post WWII military occupation of Germany, with Berlin in particular. However, US insular law does not apply to any of these areas because they are not territorial cessions.

The Republic of China on Taiwan

The continued existence of the “Republic of China” in Taiwan is blocking the Taiwanese people’s enjoyment of “fundamental rights” under the US Constitution. This is explained as follows:

In the Insular Cases the US Supreme Court held that even without any actions by the US Congress, “fundamental rights” under the US Constitution apply in all

unincorporated territories. However, with no action by the US Commander in Chief, what we have seen in Taiwan from late April 1952 to the present is something completely different.

Specifically, the Taiwanese people have been forced to accept ROC citizenship without any internationally recognized legal basis, and males are subject to military conscription in violation of the Geneva Conventions. The Taiwanese people are living under the ROC Constitution, and in their daily lives they are singing the ROC national anthem, raising the ROC flag, and recognizing an ROC national father. The ROC on Taiwan is a non-state, but the ROC constitutional structure in force specifies that insurrection or rebellion against the ROC is punishable by death or lengthy imprisonment!!

Hence, as of late Spring, 1952, in order to conform to the provisions of the Senate-ratified SFPT, and to support and defend the Constitution of the United States against all enemies, foreign and domestic, the US Commander in Chief must issue an Executive Order for the Republic of China government on Taiwan to disband. The US government must help the Taiwanese people organize a temporary government (with a new President, Vice-President, and other top officials), and begin preparations for the calling of a Constitutional Convention.

We are now in the 21st century. In order to deal with this long series of oversights in handling the Taiwan issue up to the present day, many remedial actions are necessary.