

US Territorial Acquisitions as the Result of War

Analysis of *Spanish American War* cessions – April 11, 1899 Treaty of Paris, Articles I, II, & III

	Area/Region	Territorial Classification	Insular Area of USA?	Sovereignty Held by?	Ceded to USA?	Part of USA?	Examples	Classification as "Alien" under US law	Alternative Nomenclature	Notes
1.	Territory held under belligerent occupation by US military forces	Independent customs territory under USMG (on Spanish soil)	No	Spain	(No) (Note 1)	No	Puerto Rico (Aug. 12, 1898→) ----- Guam (June 21, 1898→) ----- Philippines (Aug. 14, 1898→) ----- Cuba (July 17, 1898→)	Nat. Pop.?: Yes Alien (Type I)	Spanish subject	Belligerent occupation ended with the coming into force of the peace treaty on April 11, 1899
2	Domestic Territory (Domestic Country) (Note 2)	Before establishment of civil government: unincorporated territory under USMG After establishment of civil government: unincorporated territory	Yes	USA	Yes	No	Puerto Rico (April 11, 1899→ present) ----- Guam (April 11, 1899→ present) ----- Philippines (April 11, 1899→July 4, 1946)	Nat. Pop.?: Yes Alien (Type II) <i>US national non-citizen</i>	island citizen of the Puerto Rico cession ----- island citizen of the Guam cession ----- island citizen of the Philippine cession (Note 3)	[Civil gov. established:] May 1, 1900 July 1, 1950 July 4, 1901 (Note 4)
3	Foreign Territory under the (temporary) dominion of the USA (Note 5)	Unincorporated territory under USMG	Yes	USA	No	No	Cuba (April 11, 1899→ May 20, 1902)	Nat. Pop.?: Yes Alien (Type III) <i>US national non-citizen (?)</i>	island citizen of the Cuba cession	[Effective Dates:] April 11, 1899→ May 20, 1902 (Note 6)

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Analysis of *World War II in the Pacific* cessions – April 28, 1952 **San Francisco Peace Treaty**, Article 2b

	Area/Region	Territorial Classification	Insular Area of USA?	Sovereignty Held by?	Ceded to USA?	Part of USA?	Example	Classification as "Alien" under US law	Alternative Nomenclature	Notes
1.	Territory held under belligerent occupation by US military forces	Independent customs territory under USMG (on Japanese soil) (with administrative authority for the occupation delegated to the Chinese Nationalists)	No	Japan	(No) (Note 1)	No	Taiwan (Oct. 25, 1945→)	Nat. Pop.?: Yes Alien (Type I)	Japanese subject	Belligerent occupation ended with the coming into force of the peace treaty on April 28, 1952
2	Domestic Territory (Domestic Country) (Note 2)	Before establishment of civil government: unincorporated territory under USMG After establishment of civil government: unincorporated territory	Yes	USA	Yes	No	(none)	Nat. Pop.?: N/A Alien (Type II) <i>US national non-citizen</i>		[Civil gov. established:] -----
3	Foreign Territory under the (temporary) dominion of the USA (Note 7)	Unincorporated territory under USMG	Yes	USA	No	No	Taiwan (April 28, 1952→ present)	Nat. Pop.?: Yes Alien (Type III) <i>US national non-citizen (?)</i> (Note 8)	island citizen of the Taiwan cession ----- TRA alien	[Effective Dates:] April 28, 1952 → present ----- January 1, 1979→present (Note 9)

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This chart extrapolates the concept of having “eligibility” to carry some type of US passport back to earlier eras, even though most persons did not carry passports before the 1950’s. The special circumstances of (1) trust territories, or (2) Indian reservations in the fifty states may overlap with insular law to some extent, but are not considered. Foreign Territory held by US military forces under belligerent occupation (without any territorial cession) may be said to be under the administrative control of the USA, but is not insular and hence is not considered here.

[Note 1]: A person who is a dual citizen of his/her home country and the USA would of course be qualified to carry a US passport.

[Note 2]: The terminology of “domestic country” and “island citizen” comes from the ruling in *Gonzales v. Williams*, 192 U.S. 1 (1904).

[Note 3]: The people of Puerto Rico were collectively naturalized as US citizens in March 1917. The people of Guam were collectively naturalized as US citizens in August 1950. The Philippines became independent on July 4, 1946, and the people became citizens of the Republic of the Philippines.

[Note 4]: Military occupation is conducted under military government. United States Military Government (USMG) jurisdiction over Puerto Rico, Guam, and the Philippines ended on the following dates respectively: May 1, 1900; July 1, 1950; and July 4, 1901.

[Note 5]: Cuba was a “limbo cession” with the USA as the (principal) occupying power and qualifies as an insular area. US Insular Law applies to Cuba because it is "inside" the principle of *cession by conquest* which was confirmed by *cession by treaty*. In *DeLima v. Bidwell* 182 U.S. 1 (1901), it was held that "Cuba is under the dominion of the United States."

[Note 6]: The people of Cuba became citizens of the Republic of Cuba on May 20, 1902.

[Note 7]: Taiwan was a “limbo cession” with the USA as the principal occupying power and qualifies as an insular area. US Insular Law applies to Taiwan because it is "inside" the principle of *cession by conquest* which was confirmed by *cession by treaty*. This is a similar situation to Cuba after the Spanish American War.

[Note 8]: In the Insular Cases (beginning 1901) the US Supreme Court held that even without any actions by the US Congress, “fundamental

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rights” under the US Constitution apply in all unincorporated territories. So-called “fundamental rights” include life, liberty, property, and due process of law under the Fifth Amendment. According to the precedent in *Kent v. Dulles*, 357 U.S. 116 (1958), and subsequent INS interpretations, the right to travel is a part of the "liberty" of which a citizen, or other person owing allegiance to the United States, cannot be deprived without due process of law under the Fifth Amendment. The right to travel also includes the right to obtain a passport. Hence, the Taiwanese are entitled to carry new Taiwan passports issued under US administrative authority. If the US State Dept. does not accept default status of *US national non-citizen* for native Taiwanese people, then some new category of travel document, such as TRA Alien Passport or Taiwan Cession Passport, will have to be issued. By way of clarification, there is no valid rationale under international law to consider native Taiwanese persons as Republic of China citizens/nationals.

[Note 9]: The Taiwan Relations Act (TRA) came into effect in early 1979, and is a domestic law of the United States. Under the TRA the United States treats Taiwan as a "foreign state," however in terms of foreign relations, the US Executive Branch does not consider Taiwan to be an independent sovereign nation. Taiwan is thus "foreign in a domestic sense," which is precisely the description attached to the United States' newly acquired insular possessions of Puerto Rico, Guam, Cuba, and the Philippines after the Spanish American War of 1898.

[Addendum]: According to the US Constitution, the USA must provide for the “common defense.” None of the pre-existing five major unincorporated territories (Guam, Northern Mariana Islands, American Samoa, Puerto Rico, and the US Virgin Islands) have their own Ministry of National Defense, or have they instituted military conscription laws over their local populace. All defense matters for the fifty states and territories under US administrative authority are handled by the Department of Defense in the Pentagon.

Nat. Pop. is used to indicate “Native Population.”

Civil gov. is used to indicate “Civil government.”

N/A is used to indicate “Not Applicable.”

Source: This chart is an expanded analysis of a similar chart taken from “Understanding the San Francisco Peace Treaty’s Disposition of Formosa and the Pescadores,” in the *Harvard Asia Quarterly*, published Fall 2004 by the Harvard Asia Center, Cambridge, Massachusetts.

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