

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Dr. Paul Maas Risenhoover,
Plaintiff,

v.

US Department of Commerce and US Department of State,
Defendants.

Case No. _____

FOIA COMPLAINT Supplemental Jurisdictional Statement

Plaintiff invokes 22 CFR § 120.13 of the ITARS or International Traffic in Arms Regulations and their unique definition of being in the United States, precisely because Plaintiff is uniquely, personally, individually, privately effected by the US Department of Commerce Bureau of Industry and Security rulemaking if the island of Formosa is within the United States for purposes of an export therefrom of a Brain-Computer Interface device such as a subretinal implant or digital permanent contact lens, or anti-epileptic devices (when proceeding through Tokyo Airport security, body screening yielded an “anomaly” at left brain result): because when the People’s Republic of China People’s Liberation Army occupied Woody Island in the Paracels, the Secretary of State concluded the US had residual responsibilities (“**During the discussion, the Secretary pointed out that we might consider acting under the Japanese Treaty since the U.S. has residual responsibility over all former Japanese territories.**”

<https://history.state.gov/historicaldocuments/frus1955-57v03/d186>) for all territories renounced by Japan in the Treaty of Peace concluded at San Francisco, but not ceded to a recipient nation (“**The Legal Adviser’s office has dug up a theory in Hyde’s International Law which would support the Secretary’s view that Japan has a residential sovereignty (a different concept we think than residual sovereignty in the Ryukyus but possibly the inspiration for the latter) in the Kuriles and Sakhalin until the sovereignty which she has renounced is transferred to another country.**”

<https://history.state.gov/historicaldocuments/frus1955-57v23p1/d93>), and thus the

US had antecedent “Principal Victor” “right of conquest” to Formosa, and had formally extended powers of jurisdiction and naval and air legislation creating the islands an American possession:

22 CFR § 120.13 United States. *United States, when used in the geographical sense... any territory or possession over which the United States exercises any powers of administration, legislation, and jurisdiction.*

Compare this law of war precedent, cited approvingly (see Footnote 4, page 4, 4See generally ***B. Calder, The Impact of Intervention: The Dominican Republic During the U. S. Occupation of 1916–1924, pp. 17, 204–205 (1984) (describing establishment of a U. S. military government in the Dominican Republic in 1916, and plans, beginning in late 1920, for withdrawal).***) in *Sessions v Santana-Morales*:

“The Head of the Military Government suggests that authority be given him to issue temporary licenses that will permit Americans in business in Santo Domingo to readjust the engagements they now have with the enemy or to enable them to continue contracts with the proviso that no funds pass into enemy hands during the war, and inquires whether the Alien Property Custodian will have an agent in Santo Domingo.

I am also in receipt of a paraphrase of a despatch of December 19, 1917,¹ from the Head of the Military Government, in which he requests that the International Banking Corp. be made an agent of the Alien Property Custodian in Santo Domingo.

The inquiries from the Head of the Military Government, with reference to the appointment of an agent in Santo Domingo for the Alien Property Custodian, appear to involve the question as to whether or not, in view of the occupation of the Republic by the forces of the United States, it is to be considered a part of the “United States” as those words are used in the Trading with the Enemy Act so as to extend to that country the application of the act.

In reply I have the honor to state that, bearing in mind the nature and purposes of the act and the circumstances surrounding the occupation of the Republic of Santo Domingo, it would appear that the words “United States” as used in the act, were not intended to include the Republic of Santo Domingo and that it was not contemplated that the provisions of the act should apply to that country. The Department has consulted the officers vested with the administration of the Trading with the Enemy Act, including the Alien Property Custodian, and they agree that the act need not be interpreted as applicable to the Republic of Santo Domingo.

In this relation, however, it would appear that the Head of the Military Government could issue such orders as may be necessary or appropriate to obtain the objects of the Trading with the Enemy Act in a manner suitable to the peculiar conditions prevailing in that country.

With reference to the suggestion of the Head of the Military Government that authority be given him to issue temporary licenses to Americans in business in Santo Domingo to readjust the arrangements [Page 361]they now have with enemies, attention is called to the fact that the Enemy Trading Act forbids persons in the United States to “trade” not only with enemies as defined in section 2 of that act but also under section 3(a) with any other person, with knowledge or reasonable cause to believe that such person is conducting or taking part in such trade, directly or indirectly, for, on account of, or on behalf of, or for the benefit of enemies.”

<https://history.state.gov/historicaldocuments/frus1918Supp02/d396>

In 1949, the US also asserted jurisdiction and legislation on the Most Favored Nation, national treatment, Friendship Navigation and Commerce Treaty, and separate customs zone treatment of Formosa:

DEPARTMENT OF THE TREASURY

Bureau of Customs [T . D. 52253] P r o d u c t s o f F o r m o s a (T a i w a n)

MARKING OF COUNTRY OF ORIGIN

Ju n e 29, 1949.

The Department of State has informed the Bureau of Customs that **pending the final determination of the status of Formosa (Taiwan)**, the English name of the country of origin of articles manufactured or produced in that island will be appropriately indicated by the* words “ Taiwan”, “Formosa”, “Taiwan (China)” or “Formosa (China)”.*

T. D. 50361 is amended to conform to the foregoing, and the entry for the area in question in item 3 of Bulletin of Marking Rulings-3 shall be changed to conform to this decision.

[s e a l]

F r a n k D o w , A c t i n g C o m m i s s i o n e r o f C u s t o m s .

[F . R. Doc. 49-5430; Filed , July 8, 1949; 8:54 a. m .]

<https://www.govinfo.gov/content/pkg/FR-1949-07-06/pdf/FR-1949-07-06.pdf>

In 1946, by General Orders, the US also asserted jurisdiction and legislation on the Most Favored Nation, national treatment, Friendship Navigation and Commerce

Treaty, and separate customs zone treatment of Formosa:

Appendix A to Part 131—General Rulings Under Executive Order No. 8389, April 10, 1940, as Amended, and Regulations Issued Pursuant Thereto

STATUS OF TAIWAN (FORMOSA)

Cross Reference: For an interpretation of General Ruling No. 11A, see Public Circular No. 33, infra.

Appendix B to Part 131—Public Circulars Under Executive Order No. 8389, April 10, 1940, as Amended, and Regulations Issued Pursuant Thereto

STATUS OF TAIWAN (FORMOSA) November 15, 1946.

Public Circular No. 33 under Executive Order No. 8389, as amended, Executive Order No. 9193, as amended, sections 3 (a) and 5 (b) of the Trading With the Enemy Act, relating to foreign funds control.

(1) In general. For the purposes of the order and General Ruling No. 11: (a) **Taiwan (Formosa) shall be deemed to be** subject to the jurisdiction of China; (b) **No person shall be deemed a national of Japan solely by reason of the fact that, at any time on or since the effective date of the order, Taiwan (Formosa) was regarded as part of Japan.** (2) Under General Ruling No. 11A (10 F. R. 5573, 11 F. &. 9340). Paragraph (1) (c) of General Ruling No. 11A shall **not be deemed to apply to a partnership, association, corporation, or other organization solely by reason of the fact that it is organized under the laws of Taiwan (Formosa) or has had its principal place of business therein.** (Secs. 3 (a), 5 (b), 40 Stat. 412, 415, 966, sec. 2i 48 Stat. 1, 54 Stat. 179, 55 Stat. 838; 50 U. S. C. App. 3, 5; 12 U. S. C. 95 note, 95a, 50 U. S. C. App., Sup., 616; E. O. 8389, April 10, 1940, as amended by E. O. 8785, June 14, 1941, E. O. 8832, July 26, 1941, E. O. 8963, Dec. 9, 1941, and E. O. 8998, Dec. 26, 1941, E. O. 9193, July 6, 1942, as amended by E. O. 9567, June 8, 1945; 3 CFR, Cum. Supp., 10 F. R. 6917; Regulations, April 10, 1940, as amended June 14, 1941, February 19, 1946, and June 28, 1946; 31 CFR, Cum. Supp. 130.1-7, 11 F. R. 1769, 7184) [seal] John W. Snyder, Secretary of the Treasury. [F. R. Doc. 46-20353; Filed, Nov. 14, 1946; 8:50 a. m.]
<https://www.govinfo.gov/content/pkg/FR-1946-11-15/pdf/FR-1946-11-15.pdf>

Nevertheless, the Bank of Taiwan was deemed an Enemy Alien:

- a. That certain draft, in the principal sum of \$959.63, dated May 27, 1941, drawn by N. Minami & Co., Ltd., on Minami & Hori Importing Co., New York, New York, and presently in the custody of the Superintendent of Banks of the State of New York, as Liquidator of the Business and Property in New York of Bank of Taiwan, Ltd., 80

Spring Street, New York, New York, together with any and all rights in, to and under, including particularly the right to possession of, the aforesaid draft, b. That certain draft, in the principal sum of \$817.03, dated May 16, 1941, drawn by N. Minami & Co., Ltd., on Minami & Hori Importing Co., New York, New York, and presently in the custody of the Superintendent of Banks of the State of New York, as Liquidator of the Business and Property in New York of Bank of Taiwan, Ltd., 80 Spring Street, New York, New York, together with any and all rights in, to and under, including particularly the right to possession of, the aforesaid draft, and <https://www.govinfo.gov/content/pkg/FR-1946-11-15/pdf/FR-1946-11-15.pdf>

Native Formosans were to be deemed wards of the US military government, like Palauans, Marshallese and Micronesians, but if military necessity warranted, Formosans could be rendered Enemy Aliens:

II. *Departmental View*

It will be recalled that the Government of the United States has consistently taken the position that its rights in certain former German [\[Page 1218\]](#)territories are equal to the rights of any other of the Principal Allied and Associated Powers in whose favor Germany renounced her rights in those territories. That position has been made clear in official correspondence with other governments concerned, in our Peace Treaty with Germany of 1921,⁹ and **in our Treaty of 1922 with Japan in which we assented to the mandate given to Japan.**¹⁰

It is unnecessary to consider at this stage whether violation by Japan of the terms of the mandate *ipso facto* terminated the mandate because **existence of the mandate does not present any legal obstacle to an American military administration of the islands during occupation.**

The **United States, as belligerent occupant of the territory,** supersedes the Japanese Government **as the actual and lawful government of the territory.** There is **no question of the lawfulness under international law of the American occupation.**

Belligerent occupation is a temporary rather than a permanent status and does not transfer sovereignty to the occupant although during such occupation the belligerent occupant is entitled to exercise the rights of sovereignty subject to the rule of international law dealing with military occupation.

The fact of occupation does not operate to terminate the mandate although it may suspend its operation. The belligerent occupant is not subject to the terms of the

mandate or responsible to the League of Nations. The military administration of the belligerent occupant is not bound by the mandate provision concerning the establishment of bases and fortifications and is not required to make reports to the Council of the League of Nations. Any rights of the League of Nations in the mandated territory **are in abeyance during belligerent occupation** and need not be of concern to the military administration.

The **belligerent occupation does not confer United States nationality upon the inhabitants** of the Japanese Mandated Islands. The mandate, however, **did not confer Japanese nationality upon them. Native inhabitants, therefore, should not be treated as enemy aliens.**

<https://history.state.gov/historicaldocuments/frus1944v05/d1197>

Non-Japanese Inhabitants of Formosa

Although Chinese-Formosans and the aborigines, in a legal sense, are enemy nationals, in a political sense, the Chinese-Formosans should be treated as **“liberated peoples”, and the tribal aborigines as wards of the military government** (PWC-194⁶³).

<https://history.state.gov/historicaldocuments/frus1944v05/d1218>

Formosa has been under Japanese sovereignty for half a century. Although **technically all Formosans, therefore, are enemy nationals**, the State Department looks upon the Chinese Formosans and the Formosan aborigines as quite apart from the persons of Japanese blood who live on the island. It anticipates that the Military Governor will act generally on the assumption that the Chinese Formosans, who speak Chinese and are of Chinese or of mixed Chinese and aborigine origin, are to be restored to Chinese citizenship after the war, and that the **tribal aborigines, who are akin to the non-Christian peoples of Northern Luzon, are neither Japanese nor Chinese, but more properly to be considered as wards of whatever government has control of the island.**

The **Marshall, Caroline and Marianas Islands**, on the other hand, have been held by Japan only under mandate and the **natives of these islands have never become Japanese nationals. They should be treated as wards of the military government.** A number of Koreans may be found in the islands. If so, special consideration should be given them.

<https://history.state.gov/historicaldocuments/frus1944v05/d1208>

See pages 101-103 on status of Formosans and Koreans,

<https://dl.ndl.go.jp/pid/9894728/1/1>

“In Samanillo case, the debt due from the defendant to the plaintiff was paid, by order of the Japanese Military Administration, to the Bank of Taiwan as Liquidator of local enemy banks and Bureau of Enemy Property of the enemy bank's properties. In the present case the defendants, by order of the Japanese Military Administration, paid to the Bank of Taiwan as Bureau of Enemy Property the debt due from the defendants to the plaintiffs. The question involved in said Samanillo case was whether or not the collection of Samanillo's debt to the Hongkong and Shanghai Banking Corporation by the Bureau of Enemy Property of the Japanese Military Administration, was a confiscation of the plaintiffs' credit. And the question involved in the instant case is whether or not the collection by the Department of Enemy Property, Japanese Military Administration, of the mortgage debt due from the defendants to the plaintiffs was a confiscation of the latter's credit.

This Court reversed the decision of the lower court in the case of *Hongkong and Shanghai Baking Corporation vs. Luis Perez Samanillo, Inc., et al.*, on the strength of the ruling of this Court in the case of *Haw Pia vs. China Banking Corporation*, (80 Phil 604), in which the facts and law involved were similar to those in *Haw Pia*. In this last case we held that the collection by the Bank of Taiwan of the China Banking Corporation's credit from the latter's debtor by order of the Japanese Military Administration, was not a confiscation but a sequestration of the enemy private personal property, and therefore the payment by the plaintiff *Haw Pia* to the Bank of Taiwan was valid and released plaintiff's obligation to the defendant bank. ”

https://lawphil.net/judjuris/juri1949/aug1949/gr_1-1494_1949.html

Bank of Taiwan, as an agency of the Japanese invading army, was not authorized under the international law to liquidate the business of the China Banking Corporation,

https://lawphil.net/judjuris/juri1948/apr1948/gr_1-554_1948.html

[Vesting Order 911] Bank of T aiwan, Ltd. Under the authority of the Trading with the Enemy Act, as amended, and Executive Order No. 9095, as amended, and pursuant to law, the undersigned, after investigation: 1. Finding that Bank of Taiwan, Ltd., a Japanese

corporation, Taihoku, Formosa, Japan, is a national of a designated enemy country (Japan); 2. Finding that said Bank of Taiwan, Ltd. has an established agency or branch office at New York, New York, engaged in the conduct of business within the United States and therefore is, to that extent, a business enterprise within the United States; 3. Finding that the property of such New York agency of said Bank of Taiwan, Ltd. is in the process of administration by the Superintendent of Banks of the State of New York acting under judicial supervision of the Supreme Court of the State of New York; 4. Finding, therefore, that the property described as follows: The excess proceeds of the business and property in the State of New York of Bank of Taiwan, Ltd. in the possession of the Superintendent of Banks of the State of New York, or which may hereafter come into his possession under and by virtue of the Banking Law of the State of New York, including but not limited to the excess proceeds of all assets of any nature whatsoever, owned or controlled by or payable or deliverable to or held on behalf of or on account of or owing to the New York agency of said Bank of Taiwan, Ltd., remaining after the payment of the claims of creditors, accepted or established in accordance with the Banking Law of the State of New York, arising out of transactions had by them with the New York agency of said Bank of Taiwan, Ltd. or whose names appear as creditors on the books of such agency, together with interest on such claims and the expenses of liquidation, is property within the United States owned or controlled by a national of a designated enemy country (Japan), and also is property which is payable or deliverable to, or claimed by, a national of a designated enemy country (Japan) and which is in the process of administration by a person acting under judicial supervision; 5. Determining that to the extent that such national is a person not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of the aforesaid designated enemy country (Japan); 6. Having made all determinations and taken all action, after appropriate consultation and certification, required by said Executive Order or Act or otherwise, and 7. Deeming it necessary in the national interest; hereby vests in the Alien Property Custodian the property described in subparagraph 4 hereof, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States. Nothing in this order is intended to affect the right and power of the Superintendent of Banks of the State of New York to continue to retain possession of, collect and liquidate such business, property and assets and, in the course thereof, to do such acts and perform such duties (not inconsistent herewith) as may be 2456 FEDERAL REGISTER, Friday, February 26, 1943 required or permitted to said Superintendent of Banks by and in accordance with and subject to the provisions of the Banking Law of the State of New York: Provided, however, That after the claims of the creditors described in subparagraph 4 hereof, together with interest thereon and the expenses of liquidation, have been paid in full, the proceeds of the remaining assets of said Bank of Taiwan, Ltd. in the

possession of said Superintendent of Banks shall be held for the account of and subject to the further order of the Alien Property Custodian. The property herein vested, and any or all of the proceeds thereof, shall be held in an appropriate special account or accounts, pending further determination of the Alien Property Custodian. This shall not be deemed to limit the powers of the Alien Property Custodian to return such property or the proceeds thereof, or to indicate that compensation will not be paid in lieu thereof, if and when it should be determined that such return should be made or such compensation should be paid. Any person, except a national of a designated enemy country, asserting any claim arising as a result of this order may file with the Alien Property Custodian a notice of his claim, together with a request for a hearing thereon, on Form APC-1, within one year from the date hereof, or within such further time as may be allowed by the Alien Property Custodian. Nothing herein contained shall be deemed to constitute an admission of the existence, validity or right to allowance of any such claim. The terms “national” , “designated enemy country” and “business enterprise within the United States” as used herein shall have the meanings prescribed in section 10 of said Executive Order. Executed at Washington, D. C., on February 15, 1943. [seal] Leo T. Crowley, Alien Property Custodian. [F. R. Doc. 43-3028; Filed, February 25, 1943; 10:37 a. m.]

Korea, also a part of the Empire of Japan, like Formosa:

[Vesting Order 913] Bank of Chosen, Ltd. Under the authority of the Trading with the Enemy Act, as amended, and Executive Order No. 9095, as amended, and pursuant to law, the undersigned after investigation r 1. Finding that Bank of Chosen, Ltd., a Japanese corporation, Keijo, Chosen, Japan, is a national of a designated enemy country (Japan): 2. Finding that said Bank of Chosen, Ltd., has an established agency or branch office at New York, New York, engaged in the conduct of business within the United States and therefore is, to that extent, a business enterprise within the United States; 3. Finding that the property of such New York agency of said Bank of Chosen, Ltd. is in the process of administration by the Superintendent of Banks of the State of New York acting under judicial supervision of the Supreme Court of the State of New York; 4. Finding, therefore, that the property described as follows: The excess proceeds of the business and property in the State of New York of Bank of Chosen, Ltd., in the possession of the Superintendent of Banks of the State of New York, or which may hereafter come into his possession under and by virtue of the Banking Law of the State of New York, including but not limited to the excess proceeds of all assets of any nature whatsoever, owned or controlled by or payable or deliverable to or held on behalf of or on account of or owing to the New York agency of said Bank of Chosen, Ltd., remaining after the payment of the claims of creditors, accepted or established in accordance with the Banking Law of the State of New York, arising out of transactions had by them with the New York agency of said Bank of Chosen, Ltd.,

or whose names appear as creditors on the books of such agency, together with interest on such claims and the expenses of liquidation, is property within the United States owned or controlled by a national of a designated enemy country (Japan), and also is property which is payable or deliverable to, or claimed by, a national of a designated enemy country (Japan) and which is in the process of administration by a person acting under Judicial supervision; . 5. Determining that to the extent that BUCh national is a person not within a des- FEDERAL REGISTER, Friday, February 26, 1943 2457 igned enemy country, the national interest of the United States requires that such person be treated as a national of the aforesaid designated enemy country (Japan); 6. Having made all determinations and taken all action, after appropriate consultation and certification, required by said Executive Order or Act or otherwise, and 7. Deeming it necessary in the national interest; ; hereby vests in the Alien Property Custodian the property described in subparagraph 4 hereof, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States. Nothing in this order is intended to affect the right and power of the Superintendent of Banks of the State of New York to continue to retain possession of, collect and liquidate such business, property and assets and, in the course thereof, to do such acts and perform such duties (not inconsistent herewith) as may be required or permitted to said Superintendent of Banks by and in accordance with and subject to the provisions of the Banking Law of the State of New York: Provided, however, That after the claims of the creditors described in subparagraph 4 hereof, together with interest thereon and the expenses of liquidation, have been paid in full, the proceeds of the remaining assets of said Bank of Chosen, Ltd. in the possession of said Superintendent of Banks shall be held for the account of and subject to the further order of the Alien Property Custodian. The property herein vested, and any or all of the proceeds thereof, shall be held in an appropriate special account or accounts, pending further determination of the Alien Property Custodian. This shall not be deemed to limit the powers of the Alien Property Custodian to return such property or the proceeds thereof, or to indicate that compensation will not be paid in lieu thereof, if and when it should be determined that such return should be made or such compensation should be paid. Any person, except a national of a designated enemy country, asserting any claim arising as a result of this order may file with the Alien Property Custodian a notice of his claim, together with a request for a hearing thereon, on Form APC-1, within one year from the date hereof, or within such further time as may be allowed by the Alien Property Custodian. Nothing herein contained shall be deemed to constitute an admission of the existence, validity or right to allowance of any such claim. The terms "national", "designated enemy country" and "business enterprise within the United

States” as used herein shall have the meanings prescribed in section 10 of said Executive Order. Executed at Washington, D. C., on February 15, 1943. [seal] Leo T. Crowley, Alien Property Custodian. [F. R. Doc. 43-3030; Piled, February 25, 1943; 10:37 a. m.]

<https://www.govinfo.gov/content/pkg/FR-1943-02-26/pdf/FR-1943-02-26.pdf>

[Vesting Order P4] B a n k of T a i w a n , L t d. ■ In re: Bank of Taiwan, Ltd. Under the authority of the Trading with the Enemy Act, as amended, and Executive Order No. 9095, as amended, and pursuant to law, the Alien Property Custodian, after investigation: 1. Having found and determined in Vesting Order Number 911, dated February 15, 1943, that Bank of Taiwan, Ltd., is a national of- a designated enemy country (J a p a n); 2. Finding that Bank of Taiwan, Ltd., has established agencies or branch offices in the Commonwealth of the Philippines, engaged in the conduct of business w ithin the United States and therefore is, to that extent, a business enterprise within the United States; 3. Finding that the property described as follows: A ll property of any nature whatsoever subject to the Jurisdiction of the United States and owned or controlled by, payable or deliverable to, or held on behalf o f or oh account of, or owing to, the said branches in the Commonwealth of the Philippines of the Bank of Taiwan, Ltd., Including but not limited to the cash which was on deposit with the Manila Clearing House Association on December 29,1941, in the apaount of 233,410.26 Philippine pesos, is property of a business enterprise within the United States which is a national of a designated enemy country (Japan); and determining: 4. That to the extent that such national is a person not within a designated enemy country, the national interest of the United States requires that such person be treated as a national of a designated enemy country (J a p a n); And having made all determinations and taken all action required by law, including appropriate consultation and certification, and deeming it necessary ' in the-national interest, hereby vests in the Alien Property Custodian the property described in subparagraph 3 hereof, to be held, used, administered, liquidated, sold, or otherwise dealt with in the interest and for the benefit of the United States. Such property and any or all of the proceeds thereof shall be held in an appropriate account or accounts, pending further determination of the Alien Property Custodian. This order shall not be deemed to constitute an admission by the Alien Property. Custodian of the lawfulness of, or acquiescence in, or licensing of, any set-offs, charges or deductions, nor shall it be deemed to limit the power of the Alien Property Custodian to return such property or the proceeds thereof in whole or in part, nor shall it be deemed to indicate that compensation will not be paid in lieu thereof, if and when it should be determined to#take any one or all of such actions. Any person, except a national of a

designated enemy country, asserting any claim arising as a result of this order may, «within one year from the date hereof, or within such further time as may be allowed, file with the Alien Property Custodian on Form- APC-1 a notice Of claim, together with a request for a hearing thereon. Nothing herein contained shall be deemed to constitute an admission of the existence, validity or right to allowance of any such claim. The terms “national”, “designated enemy country” and “business enterprise within the United States” as used herein shall have the meanings prescribed in section TO of Executive Order No. 9095, as amended. Executed at Washington, D. C., on January 7, 1946. [s e a l] Jam es E. M a r k h am , Alien Property Custodian. [F . R. Doc. 46-1051; Filed, Jan. 21; 1946; ^1:28 a. “m.]

<https://www.govinfo.gov/content/pkg/FR-1946-01-23/pdf/FR-1946-01-23.pdf>

<https://www.govinfo.gov/content/pkg/FR-1948-04-10/pdf/FR-1948-04-10.pdf>

Taiwan bonds as enemy aliens <https://www.govinfo.gov/content/pkg/FR-1951-02-03/pdf/FR-1951-02-03.pdf>

Today, the Constitution on Formosa declares existence of a “Free Area” consistent with the fact that Formosa is not ruled by communist (or any) China.

<https://law.moj.gov.tw/ENG/LawClass/LawAll.aspx?pcode=A0000002>

Article 1 The electors of the free area...

Article 11

Rights and obligations between the people of the Chinese mainland area and those of the free area, and the disposition of other related affairs may be specified by law.

Formosa, then, in law martial, or Jus Gentium, is like the American Zone of Berlin (US v Tiede, United States v. Tiede, 86 F.R.D. 227, <https://ihl-databases.icrc.org/en/national-practice/united-states-v-tiede-ruske-united-states-court-berlin-14-march-1979>), the Free City of Danzig, the Free Territory of Trieste, and similar areas under allied occupation by or pursuant to White House Military Orders of United States Military Government (<https://history.state.gov/historicaldocuments/frus1920v02/d103>, <https://history.state.gov/historicaldocuments/frus1920v02/d101>). That is, under directives JCS 1651 on Sovereignty Status of Formosa <https://history.state.gov/historicaldocuments/frus1946v08/d163> , JCS 18 and SCAPIN 677, and JCS 1381/15

<https://www.ndl.go.jp/constitution/e/shiryo/01/036/036tx.html> , Formosa was removed from Japanese administration by or pursuant to White House directives exercising possessory right of conquest of the Principal Victor. While in the US occupation at Santo Domingo, the State Department opined that US military government was a foreign country (compare 22 USC 3303(b)(1)), the Navy Department contended the naval government was an agent of the Government of the United States, and not acting by and for a sovereign people abroad. In Carmen Randolph's Observations on the Status of Cuba, he rightly notes the Cubans under allied occupation after 1898, with their guerrillas, were not yet a sovereign people either, and hence, held in trust by the Principal Victors, *Neely v Henkel*, *Pearcy v Stranahan*. See US Japan FCN Treaty Protocol Articles 12 to 14, assimilating Formosa with Puerto Rico and the Ryukyus (Okinawa).

*The **Basic Initial Post-Surrender Directive to SCAP for the Occupation and Control of Japan, prepared by the Joint Chiefs of Staff JCS Directive No. 18 of November 8, 1945**,⁴ Section 4, paragraph d) provides for the complete governmental and administrative separation from Japan of certain Pacific islands acquired by Japan since 1914, Manchuria, Formosa, the Pescadores, Korea, Karafuto (southern Sakhalin), and "such other territories as may be specified in future directives." This **provision of JCS 18**, which it may be noted did not specifically mention the Kuril Islands, was **carried out by General Headquarters through a directive to the Japanese Government on January 29, 1946 (Scapin 677)**. In defining the areas to be separated from Japan governmentally and administratively, Scapin 677 specifically enumerates the Kuril Islands as well as the Habomai Group and Shikotan Island. Historically, this is the first time that the Habomai–Shikotan area is dealt with in a document of international character concerned with the territorial boundaries of Japan. Although the Habomai-Shikotan area was under Soviet occupation at the time Scapin 677 was drafted, such specific mention of the area in this directive has unfortunately tended to endorse if not validate the Soviet position there. In a sense, therefore, it is believed that **Scapin 677, while fundamentally a General Headquarters administrative matter**, will be regarded by the Soviet Government as tantamount to an addendum to or extension of the provisions of the Yalta Agreement.*

<https://history.state.gov/historicaldocuments/frus1949v07p2/d106>

Yalta Agreement could not have been determination referred to para 8 Potsdam Proclamation since it was prior Potsdam Proclamation in point time conclusion.

3.

Potsdam Proclamation clearly leaves question Japanese territorial determination for subsequent consideration Parties Proclamation. U.S.S.R. cannot unilaterally make this determination.

4.

SCAP General Order No. 1⁴ merely states Japanese troops Karafuto and Kuriles should surrender to Commander Soviet Forces Far East and does not and was not intended touch upon final disposition these islands.

5.

SCAPIN 677⁵ was operational directive to Japanese Government tentative in character and specifically states para 6 that it not Allied policy determination of Japanese territory.

6.

Under terms San Francisco Peace Treaty Japan relinquished title Kuriles and South Sakhalin but treaty did not transfer these islands to another State. U.S.S.R. recognized treaty as ratified [but?] did not accomplish this since Gromyko proposed amendment Article 2 by which Japan would recognize Soviet sovereignty South Sakhalin and Kuriles. Furthermore Treaty provides no country which has not signed Treaty shall derive benefits from Treaty.

7.

Ultimate disposition South Sakhalin and Kuriles has not been determined and is matter to be resolved by future international agreement.

US position regarding foregoing given in detail in claim submitted to ICJ in shooting down B-29 off Hokkaido October 1952. Copy claim⁶ sent Tokyo. Japanese Foreign Office concurred this claim.⁷

<https://history.state.gov/historicaldocuments/frus1955-57v23p1/d34>

And consider:

It may also be pointed out that on December 29 [20], 1916, the Department of State telegraphed the American Minister at Santo Domingo that the position of

his Legation should be practically the same as before the proclamation of the Military Government, and that it should advise on all points with the Military Government, "which is carrying on the Government for the Republic".²²

On April 7, 1917, Captain Knapp issued an order to the Commander, Second Provisional Brigade, United States Marines, in which he set forth that in the world war, "the attitude of the Dominican Government should be that of a neutral, in so far as the existing circumstances of the Military Government permit".

<https://history.state.gov/historicaldocuments/frus1920v02/d112>

RELATIONSHIP OF THE MILITARY OCCUPATION AND GOVERNMENT IN THE DOMINICAN REPUBLIC TO THE DOMINICAN GOVERNMENT

<https://history.state.gov/historicaldocuments/frus1918/d402>

Formosa: Military Government: Cooperation With the Formosan Government

<https://history.state.gov/historicaldocuments/frus1944v05/d1222>

Papers Concerning Military Government in Formosa

<https://history.state.gov/historicaldocuments/frus1944v05/d1218>

FORMOSA: (TAIWAN) OCCUPATION AND MILITARY GOVERNMENT COMPOSITION OF FORCES

<https://history.state.gov/historicaldocuments/frus1944v05/d1219> ,

<https://history.state.gov/historicaldocuments/frus1944v05/d1219>,

<https://history.state.gov/historicaldocuments/frus1944v05/d1216>,

13.

In the Pescadores, Loochoos (Nansei), and such other small islands in the general vicinity of the Bonins and Formosa, as may be under military control, civil affairs administration shall be the responsibility of the United States Navy.

14.

The responsibility for over-all planning for civil affairs administration in Formosa will remain with the Navy. Such plans, however, will recognize that in practice the administration of civil affairs in Formosa to a large

extent will be delegated or otherwise assigned to and performed by the Army.

<https://history.state.gov/historicaldocuments/frus1944v05/d1213>

Supplemental Prayer for Relief

1. Declare the US in fact, and through Seventh Fleet operational plans, orders, and directives, attend to and “*exercises any powers of administration, legislation, and jurisdiction*”.
2. Declare that Plaintiff is entitled to discovery as to how the US naval government from Okinawa to the Philippines, and Guam to Formosa, *exercises any powers of administration, legislation, and jurisdiction.*
3. *Declare that OSS POW repatriation activities before October 25, 1945, and OSS MIA grave repatriation acts similar, constitute US naval government exercises any powers of administration, legislation, and jurisdiction, during a temporary military occupation.*
4. *Take judicial notice of all case law in English on belligerency, military occupation, civil affairs, COGAT, military governor, law of war, from the Cardozo Law School online collection of Israel Supreme Court translations, pursuant to the sua sponte duty of this Court under FRCP Rule 441.: In determining foreign law, the court may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Federal Rules of Evidence. The court's determination must be treated as a ruling on a question of law.*
5. *Take notice that Plaintiff intends to introduce foreign law: the Amendments to the Free Territory of Taiwan or Free Zone of Formosa, the Israel Supreme Court precedents on modern law of occupation, and the Grand Justices Interpretation 328 that the island of Formosa reposes a political question outside competent authority of their Advisory Body, and that Interpretation 558 in light of the Taiwan and Mainland Relations Act Article 9-1, denationalize the Republic of China Chinese citizenship and substitute with actual residence and registered legal domicile on Formosa. And Taiwan District Court cases applying cy pres trust doctrine, or rebus sic stantibus to trusts, in the following matter, declaring Chinese from Hong Kong or China Proper to be refugees:*

Hundreds of thousands of Chinese people have fled from their homes within the boundaries of historic China on the Asiatic mainland and have become refugees. It is common

knowledge that they are refugees from the type of slaughter and distress the testator described. Some two million of the refugees are now on Formosa. More than a million are in Hong Kong. **These Chinese people are, within our general concept of domicile, still people of China who have left historic China only temporarily.**

There is considerable discussion in the briefs with reference to the American position in regard to the relationship between mainland China and the Island of Formosa. The Island occupies an interesting situation in international law and its definite legal status is a matter for future settlement and determination among the nations of the world.¹ However, insofar as the will of ^{*905}Mr. Plummer is concerned the words and clauses used by him establish his intention that the proceeds of the testamentary trust should be used for the benefit of Chinese tipon the Asiatic mainland and not Chinese on the Island of Formosa or elsewhere in the world outside the boundaries of historic China. What has been said with reference to Formosa applies also to the British Crown Colony of Hong Kong which consists of Hong Kong Island (32 square miles) ceded by China to Britain in 1841, Kowloon peninsula (3 square miles) and a small adjoining mainland area, known as the "New Territories" held under a ninety-nine year lease negotiated in 1898. The total area of the colony is 391 square miles and its population approximately 1,750,000. Like Formosa, its population has been swelled by refugees from the mainland. Neither Hong Kong nor Formosa, however, is the "China" contemplated by Mr. Plum-mer in his will. In view of the directions for a rapid and expeditious use of the assets of the charitable trust for the relief of "needy Chinese in China," it appears that the terms of the will cannot be strictly or substantially carried out and its directives performed. The first question therefore should be answered in the negative.

From State Department bulletins and articles appearing in periodicals and surveys prepared for institutes and foundations (all cited in the briefs) it appears that the American position as to the status of the Island of Formosa is purposely ambiguous and awaits further historical developments.

*“The island’s history may be divided roughly into the following periods: 1590, Western discovery by the Portuguese; 1624 – 1661, Dutch colonial rule; 1622-1683, the Koxinga kingdom; 1684r-1874, a ‘protectorate’ of the Manchu dynasty; 1875-1894, a province of the Manchu dynasty; 1895, Formosa Democratic Republic; 1896-1945, Japanese colonial rule; 1945 to the present, Chinese Nationalist rule.” The Chinese Impasse by Li Tliian-hok, 36 Foreign Affairs magazine 437. In the cited article it is also said that, “Of the island’s 10,000,000 people, less than one fifth come from the mainland * 3/8 * ”*

There is no question of Japanese sovereignty over Formosa from 1896 until the end of World War II. In 1943, when Mr. Plummer’s will was executed, Formosa was a part of the Japanese empire. Declarations of the Allied Powers against Germany and Japan that Formosa should be restored to China had not then been rendered effective by military power.

The progress of the Communist conquest of mainland China is also discussed in the briefs. The Nationalist forces under Chiang Kai-shek occupied Formosa in September, 1945, but the government was not moved to the island until December, 1949. In the latter part of 1948, control of Manchuria passed from the Nationalist government to the Communists who then surged from the north through central and southern China during 1949. Nanking fell in April of 1949, Shanghai in May and Canton in October. By the end of the year the Nationalists had quitted the continent and the mainland was lost to the Communists. Mr. Plummer executed his last codicil on June 1, 1948 and died on January 29, 1949. He left nothing in writing that indicated that he foresaw the Communist sweep, or, if he did, that he anticipated that the encroachment would not engulf the islands lying off the Chinese mainland. In 1949, numerous Americans failed to anticipate the rout of the armies of Chiang Kai-shek and were astounded with the rapidity of the Communist advance. Today, the causes of the deterioration of the Nationalist position on the mainland are mooted matters and the subject of much diversity of opinion. Here, we must await the future verdict of history.

The report of the opinion of Judge Holtzoff in Cheng Fu Sheng v. Rogers, D.C.D.C., [177 F.Supp. 281](#) contains copies of certain State Department bulletins. From them it appears that the United States recognizes the Government of the Republic of China (Chiang Kai-shek) as the legal government of China and that the provisional capital of the Republic of China has been at Taipei, Tiawan (Formosa) since December, 1949; that in both the Cairo and Potsdam conferences, the United States agreed that Formosa should be restored to China; that the United States and its allies required the Japanese to surrender Formosa to Generalissimo Chiang Kai-shek, and since that time have recognized the Nationalist government of Chiang Kai-shek as having authority over the island. However, the Japanese peace treaty did not cede sovereignty over Formosa to China, but simply renounced “all right, title and claim” to Formosa.

In speaking of this “quitclaim” the State Department said:

*“Neither this agreement nor any other agreement to sovereignty has purported to transfer the sovereignty of Formosa to China * * * ”*

“[N] either in that treaty [Japanese Peace Treaty] nor in any other treaty has there been any definitive cession to China of Formosa. The situation is, then, one where the Allied Powers still have to come to some agreement or treaty with respect to the status of Formosa.”

*The case of Cheng Fu Sheng involved the construction of an Act of Congress regulating the deportation of aliens. The meaning of the word “country” as used in several parts of the Act was of importance. The District Court held [*905](#) that Chinese nationals could not be deported to Formosa. The Court of Appeals reversed but did not hold that Formosa was a part of China. It held that Formosa itself was a “country” within the meaning of the Congressional Act. It was said that, “Since Formosa is a well-defined geographical, social and political entity and since there is a government on Formosa which has undisputed control of the island, we think it is a ‘country’ within the meaning and purposes of the statute.” See, *Rogers v. Cheng Fu Sheng and Lin Fu Mei, D.C. Cir., [280 F.2d 663](#).**

Whether the United States without equivocation ever recognizes Formosa as a part of China depends upon a number of factors, such as whether or not the mainland continues to be Communist controlled, whether, if Communist control continues, there occurs a change in its foreign policy toward the west and a resultant change in the attitude of the United States. At the present writing, mainland China is under the actual control of one

government and the Island of Formosa is under the control of a different government. The declared policy of the United States is that the present Communist government of mainland China shall not control the Island of Formosa.

A consideration of the historical events which have occurred during 1948, and since that time, while of interest, throw but little light upon the testamentary intentions of Mr. Plummer. He died in January of 1949, and he left nothing in writing from which his views of the 1948. far eastern situation can be gleaned.

*For an example of an exercise of the cy pres power involving the existing *908 Chinese situation and a charitable trust, see, In re Swope's Estate, Surrogate's Court, New York County, 204 Misc. 510, [121 N.Y.S.2d 181](#), in which the Board of Foreign Missions of the Methodist Episcopal Church was permitted to pay over to the Nanking Theological Seminary, a New York educational corporation, certain funds which were bequeathed for the maintenance of the Nanking Theological Seminary at Nanking, China, because Communist control of Nanking made it impossible to carry out the exact directions of the will.*

The Mission Board relies upon the case of Loring's Estate, [29 Cal.2d 423](#), [175 P.2d 524](#), 531, wherein the doctrine of cy pres was not applicable because there was no general charitable intent expressed in Loring's Will.

<https://cite.case.law/sw2d/341/896/10169948/>

6. Declare the second amendment applies to American inchoate juridical possessions, for self-defense (US UN Trusteeship Agreement for the Trust Territory of the Pacific Islands) against communist (or any) China, see Kazuo v Palau and Palauan case law on the eighth amendment in the right to bear arms context.
7. Declare the US Principal Victor rights remain (unlike in Percy v Stranahan, where in 1903 until 1925, there existed a signed, unratified Treaty for Relinquishment of Right of Claim of Victors in the Treaty of Paris of 1898, in consideration for grant of Guantanamo naval and coaling stations) ripe and antecedent to any Chinese claims:

The Chargé in China (Strong) to the Secretary of State

CHUNGKING, October 23, 1949—noon.

[Received October 24—4:19 a. m.]

Cantel 1221. As third major point in conversation on October 22 (Cantels 1219 and 1220, October 23¹⁵) Chu Chang-wei¹⁶ said President Li was anxious be informed of U.S. policy on Taiwan and declared Li authorized him say that Li was willing see Taiwan in hands of a friendly country rather than taken by Chinese Communists as they controlled by USSR. Chu stated Li would prefer a joint Sino-American Commission govern Taiwan but if US not favor this proposal US could properly take over Taiwan “by right of conquest.” To avoid charges that such action violated moral obligation undertaken by US at Cairo to return Taiwan to China, he explained US could promise cede Taiwan back to China some future time. Moral obligation of US respect to recovery of Taiwan by China had now become, he averred, responsibility to keep island from Communist control. He declared that reference Taiwan problem to UN would be inadvisable because of Soviet opposition and urgency of problem.

<https://history.state.gov/historicaldocuments/frus1949v09/d435>

On grounds Taiwan strategic value to US he proposed US Navy use its harbors as was done at Tsingtao. He felt that presence US warships would deter Communist attack and again averred US could properly claim Taiwan by “right of conquest”. Said would like to see joint Sino-American administration of Taiwan.

<https://history.state.gov/historicaldocuments/frus1949v09/d444>

Respectfully,

A handwritten signature in blue ink, appearing to be 'B. A. Strong', written in a cursive style.

Dr. Paul Maas Risenhoover

AmericanFormosaTrustArea@gmail.com