

# The Four Political Documents and China-Japan-Taiwan-US Relations

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When the Foreign Minister of the People's Republic of China Wang Yi met with the new Japanese Foreign Minister Yoshimasa Hayashi on November 18, he expressed a wish that Japan strictly observe the four political documents exchanged between the two countries concerning the Taiwan issue. Based on the white paper, "The Taiwan Question and Reunification of China," these four political documents could be the Cairo Declaration of 1943, the Potsdam Declaration of 1945, the Japanese Instrument of Surrender and the Joint Communiqué of the Government of Japan and the Government of the People's Republic of China issued when the two countries established diplomatic relations in 1972. The People's Republic of China's interpretations of these documents are very questionable. Furthermore, the crux of the Taiwan issue cannot be approached without reference to the Treaty of Shimonoseki signed between Qing China and Japan in 1895, the 1952 Treaty of San Francisco and the Treaty of Taipei (the peace treaty between the Republic of China and Japan signed in Taipei) .

The white paper states, "Japan launched a war of aggression against China in 1894 (20<sup>th</sup> year of the reign of Qing Emperor Guangxu). In the ensuing year, as a result of defeat, the Qing government was forced to sign the Treaty of Shimonoseki, ceding Taiwan to Japan. . . . In its declaration of war against Japan, the Chinese Government proclaimed that all treaties, conventions, agreements, and contracts regarding relations between China and Japan, including the Treaty of Shimonoseki, had been abrogated." Where the white paper refers to any event involving the government of the Republic of China, "Republic of China" has been replaced by "China." The Treaty of Shimonoseki came after a five-month war with Japan, where war was declared and a legal status of war established. Qing China, army and navy both defeated, entreated the United States to broker peace and subsequently signed the Treaty of Shimonoseki. This treaty was signed to preserve China, but it permanently ceded Taiwan's sovereignty to Japan. The Republic of China's unilateral declaration of war against Japan on December 9, 1941 and the Cairo Declaration's joint declaration

of war against Japan with the United Kingdom and the United States in 1943 were only declarations of war according to traditional law of war. They created a legal status of war. To enter a state of peace and transfer territory, a peace treaty had to be signed.

The peace treaties that concern the transfer of Taiwan's sovereignty are the Treaty of San Francisco and the Treaty of Taipei. The Potsdam Declaration of 1945 reaffirmed the intention of the Cairo Declaration, which was to return Taiwan and Penghu to the Republic of China upon Japan's defeat. The Republic of China's acceptance of Japanese surrender of Taiwan in 1945 in Taipei and the Treaty of Taipei both actualized this intention. The Treaty of San Francisco and the Treaty of Taipei were both concluded with the assistance of the United States, which had achieved victory over Japan; however, as the treaties were registered with the United Nations, each member of the United Nations was obligated to abide by them.

Declarations are communiqués released after meetings of national leaders with the purpose of declaring important resolutions. Declarations can affect subsequent actions but are not legally binding. The Cairo Declaration can be taken as an example. It declared that defeated Japan should return Manchuria to the Republic of China. However, Manchuria was not mentioned in the Japanese Instrument of Surrender presented in 1945 in Nanjing, creating the conditions for the Chinese Communists to turn the tide of the Civil War in 1947.

Treaties require that participating countries dispatch officially authorized plenipotentiaries. In democratic countries, a treaty signed by plenipotentiaries has to be passed by congress as constitutionally stipulated, giving the treaty both the nature of international law and status as domestic law. The clauses of a treaty that are in implementation are suspended when the treaty is terminated or diplomatic relations are severed. Implemented clauses are unaffected because they have already become law. For example, in 1943, when the United Kingdom and the United States terminated their treaties with Republic of China, this only ended treatments such as extraterritoriality and most-favored-nation status. However, Hong Kong's relation with United Kingdom continued until it was returned in 1997 in accordance with the Convention between Great Britain and China Respecting an Extension of Hong Kong Territory, a lease signed between Qing China and the United Kingdom in 1898.

The Joint Communiqué of the Government of Japan and the Government of the People's Republic of China could be the last of the four political documents referred to by Wang Yi. It states, "The Government of the People's Republic of China reiterates that Taiwan is an inalienable part of the territory of the People's Republic of China. The Japanese government fully understands and respects this stand of the Government of the People's Republic of China, and it firmly maintains its stand under Article 8 of the Potsdam Proclamation (Declaration)." "Understands" and "respects" in no way imply

approval or opposition. Instead, the important point here is adherence to Article 8 of the Potsdam Declaration, that is, in accordance with the Cairo Declaration, Taiwan is to be returned to the Republic of China. The legal status of the Republic of China in Taiwan established by the Treaty of Taipei was not affected by the severance of diplomatic relations or Resolution 2758 according to the Vienna Convention on the Law of Treaties and the Montevideo Convention.

The white paper transformed the Republic of China of the Cairo Declaration into China, overshadowing the government that led China to victory in its alliance with the United Kingdom and the United States. This government is actually the government of the Republic of China, which moved to Taiwan in 1949, and it gained sovereignty over Taiwan and Penghu from Japan for the Republic of China. The events of 1949 led to the partial succession of the People's Republic of China to the Republic of China as the holder of sovereignty over mainland territories excluding Kinmen and the Matsu Islands. The government of the Republic of China moved to Taiwan and the ancestors of the Taiwanese people helped hold China in the two Sino-Japanese wars. I sincerely wish that China, today a world power, can better promote world peace and prosperity.

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# 4政治文件與中日台美關係

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中華人民共和國外交部長王毅十八日與日本新任外相林芳正會談時，希望日本嚴守兩國間四個政治文件處理台灣問題。四個政治文件如果就台灣問題與中國統一白皮書看來，應該是指：一九四三年的開羅宣言、一九四五年的波茨坦公告、日本降伏文書及一九七二年兩國建交後所發表的聯合聲明。就此白皮書看來，其解讀實有可商榷之處。而要處理台灣問題，不提馬關條約、舊金山和約與台北和約（中華民國與日本國間和平條約），則不能切入重點。

白皮書稱：馬關條約割讓台灣為迫於日本侵逼，不具治理的正當性，並業已因中國政府一九四一年對日宣戰布告而失效。白皮書中涉及中華民國政府之處都被置換為中國政府。馬關條約為清朝中國在與日本交戰五個月水陸兩敗之際，乞求美國促和而簽定，用以保住中國，但永久割讓台灣主權給日本。一九四一年十二月九日中華民國的單獨對日宣戰，或一九四三年的開羅宣言之與英美共同對日宣戰，都只是傳統戰爭法中的宣戰，使戰爭進入法律狀態。要轉而進入和平狀態，並確認領土轉移，有待和平條約的簽定。

與台灣主權轉移相關之條約為舊金山和約與台北和約。一九四五年波茨坦公告重申開羅宣言之意。該旨意為：日本戰敗，台灣應返還中華民國。一九四五年中華民國受降與一九五二年台北和約之簽定，均其實踐。舊金山和約與台北和約固有領導戰勝日本的美國所協助促成，但為在聯合國登記有案的條約，應為聯合國各成員國所奉行。

公報為國家領袖開會後的新聞公報，報告會中重要決議，為意向之宣示，可以影響之後的行動，但無絕對的法律約束力。以開羅宣言為例，其原本宣示日本戰敗應返還中華民國之領土，尚包括中國東北，但中國東北並不見於南京的降書，為一九四七年國共內戰中共軍轉順奠定基礎。

條約則須派出全權代表，其所簽字認可的條約，在民主國家尚須憲法規定的國會同意，使其不但具有國際法性質，亦具國內法地位。條約中，執行條款會因廢約或斷交而中止，已執行條款因已成為法律，則不受影響。一九四三年英美廢除對中國之條約，只廢領事裁判權與最惠國待遇等，不影響香港回歸，即為其例。

王毅所稱四個政治文件中的中日聯合聲明：中華人民共和國政府重申：台灣是中華人民共和國領土不可分割的一部分。日本政府充分理解和尊重中國政府的這一立場，並堅持遵循波茨坦公告第八條的立場。理解和尊重並無贊成或反對之意。重要的是：堅持遵循波茨坦公告第八條的立場即依照開羅宣言，台灣應返還中華民國。而台北和約所確立中華民國在台灣之法律地位，依維也納條約法公約與蒙特維德公約，不受斷交或二七五八號決議之影響。

白皮書將開羅宣言中的中華民國轉為中國，忽略領導中國與英美結盟而獲得勝利的政府，實為一九四九年移遷台灣的中華民國政府。此政府因而由日本移轉台灣主權給中華民國。一九四九年的雙局使中華人民共和國對中華民國進行金馬以外大陸領土之部分繼承。遷台的中華民國政府及台灣人民的祖先曾在兩次中日戰爭中協助保住中國。祝福今天成為世界強權的中國更能促進世界的和平與繁榮。