

Appendix 22 -- "Legal Problems Regarding Formosa and the Offshore Islands" (1958)

Source: *Department of State Bulletin* 39, no. 1017 (December 22, 1958): 1009-10. Maurer was assistant legal adviser for Far Eastern affairs at the time of presenting this address before the Washington chapter of the Federal Bar Association on November 20, 1958.

Ely Maurer
International Legal Problems

On the international front it is best to examine the problem of Formosa separately from the problem of the offshore islands [Quemoy and Matsu in the vicinity of the coast of Fukien Province].

In giving the historical background of Formosa it has been pointed out that at Cairo the Allies stated it was their purpose to restore Formosa to Chinese sovereignty and that at the end of the war the Republic of China receive the surrender of Japanese forces on Formosa. It has also been pointed out that under the Japanese Peace Treaty Japan renounced all right, title, and claim to Formosa. However, neither in that 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. Any action, therefore, of the Chinese Communist regime to seize Formosa constitutes an attempt to seize by force territory which does not belong to it. Such a seizure is prohibited by law and the United Nations Charter as an attempt to settle claim to territory by force. It would thus appear that the United States is within its legal rights in taking action to defend Formosa.

With respect to the offshore islands the situation is admittedly somewhat different. There is no question that these islands are a part of the state of China. It may be admitted further that these islands are close to the mainland of China. However, the offshore islands have been in the possession and effective control of the Government of the Republic of China since its inception, except for the period of the Japanese war. Since 1949 a status quo has come into existence vis-a-vis the Peiping regime. It is this status quo which the Chinese Communists have threatened with the menace of armed force. It is our view that we have here in fact a situation comparable to that which obtained in Korea preceding the invasion of south Korea by north Korea. In other words, the action of the Chinese Communists in taking warlike measures is an effort to change the status quo and to gain additional territory by force in violation of the prohibitions of the United Nations Charter.

It has been urged that this is essentially a civil war and therefore it is improper for the United States to participate with the Government of the Republic of China in defense of the offshore islands. It should first be pointed out that it is too narrow to look upon the conflict merely as a civil war. Even as early as the end of the war with Japan the Soviet Union, in violation of its treaty with the Chinese Nationalists, turned over large stores of equipment and in other ways furnished material aid to the Chinese Communists. Since that time the Soviet Union has continued giving large assistance to the Chinese Communist regime. Thus much of the ammunition, artillery, and planes that are at present being used by that regime derive from

Russian sources. And the Soviet Union is allied by military treaty with the Chinese regime. On the other hand the United States has vital interests in the Formosa area and is allied with the Republic of China in a Mutual Defense Treaty and has agreements to supply arms for defensive purposes. In the circumstances it seems fair to say that we are here involved in what is realistically an international dispute which the Communist regime is attempting to settle by force.

Further, with respect to the argument that this is a civil war, it will be recalled that this was the same argument that was made by Vishinsky regarding the north Korean invasion of south Korea. It was an argument however which the United Nations paid no heed to but, instead, viewed the action of the north Koreans as one of aggression which came under the ban of the United Nations Charter.

On this phase of the matter it is our view, then, that the United States would be justified from an international standpoint in cooperating with the Republic of China in the defense of the offshore islands and Formosa.