

# Lawfare as Deterrence in Taiwan Contingencies: Building a Framework for US–Taiwan Cooperation



KaiChieh (KJ) Hsu

May 2026

## About the Global Taiwan Institute

---

GTI is a 501(c)(3) non-profit policy incubator dedicated to insightful, cutting-edge, and inclusive research on policy issues regarding Taiwan and the world. Our mission is to enhance the relationship between Taiwan and other countries, especially the United States, through policy research and programs that promote better public understanding about Taiwan and its people.



**KaiChieh KJ Hsu** (許凱傑) is a judge in the National Security and Military Division of the Taipei District Court in Taiwan. He previously served as a visiting fellow at the Global Taiwan Institute in Washington, DC, and as a visiting scholar at the US-Asia Law Institute at New York University School of Law. His work focuses on legal warfare, foreign interference, economic security, and rules of engagement in hybrid and gray-zone conflict, with particular attention to institutional reform and democratic legal resilience. Hsu has written and spoken extensively on Taiwan's national security law, cross-Strait legal warfare, and the legal dimensions of democratic defense in policy and academic forums. His research advances a framework for how democratic legal systems can deter authoritarian coercion, preserve institutional legitimacy, and protect civil liberties under conditions of hybrid conflict.

*The views expressed in this paper are the author's own and do not necessarily represent the positions of the Global Taiwan Institute.*

*Cover Photo Source: Harvepino / Shutterstock.com*

## Board of Directors

Jennifer Hu  
(Chairperson and President)

Howard Huang  
(Vice Chairperson)

Anthony Kang  
(Vice Chairperson)

Betty Wang  
(Secretary)

Mary Yeh  
(Treasurer)

Danny Chiang  
(Audit Committee Chair)

John Huang

Patrick Huang

Dr. Hong-tien Lai

Minly Sung

Dr. Thomas Su

Spencer Wu

## Advisory Council

Dr. David Tsai

Dr. Chien-ping Chen

Dr. Kuei-Hsien Chen

Dr. Wen Yen Chen

Dr. Peter Chow

Jennifer Hu

Dr. Tun-hou Lee

James Wang

Chieh-Ting Yeh

Charles Pan

## Board of Advisors

**Arthur Waldron**

Lauder Professor of International Relations, Department of History, University of Pennsylvania

**Bonnie Glick**

Inaugural Director, Krach Institute for Tech Diplomacy at Purdue; former USAID Deputy Administrator (2019-2020)

**Dafydd Fell**

Director, Centre of Taiwan Studies, School of Oriental and African Studies

**Fang-long Shih**

Co-director, Taiwan Research Programme, London School of Economics and Political Science

**Gerrit van der Wees**

Professor at George Mason University; formerly editor of *Taiwan Communitiqué*

**Gordon Chang**

Columnist for The Daily Beast, author of *The Coming Collapse of China*

**Hsin-Huang Michael Hsiao**

Chairman of the Taiwan-Asia Exchange Foundation; Adjunct Research Fellow at Academia Sinica

**John Tkacik**

Senior Fellow and Director, Future Asia Project International Assessment and Strategy Center

**Joseph Bosco**

Former China Country Desk Officer in the Office of the Secretary of Defense

**June Teufel Dreyer**

Professor, University of Miami

**Kelley Currie**

Former US Ambassador-at-Large for Global Women's Issues

**Lanhee J. Chen**

David and Diane Steffy Fellow in American Public Policy Studies, Hoover Institute, Stanford Uni.

**Wallace Gregson**

Former Assistant Secretary of Defense for Asian and Pacific Security Affairs

**Mark Stokes**

Executive Director Emeritus, Project 2049 Institute

**Masahiro Wakabayashi**

Emeritus Professor of Political Science and Economics, Waseda University

**Matt Salmon**

Vice President for Government Affairs, Arizona State University; Former Member of Congress from Arizona

**Michael Reilly**

Former British Representative to Taiwan

**Ralph Cossa**

Former President of the Pacific Forum

**Reinhard Bütikofer**

Former Member of the European Parliament (Greens/EFA)

**Richard Fisher**

Senior Fellow, Asian Military Affairs International Assessment and Strategy Center

**Robert Wang**

Senior Associate Center for Strategic and International Studies; former AIT Deputy Director (2006-2009)

**Satu Limaye**

Vice President of the East-West Center and the Director of the East-West Center in Washington and Research Program.

**Shelley Rigger**

Brown Professor of East Asian Politics at Davidson College

**Shirley Kan**

Independent Specialist in Asian Security Affairs who worked for Congress at CRS

**Stephen M. Young**

Former AIT Director (2006-2009); Former US Consul General to Hong Kong (2010-2013)

**Thomas Hughes**

Consultant, Hughes And Company

**Toshi Yoshihara**

Senior Fellow, Center for Strategic and Budgetary Assessments

**Vincent P. Chen**

Former Commander, United States Navy

**W. Brent Christensen**

Adjunct Professor at Brigham Young University; Former AIT Director (2018-2021)

**William Stanton**

Chair Professor, National Chengchi University (Taiwan); Former AIT Director (2009-2012)

## Table of Contents

---

Why Taiwan Needs a Comprehensive Legal Warfare Framework as a Defense.....	1
<i>Aligning with International Standards</i> .....	2
<i>Deterring the CCP Through a Shift in Legal Rhetoric</i> .....	2
<i>Deterring the CCP Through Practical Rules of Engagement (ROE)</i> .....	3
Hypothetical Contingency Scenario.....	5
<i>Direct Attack</i> .....	5
<i>Military Blockade and Maritime Quarantine</i> .....	9
<i>Minor Gray Zone Related Conflicts</i> .....	12
Integrating Rules of Engagement into Legal Warfare.....	17
<i>Taiwan's Standing Rules of Engagement</i> .....	17
<i>Comprehensive and Integrated Legal Authorization</i> .....	17
<i>Judge Advocates as a Team</i> .....	18
<i>International Cooperation</i> .....	18
Conclusion.....	19

## Why Taiwan Needs a Comprehensive Legal Warfare Framework as a Defense

In recent years, the Chinese Communist Party (CCP, 中國共產黨) has continuously employed tactics of legal warfare and hybrid warfare, resulting in severe domestic infiltration in Taiwan.<sup>1</sup> Externally, the Taiwanese people have become accustomed to the Chinese People's Liberation Army's (PLA, 中國人民解放軍) military aircraft and naval vessels operating around Taiwan. In addition, there have been more localized incidents such as the Kinmen boat accident on February 14, 2024;<sup>2</sup> and a Chinese speedboat entering Taipei Harbor on June 10, 2024.<sup>3</sup> In 2025, a Chinese national was sentenced to three years in prison for damaging an undersea cable connecting Taiwan's main island and the Penghu Islands in the Taiwan Strait. Recent US–China discussions have again underscored the sensitivity of Taiwan's status, but they also reinforce the central point of this article: legal preparedness should serve the preservation of peace and the status quo, but avoid unilateral escalation.

Facing the CCP's increasingly aggressive tactics aimed at undermining peace across the Taiwan Strait, Taiwan and its partners increasingly need a more structured legal framework for anticipating, classifying, and responding to gray-zone coercion before a crisis escalates. Otherwise, they risk being

Facing the CCP's increasingly aggressive tactics aimed at undermining peace across the Taiwan Strait, Taiwan and its partners increasingly need a more structured legal framework for anticipating, classifying, and responding to gray-zone coercion before a crisis escalates.

disadvantaged as a result of the CCP's legal and strategic pressures – after all, the so-called “gray zone” might become the CCP's “red zone” in the near future. This paper examines how Taiwan can use international law, rules of engagement, and legal preparedness to reduce escalation risks, while denying Beijing the ability to exploit ambiguity. It argues that legal warfare should not be understood as rhetorical confrontation alone – but as a framework for preserving legitimacy, clarifying response options, and coordinating with democratic partners before a crisis occurs.

Since the introduction of the *Anti-Secession Law* in 2005, the CCP has strengthened its legal narrative that Taiwan is part of China, including through new rules in 2024 targeting persons that Beijing identifies as Taiwan independence activists.<sup>4</sup> Additionally, the CCP has increasingly emphasized its interpretation that United Nations Resolution 2758 reaffirms the “One-China Principle.”<sup>5</sup> In 2026, China further codified this identity-based legal narrative through the *Law on Promoting Ethnic Unity and Progress* (中華人民共和國民族團結進步促進法), which explicitly calls for deepening cross-strait integration, increasing Taiwanese people's identification with the “Chinese nation,” and strengthening the idea that people on both sides of the Strait are “all Chinese.”

1 KaiChieh KJ Hsu, “The CCP's Legal Warfare Against Taiwan's Democracy, Lawfare Media”, Aug 10, 2025, <https://www.lawfaremedia.org/article/the-ccp-s-legal-warfare-against-taiwan-s-democracy>

2 “Chinese Coast Guard Boarded Taiwan Ship After Deadly Boat Incident,” *Voice of America*, Feb 19, 2024, <https://www.voanews.com/a/chinese-coast-guard-boarded-taiwan-ship-after-deadly-boat-incident-/7493857.html>

3 “Taiwan arrests Chinese man who took speedboat into Taipei harbor,” *Reuters*, June 10, 2024, <https://www.reuters.com/world/asia-pacific/taiwan-arrests-chinese-man-who-took-speedboat-into-taipei-harbour-2024-06-10/>

4 “Scholars discuss China's new rules targeting Taiwan independence,” *Taiwan News*, Jun 24, 2024, <https://www.taiwannews.com.tw/news/5894960>

5 “US refutes China's characterization of UN Resolution 2758,” *Voice of America*, May 28, 2024, <https://www.voanews.com/a/7630543.html>

By 2025 and 2026, Beijing's broader lawfare-and-hybrid-pressure campaign had also extended into AI-assisted cognitive operations, undersea infrastructure sabotage, and coordinated pressure on Taiwan's participation in UN-affiliated and specialized agencies. The dual challenge of legal narrative contestation and gray-zone coercion is therefore no longer an emerging risk; it now defines the baseline security environment in which Taiwan operates.

Too much unilateral support for Taiwan increases the risk of conflict, while too little undermines Taiwan's ability to exercise autonomy.<sup>6</sup> The importance of legal warfare is found in accordance with three key objectives:

1. **Avoiding Legal Missteps:** In the face of the CCP's various gray zone tactics, Taiwan must remain vigilant to avoid legal or operational missteps that could give the CCP a pretext to escalate a conflict. Such missteps could undermine Taiwan's legitimacy in seeking support from its allies, particularly if Taiwan's actions are perceived as inconsistent with international legal standards.

2. **Shifting the Rhetoric Around Invasion:** Taiwan can strengthen its position by aligning its legal and policy responses with international legal norms, thereby preserving legitimacy, facilitating allied coordination, and raising the costs of Chinese coercion.

3. **Clear Defense Standards:** By establishing clear legal standards, Taiwan would be better equipped to take necessary actions when needed, thus preventing the CCP from exploiting any perceived weaknesses or ambiguities.

### *Aligning with International Standards*

Although Taiwan is not a member of the United Nations, it actively participates in numerous international organizations and upholds universal values. Taiwan has demon-

6 Michael E. O'Hanlon, Ivan Kanapathy, Rorry Daniels, and Thomas Hanson, *Should the United States change its policies toward Taiwan?*, Brookings, April 16, 2024, <https://www.brookings.edu/articles/should-the-united-states-change-its-policies-toward-taiwan/>

strated this commitment by incorporating international conventions into domestic law,<sup>7</sup> showcasing its determination to voluntarily comply with international standards. This approach has garnered praise and support from UN human rights experts, who have been invited to Taiwan to conduct reviews based on UN standards and processes. Taiwan's "local international review" model,<sup>8</sup> where national reports on human rights conventions are examined in Taiwan, further highlights its role as a model member of the international community. Given this exemplary status, Taiwan must be cautious not to give the CCP a pretext for war by making a legal misstep. A single error at a crucial moment could result in Taiwan being isolated internationally, losing the support of other countries, and becoming vulnerable to Chinese aggression.

### *Deterring the CCP Through a Shift in Legal Rhetoric*

Beyond avoiding mistakes, Taiwan must actively create favorable conditions to ensure its security. The most effective way to prevent the CCP from initiating a conflict is to make the CCP fear the consequences of a military action that fails. If the CCP believes that a military defeat could lead to permanently losing Taiwan or precluding any future attempt at peaceful unification, it might hesitate to take aggressive actions. Although Taiwan could not take provocative steps that will needlessly anger the CCP, it can use legal warfare discourse to highlight the CCP's ambitions or internal contradictions.

For example, in Taiwan's unique legal situation, it is possible to collaborate with the United States under the framework

7 "Taiwan can play a leading regional role on human rights but sustained commitment needed, says Amnesty's Secretary General following visit," Amnesty International, July 13, 2023, <https://www.amnesty.org/en/latest/news/2023/07/taiwan-can-play-a-leading-regional-role-on-human-rights-but-sustained-commitment-needed-says-amnestys-secretary-general-following-visit/>

8 Report of National Human Rights Commission, Taiwan, March 27, 2024, <https://nhrc.cy.gov.tw/cp.aspx>

of the *Taiwan Relations Act* (TRA) to jointly lead discourse surrounding Taiwan. Common Chinese rhetoric is that “if Taiwan declares independence, then the CCP will attack.”<sup>9</sup> Taiwan and its allies can invert this logic: if the CCP attacks Taiwan, Taiwan’s allies could deny Beijing’s sovereignty claim over Taiwan, and Beijing’s use of force would fundamentally alter the legal and political assumptions underlying the status quo. This reframing shifts the focus away from unilateral declaration and toward the legal and political consequences that would follow if Beijing itself destroys the peaceful status quo.

At a Hudson Institute symposium in 2025,<sup>10</sup> Miles Yu emphasized that the United States has never recognized Taiwan as part of the People’s Republic of China. That view reinforces a broader deterrent logic: Beijing could understand in advance that the use of force would not advance unification, but instead could permanently destroy the legal and political ambiguity on which its Taiwan strategy depends. On that basis, Taiwan could seek not only formal recognition, but also the possibility of invoking collective self-defense under international law as a victim of aggression. On that basis, Beijing should understand that the use of force would create stronger grounds for Taiwan and its democratic partners to reassess the legal and political assumptions underlying the status quo, including the legal basis for assistance

<sup>9</sup> *Anti-Secession Law of the People’s Republic of China*, Art. 8 (2005).

<sup>10</sup> Hudson Institute, “Hybrid Warfare and CCP Infiltration: A Shared Challenge for US-Taiwan Security Cooperation,” September 16, 2025, <https://www.hudson.org/events/hybrid-warfare-ccp-infiltration-shared-challenge-us-taiwan-security-cooperation>

in response to aggression.

## *Detering the CCP Through Practical Rules of Engagement (ROE)*

In recent years, the CCP has also taken various actions in the gray zone. At sea, the CCP often obscures its intentions by using the activities of research vessels<sup>11</sup> to conceal aggressive military actions, or employs civilian ships<sup>12</sup> to intrude into Taiwan’s territorial waters. In the air, the CCP uses aircraft, ships, and emerging technol-

ogies to conduct gray zone operations that encroach on Taiwan’s airspace: such as conducting missile flights<sup>13</sup> over Taiwanese airspace, flying aircraft across the Taiwan Strait median line,<sup>14</sup> and sending spy balloons or drones<sup>15</sup> flying into Taiwanese airspace. In the face of these threats, the Taiwanese government could be prepared to respond clear-

<sup>11</sup> “Taiwan sees uptick in Chinese research vessel activi-

ty near coasts,” *Taiwan News*, Feb 27, 2024, <https://www.taiwannews.com.tw/news/5103479>

<sup>12</sup> “Taiwan ‘ready’ amid warnings of Chinese civilian vessel threat: Expert,” *CNA*, May 29, 2024, <https://focustaiwan.tw/cross-strait/202405290007>

<sup>13</sup> “China sends missiles flying over Taiwan Whether it could conquer the island is another question,” Aug 4, 2022, *Economist*, <https://www.economist.com/china/2022/08/04/china-sends-missiles-flying-over-taiwan>

<sup>14</sup> “Taiwan reports Chinese military aircraft, ships operating around island,” *Voice of America*, July 5, 2024, <https://www.voanews.com/a/taiwan-reports-chinese-military-aircraft-ships-operating-around-island-/7686994.html>

<sup>15</sup> “Chinese drone seen at Matsu Nangan Airport, disrupts 2 flights,” *CNA*, July 2, 2024, <https://focustaiwan.tw/cross-strait/202407020023>

The most effective way to prevent the CCP from initiating a conflict is to make the CCP fear the consequences of a military action that fails.

ly to these provocations from the CCP. That said, Taiwan has taken strengthened enforcement measures. It has condemned recent incursions by Chinese Coast Guard escorted fishing vessels into restricted waters near the Dongsha (東沙) Islands; and increased patrols, stopping, boarding, and expelling illegal vessels, despite ongoing interference from Chinese ships.<sup>16</sup>

Beyond military and maritime responses, public communication and regulatory awareness remain vital. Taiwan's response would also prioritize preventing the CCP from exercising unauthorized jurisdiction over its fishing vessels, while simultaneously raising public awareness of the risks and regulations associated with maritime activities. Otherwise, it will construct a *de facto* sovereign boundary controlled by the CCP that would compress Taiwan's sovereign territory at sea and in the air, creating confusion internationally about the actual extent of Taiwan's sovereignty. Therefore, it is necessary to strengthen, and adjust as needed, a set of standard rules of engagement (ROE) for responding.

---

16 “Taiwan condemns China coast guard activities around Dongsha”, Focus Taiwan, March 21, 2025, <https://focustaiwan.tw/cross-strait/202503210013>

## Hypothetical Contingency Scenario

### ***Direct Attack***

Following the end of diplomatic relations in 1979, and per the provisions of the *Taiwan Relations Act*, the United States deemed it necessary to provide military assistance to Taiwan for regional security and stability. Therefore, if the United States views the TRA as a means to maintain its interests, it may potentially assist Taiwan in facing Chinese invasion under certain circumstances – by invoking its rights under Article 51 of the UN Charter, which gives members the right to self-defense and collective self-defense based on these interests. Under circumstances of military attack, Taiwan could also have legal grounds for self-defense under international law, especially considering Article 2(6) of the UN Charter, which states that non-member states are also bound by these principles. Non-member states could thus adhere to the obligation of peaceful dispute resolution under the UN framework and benefit from its protections.

### ***Taiwan's Right to Self-Defense***

The fact that Article 51 raises potential international legal disputes regarding whether a United Nations non-member state, if attacked by a member state, can legitimately invoke the right of self-defense. The significance of this issue lies in the international perception of Taiwan's status – which, if Taiwan were considered as a province of China, could render Taiwan's response to a Chinese invasion as an internal rebellion, thereby depriving Taiwan of international legal justification for any counterattack.<sup>17</sup>

Nevertheless, according to Article 2 of the UN Charter, the principle of peacefully resolving disputes is fundamental. Specifically, the provisions in Article 2(3) and Article 33 outline clear principles for solving disputes peacefully. Although Taiwan is not a UN member, Ar-

17 Ediger, M. L. (2018). International law and the use of force against contested states: the case of Taiwan. *New York University Law Review*, 93(6), 1668-1706.

ticle 2(6) of the UN Charter supports the proposition that non-member entities are not outside the legal order governing international peace and security. Therefore, non-member states, by these provisions, could adhere to the obligation of the peaceful dispute resolution under the UN framework and benefit from its protections. In addition, non-member states can still assert an inherent right to self-defense under customary international law.<sup>18</sup>

### ***US Right to Collective Self-Defense***

There are three requirements related to collective self-defense: the status of the victim state, whether or not the Security Council has been notified, and necessity and proportionality of the attack. When it comes to the UN membership status of the victim state, Taiwan is not a member state of the UN. Therefore, when Taiwan's navy, aircraft or territory are under attack, can US assistance to Taiwan be interpreted as a form of collective self-defense?

The general criterion for a third-party state to intervene forcefully is that the state would need to first show that it exhausted peaceful measures, or that the extremity of the situation is such that a peaceful response would be unreasonably inadequate.<sup>19</sup> Moreover, the International Court of Justice (ICJ) in the Nicaragua case identified two additional requirements for exercising the right to collective self-defense: collective self-defense can only be exercised if the state that considers itself the victim of an armed attack has requested support, and if the victim state has publicly declared that it has been attacked.<sup>20</sup> Therefore, when Taiwan is attacked, the United States could be able to exercise collective self-defense if Taiwan's requests support such a response. Alternatively,

18 Phil C. W. Chan, *The Legal Status of Taiwan and the Legality of the Use of Force in a Cross-Taiwan Strait Conflict*, 8 *CHINESE J. INT'L L.* 455, 482 (2009).

19 James A. Green, 2006, *Docking the Caroline: Understanding the Relevance of the Formula in Contemporary Customary International Law Concerning Self-Defense*, 14 *CARDOZO J. INT'L & COMP. L.* 429.

20 ICJ, *Nicaragua case (Merits)*, §§ 195, 199, 211.

if the United States intervenes and then is attacked, becoming a “second” victim state, it should be able to jointly exercise collective self-defense with Taiwan.

Although self-defense is broadly accepted as an inherent right,<sup>21</sup> some interpretations of Article 51 treat collective self-defense more narrowly than individual self-defense.<sup>22</sup> Nevertheless, some scholars criticize this view, arguing that states typically not recognized as victims may need the right of collective self-defense more, requiring assistance from other nations.<sup>23</sup> Taiwan is an apt example of a state which cannot defend itself alone against its adversary, and may not be recognized as a victim state in its own right. Therefore, in the event of a Taiwan Strait conflict, there may be three possible interpretations of the rights of Taiwan and the United States, as discussed below.

The first interpretation is that Taiwan, despite not being a member of the United Nations, could still qualify as a victim entity eligible to directly request a third country (such as the United States) to exercise collective self-defense rights.

The second interpretation suggests that a third country, such as the United States, could justify collective self-defense based on its rights being violated – particularly through armed or physical aggression, or if its overseas assets or economic interests are threatened.<sup>24</sup> However, many scholars argue that the supporting third country would need to recognize the victim state as a sovereign entity.<sup>25</sup> For example, during the Vietnam War, the United States recognized the Republic of Vietnam (South Viet-

nam) as the legitimate government of Vietnam, and extended defense commitments through the Southeast Asia Collective Defense Treaty (SEATO). However, South Vietnam was never a member of the United Nations, while the Democratic Republic of Vietnam (North Vietnam) likewise did not hold a UN seat. This underscores the complexity of diplomatic recognition, as the US and its allies extended collective defense obligations to a state whose international legal status was contested.<sup>26</sup>

Therefore, if the United States does not recognize Taiwan as a sovereign state, disputes may arise over the interpretation method mentioned earlier. In this way, continued US compliance with the One-China Policy may serve as a deterrent to the Chinese government. While the CCP prefers for the United States to maintain this policy, the implicit possibility that the United States could offer greater recognition or expanded military support for Taiwan provides a negotiating lever to discourage the CCP from resorting to force. In the case of *United States v. Belmont* (1937)<sup>27</sup> and *Zivotofsky v. Kerry* (2015),<sup>28</sup> the United States Supreme Court has affirmed that the president holds exclusive authority over the recognition of foreign governments. These cases confirm the President’s central constitutional role in recognition decisions. For present purposes, however, the point is not to advocate a preemptive change in the United States recognition policy, but to show that Beijing’s use of force would place new legal and political pressure on the assumptions that currently sustain strategic ambiguity.

The third interpretation is that the United States government might exercise the right of self-defense di-

21 Roscini, M. (2015). On the ‘Inherent’ Character of the Right of States to Self-defence. *Cambridge International Law Journal*, 4(3), 634-660.

22 Independent International Fact-Finding Mission on the Conflict in Georgia, volume 11, at 282, Sep 30, 2009, [https://www.mpil.de/files/pdf4/IIFFMCG\\_Volume\\_11.pdf](https://www.mpil.de/files/pdf4/IIFFMCG_Volume_11.pdf) [<https://perma.cc/CC38-NSFB>]

23 Christian Henderson (2013), Contested States and the Rights and Obligations of the Jus Ad Bellum, 21 *CARDOZO J. INT’L & COMP. L.* 367, 404.

24 Bowett, Derek William, 2009, Self-defence in international law. The Lawbook Exchange, Ltd., pp. 185–6

25 Fisher, R. M. (2020). Defending Taiwan: collective self-defense of a contested state. *Fla. J. Int’l L.*, 32, 101.

26 STANIMIR ALEXANDROV, SELF-DEFENSE AGAINST THE USE OF FORCE IN INTERNATIONAL LAW 221 (1996).

27 *United States v. Belmont* :: 301 U.S. 324 (1937)

28 *Zivotofsky v. Kerry* :: 576 U.S. 1 (2015)

rectly to protect its own interests, rather than based on collective self-defense triggered by an attack on Taiwan. This is supported by the *TRA*, which states: “This Act is intended to assist in maintaining peace, security, and stability in the Western Pacific and to authorize continued commercial, cultural, and other relations between the people of the United States and the people on Taiwan to promote US foreign policy and other purposes.” Compared with the CCP’s One-China Principle, the United States has always only acknowledged – rather than accepted or denied – the One-China Policy. The US president holds the power to determine whether or not to recognize a foreign sovereign entity.

## ***Some Approaches to Legal Deterrence***

Some scholars also argue that self-defense can be justified in other scenarios, such as enforcing legal rights, conducting armed reprisals, or safeguarding economic interests abroad.<sup>29</sup> In Taiwan’s case, however, the most urgent issue is not only whether the right of self-defense exists, both individually as a victim state and collectively through US support under Article 51 – but how this legal right can be used proactively to deter aggression before it occurs. This leads to the broader question of legal deterrence.

### ***Approach 1: From Declaratory Deterrence to Institutional Preparedness***

A first form of legal deterrence is declaratory. Beijing should understand that the use of force would not preserve the status quo; instead, it would fundamentally alter the legal and political assumptions that have allowed

<sup>29</sup> Bowett, Derek William, 2009, *Self-defence in international law*. The Lawbook Exchange, Ltd., pp. 185–6.

cross-strait ambiguity to persist. This argument has previously been framed as a warning that aggression could destroy Beijing’s own claim to peaceful unification. Yet declaratory deterrence alone is insufficient: it must be matched by institutional legal preparedness.

In a crisis, Taiwan may have stronger grounds to reconsider its international legal position and seek broader diplomatic

In a crisis, Taiwan may have stronger grounds to reconsider its international legal position and seek broader diplomatic support if Beijing initiates armed aggression.

support if Beijing initiates armed aggression. The more important point for present purposes, however, is not to prescribe a specific political outcome, but to ensure that Taiwan’s legal and institutional preparations are ready before Beijing attempts to control the narrative. This approach, while addressing the sensitive issue of Taiwanese independence, also aligns with the positions of central political actors:

1. For the United States government, according to the *Taiwan Relations Act*, US policy toward Taiwan is based on the premise that Taiwan’s future would be decided through peaceful means, which was a condition for establishing diplomatic relations with the People’s Republic of China (PRC, 中華人民共和國). The principles outlined in the three *US-China Joint Communiqués*<sup>30</sup> and Section 2 of the *TRA*<sup>31</sup> emphasize three core concepts in US policy toward Taiwan:

- While the United States recognizes PRC’s sovereignty through diplomatic relations, Taiwan’s sovereignty remains undecided.
- Taiwan’s sovereignty must be resolved peacefully

<sup>30</sup> *Three communiques*, American Institute in Taiwan, <https://www.ait.org.tw/tag/three-communiques/>.

<sup>31</sup> *Taiwan Relations Act*, <https://web-archiver-2017.ait.org.tw/en/taiwan-relations-act.html>.

- The United States is committed to maintaining the security, social and economic system, and welfare of the Taiwanese people.

Therefore, for the United States, maintaining the status quo has been the policy in recent years. However, if the CCP were to invade and change the status quo, Washington would face stronger legal and political grounds to reconsider how Beijing's aggression affects existing assumptions about Taiwan's status and regional stability. If the CCP uses force against Taiwan, the United States would face stronger legal, political, and strategic pressure to reassess how such aggression affects existing assumptions about Taiwan's status, regional stability, and United States interests under the *Taiwan Relations Act*. By reiterating this stance to China, the United States could cause the CCP to hesitate between maintaining the status quo, which allows for strategic ambiguity; and taking military action, which would result in definitive and severe consequences.

2. Taiwan's President Lai Ching-te (賴清德) asserts that Taiwan currently does not need to declare independence, nor does it wish for a conflict in the Taiwan Strait.<sup>32</sup> This position, however, does not mean that the legal and political assumptions underlying the peaceful status quo would remain unchanged if Beijing were to alter that status quo through force or coercion. Recent reporting following President Trump's meeting with Xi Jinping illustrates the continuing sensitivity of Taiwan's status within U.S.–China–Taiwan relations, while also underscoring that Taiwan's own position remains framed around preserving the status quo, rather than pursuing a unilateral declaration of independence<sup>33</sup>.

32 “No need’ to declare independence, Taiwan presidential hopeful says,” *RFA*, Jan 9, 2024, <https://www.rfa.org/english/news/china/presidential-hopeful-01092024121734.html>

33 Tessa Wong, “Trump Told Taiwan Not to ‘Go Independent’ — But Does It Want To?” *BBC News*, May 19, 2026, [<https://www.bbc.com/news/articles/clyp9mk3mrgo>] (ac-

This approach reinforces that Taiwan's objective is to preserve peace and avoid unilateral escalation. The purpose of legal deterrence is to warn Beijing that the use of force would generate legal and political consequences that it cannot fully control.

## ***Approach 2: Clarifying Taiwan's Undetermined Legal Status***

A second, and more institutionally manageable, approach is to clarify the legal assumptions underlying the current status quo, rather than frame deterrence around immediate diplomatic rupture with the PRC. Recent U.S. statements provide a useful basis. In September 2025, the American Institute in Taiwan stated that World War II-era documents (including the Cairo Declaration, the Potsdam Proclamation, and the Treaty of San Francisco) did not determine Taiwan's ultimate political status; the US Department of State later confirmed that this position accurately reflected U.S. policy.<sup>34</sup> Former AIT officials similarly emphasized that the *Taiwan Relations Act* rests on the expectation that Taiwan's future will be determined peacefully, not by Beijing's unilateral interpretation of historical documents.

This clarification has deterrent value. If Beijing uses force against Taiwan, it would not be enforcing a settled legal status, but attempting to impose one through coercion. Such aggression would weaken Beijing's claim that the Taiwan issue is merely an internal matter, and strengthen the legal basis for democratic partners to reject the CCP's sovereignty narrative. The point is not to force premature recognition decisions, but to make clear in advance that military aggression would carry legal and political consequences for Beijing's Taiwan claim. Even states that maintain formal relations with the PRC share a strong interest in preserving peace and stability in the Taiwan Strait and maintaining a

34 Staff writer, with CNA, “AIT Comments on Taiwan Accurate: State Department,” *Taipei Times*, September 16, 2025, <https://www.taipetimes.com/News/front/archives/2025/09/16/2003843862>

free and open Indo-Pacific.<sup>35</sup>

### **Approach 3: Economic Security and Legal Deterrence**

A third approach is to treat Taiwan's role in advanced semiconductor and AI supply chains as part of a broader legal-deterrence framework. Taiwan's centrality in critical technology supply chains gives the United States and other technology-dependent democracies a direct economic and security interest in preserving cross-strait stability. Taiwan already dominates critical segments of the global semiconductor supply chain. Taiwan Semiconductor Manufacturing Company (TSMC, 台灣積體電路製造股份有限公司) alone accounts for roughly 70 percent of global wafer foundry revenue, and 64 percent of the dedicated contract foundry market.<sup>36</sup>

Given this concentration, any conflict-related disruption in Taiwan would not only derail the global tech ecosystem, including smartphones, AI, automotive electronics, and critical infrastructure, but could also trigger economic turmoil surpassing even the COVID-19 supply chain shock or the US-China tariff war. The United States would consider that Taiwan would provide a more stable source of chips than the PRC. For instance, NVIDIA is moving in this direction by stating that it will build a design center in Taiwan within five years.<sup>37</sup> If a Taiwan contingency would threaten AI infrastructure, semiconductor supply chains, and critical technologies, then legal preparedness should include not only military contingency planning, but also mechanisms for supply-chain security, technology-leak alerts, investment-screening coordination, and evi-

dence preservation.<sup>38</sup>

### **Military Blockade and Maritime Quarantine**

First of all, it must be clarified that military blockade and quarantine are two different concepts. Quarantine is any enforcement-led operation to control maritime or air traffic within a specific area, while a blockade is a type of quarantine that is foremost military in nature. Quarantine might not be easily defined as an armed attack: for instance, a quarantine of Taiwan could range from a blockade to gray zone actions, depending on the extent of its implementation. In contrast, a blockade has certain established conditions under international law. Therefore, many analysts focus on countering a blockade first.

Many military analysts believe that a PRC blockade of Taiwan is possible because the PLA possesses significant capabilities to enforce a maritime quarantine using its air and naval forces. However, the use of these forces would convey the message that the PRC is engaging in an invasion of a foreign entity, rather than using law enforcement agencies for routine domestic activities.<sup>39</sup> Since blockades are a legitimate means of warfare and the parties involved in a war are states, this implies that the CCP would be recognizing Taiwan's status as a state (or at least as a belligerent party). Consequently, the laws of international armed conflict and maritime warfare would apply to both sides. Under international law, the CCP's blockade must be effective; must be publicly declared, specifying its commencement, duration, location, and scope; and it must follow specific requirements for dealing with enemy and neutral ships attempting to breach the blockade. Otherwise, the blockade would be considered illegal.

Therefore, the CCP might adopt two approaches to emphasize

35 Fisher, R. M., 2020, *Defending Taiwan: collective self-defense of a contested state*. Fla. J. Int'l L., 32, 101.

36 Allianz, as cited in Dimerco, *Taiwan's Strategic Role in the Global Semiconductor Supply Chain*, 2023, <https://dimerco.com/blog-post/taiwans-strategic-role-global-semiconductor-supply-chain/>

37 "Nvidia to build design center in Taiwan within 5 years," *Taiwan News*, Sep 8, 2024, <https://taiwannews.com.tw/news/5882951>

38 KaiChieh KJ Hsu, "AI Security Demands Legal Deterrence Not Just Technological Innovation," *The Washington Times*, April 29, 2026. <https://www.washingtontimes.com/news/2026/apr/29/ai-security-demands-legal-deterrence-not-technological-innovation/>

39 Martin, B., Gunness, K., DeLuca, P., & Shostak, M., 2022, *Implications of a Coercive Quarantine of Taiwan by the People's Republic of China*.

the legitimacy of a blockade. First, the CCP could avoid the Law of Naval Warfare (LoNW) blockade framework by describing its maritime interception system as a maritime law enforcement action against a rebellious province. Based on Article 25(3) of the *United Nations Convention on the Law of the Sea* (LOSC), this would allow the PRC to temporarily suspend the right of innocent passage in that area. The law of non-international armed conflict (NIAC) does not prohibit such actions. However, the consequence of this approach is that the CCP cannot legally extend any blockade-like interception measures beyond its territorial waters. In other words, according to traditional maritime law, the CCP's interception actions in most areas of the Taiwan Strait beyond its territorial waters would be illegal, making it an unlikely choice for the PRC to legitimize its blockade.

Second, the CCP could implement the LoNW and apply the laws of international armed conflict (IAC). Scholars view blockade as *in bello* operations conducted by naval forces of a belligerent against the coastlines of its opponent.<sup>40</sup> Although the CCP might still refer to the conflict as a NIAC, this approach would require that the belligerent state (PRC) formally recognizes the belligerent status of the insurgent entity (Taiwan).<sup>41</sup> Such actions may include demonstrations, blockades, and other military operations conducted by the PRC's air, sea, or land forces.

One model that the PRC might use to legitimize its blockade is Israel's recent blockade on the Gaza Strip. When the blockade began, Israel insisted that the legal basis for the blockade was the existence of a state of armed conflict between Hamas and Israel, even without recognizing Palestine as a sovereign entity. Israel based the legitimacy of

its blockade on *The London Declaration and the San Remo Manual on International Law Applicable to Armed Conflicts at Sea*.<sup>42</sup> The CCP might claim to use the model Israel employed with regard to Palestine to implement a legitimate blockade on Taiwan without violating the One-China policy.

Under a blockade, Taiwan could assert its right to self-defense as an entity under international law in response to the CCP's measures. A blockade could potentially violate Article 2(4) of the UN Charter if it amounts to a use of force against Taiwan. The legal issue should not turn solely on whether the PLA immediately sinks Taiwanese vessels or conducts kinetic strikes. This effects-based approach aligns with the broader trend in international law toward enhancing the protection of civilians.<sup>43</sup> Therefore, if the PLA declared a blockade that substantially restricted Taiwan's access to essential goods, maritime routes, or external assistance, even without actually sinking Taiwanese naval vessels, Taiwan could argue that Beijing had crossed the threshold into belligerent conduct.<sup>44</sup> In sufficiently grave circumstances, such a blockade could also support Taiwan's claim that it is facing an armed attack sufficient to justify requests for international assistance.

Besides imposing a blockade, the CCP might use a general maritime quarantine. Defining the exact difference between a blockade and a quarantine is unclear in international law. The UN Charter mentions these concepts only once in Article 42, stating that if the Security Council determines that the peaceful measures outlined in Article 41 are insufficient, it may take necessary air, sea, or land operations to maintain or restore international peace and security. The CCP's tools for enacting a general quarantine instead of a blockade are not limited to the PLA's naval and air forces, but may also in-

40 James Kraska, 2010, 'Rule Selection in the Case of Israel's Naval Blockade of Gaza: Law of Naval Warfare or Law of the Sea?', *13 Yearbook of International Humanitarian Law* 367,

41 Rob McLaughlin, "The Law of Armed Conflict, the Law of Naval Warfare, and a PRC Blockade of Taiwan," *Articles of War*, January 30, 2023, <https://tinyurl.com/2p987czm>

42 Israel Designates Gaza a 'Hostile Territory', Israel Ministry of Foreign Affairs, 24 September 2007, available at <http://www.mfa.gov.il/MFA/About+the+Ministry/Behind+the+Headlines/Gaza+designated+a+Hostile+Territory+24-Sep-2007.htm>

43 Drew, P., 2017, *The Law of Maritime Blockade: Past, Present, and Future*. Oxford University Press; AP1 (n 10) art 49.3

44 Drew, supra note 43.

clude its maritime police and even maritime militias. The CCP might designate a specific area and employ maritime patrols, inspections, and forced rerouting to prohibit certain goods or vessels from approaching Taiwan, and/or to compel these vessels to proceed to Chinese ports for inspection. Additionally, the CCP's maritime militias could cluster around important waterways near Taiwan to obstruct foreign vessels from reaching Taiwan. If these initial measures prove ineffective, the PLA Navy and Air Force might conduct military exercises in the waters surrounding Taiwan to intimidate Taiwan and escalate their posture.<sup>45</sup>

#### ***Legal Preparedness for Blockade and Quarantine Scenarios***

However, if the CCP attempts to stay below the threshold of what is defined as an attack, the CCP could still use informal military actions to test the reactions of Taiwan, the United States, or other countries. The purpose would be to use the responses of Taiwan or other countries to justify escalating military actions under international law if such responses threaten China's interests or security.<sup>46</sup> Strengthening legal and diplomatic channels, alongside measured military preparedness, would allow Taiwan to counter such actions without crossing into the threshold the CCP seeks to manipulate.

Circumstances might force the United States government to implement an economic counter-blockade that would aim to raise the costs of the CCP's actions. However, the PRC's economy and trade flows are magnitudes larger than those of Taiwan, and can thus absorb trade disruptions for longer periods. The success of this measure will largely depend on the actions of other countries, as their cooperation is necessary to produce substantive effects. If countries comply with the counter-blockade measures, then China, despite its significant trade

relations,<sup>47</sup> will eventually experience trade and financial turmoil. However, it is undeniable that Taiwan will be more severely affected by a blockade than the PRC, and the US economy will also be impacted by these trade interruptions to some extent. Therefore, the cooperation of other countries and Taiwan's ability to endure under such conditions is critical.<sup>48</sup>

Another possible action is that the United States could allow Taiwanese ships to sail under the US flag. This should be accompanied by a statement that any interference with these ships would prompt a response from the US government. There is a recent precedent for such reflagging: the United States reflagged Kuwaiti tankers and gas carriers during *Operation Earnest Will* in the Arabian Gulf from 1987 to 1989. The 2026 Strait of Hormuz crisis and (the albeit short-lived) "Project Freedom"<sup>49</sup> provide a more recent comparison, showing how maritime protection can turn interference with commercial shipping into a broader issue of self-defense, freedom of navigation, and escalation control. Applied to a Taiwan blockade scenario, such a model could raise the costs of PRC interdiction by forcing Beijing to choose: either between allowing protected vessels to pass, or risking direct confrontation with the United States. However, this solution carries certain risks. Firstly, the United States would need vessels compliant with US Coast Guard regulations, which are also willing to undertake the risk of sailing into a declared quarantine zone.<sup>50</sup>

45 Bradley Martin, 2022, "Implications of a Coercive Quarantine of Taiwan by the People's Republic of China," RAND, pp. 1-2, <https://tinyurl.com/u6sbann6>

46 Sale Lilly, Chad J. R. Ohlandt, Eric Warner, and J.D. Williams, 2020, *China's Grand Strategy: Trends, Trajectories, and Long-Term Competition*, Santa Monica, Calif.: RAND Corporation, RR-2798-A.

47 Frank Tang, 2020, "China's Economic Vulnerabilities to Be Focus of 2021 Work Conference Amid Strong GDP Forecast, Analysts Say," *South China Morning Post*, December 11.

48 Blackwill, R. D., 2021, *United States, China, and Taiwan: A strategy to prevent war*.

49 Paulin Kola and Bernd Debusmann Jr., "What Is Trump's 'Project Freedom' in the Strait of Hormuz?," *BBC News*, May 6, 2026, <https://www.bbc.com/news/articles/c4g-437depzpo>

50 Martin, B., Gunness, K., DeLuca, P., & Shostak, M., 2022, *Implications of a Coercive Quarantine of Taiwan*

Secondly, such actions would give the PLA grounds to claim foreign intervention based on the British policy known as “The Rule of the War of 1756.” This principle states that:

1. Neutrals have no right to carry on commerce in times of war that is not permitted to them in times of peace; and,
2. A ship trading on account of the enemy has forfeited the immunity of its flag and cannot be considered neutral.<sup>51</sup>

At this point, the PLA would have to decide whether to attack ships flying the US flag, thereby risking war. However, if they allow the US-flagged ships to pass, the United States would successfully render the blockade ineffective. The execution of imposing a counter-blockade or distant blockade could lead to different outcomes based on responses from both the United States and China. A distant blockade, unlike a counter-blockade, involves interdicting shipping at sea lanes or choke points far from the adversary's ports.<sup>52</sup>

The outcome of this would depend, firstly, on how the PLA responds: whether they see the US passage as a sovereignty violation warranting armed self-defense, or whether they would allow passage of the US forces through quarantined or blockaded waters. Secondly, it will depend on the intensity of any military action the US government decides to take: for example, whether to proceed with armed operations for passage, or whether to use submarines or other means to bypass the blockade and avoid direct military conflict. In the

---

*by the People's Republic of China.*

51 Katchenovskiy D.I., 1929, ‘Prize Law’ as quoted in James W. Gantenbein, *The Doctrine of Continuous Voyage Particularly as Applied to Contraband and Blockade* (Keystone Press).

52 Doswald-Beck, L., 1995, The San Remo Manual on international law applicable to armed conflicts at sea. *American Journal of International Law*, 89(1), 192-208.

Taiwan Strait Crisis of 1958, PLA shelling made it impossible to resupply besieged Nationalist troops, leading the Eisenhower administration to consider attacks on the mainland to suppress air and artillery attacks and enable resupply.<sup>53</sup> Therefore, responses from both sides, such as the PLA's intensity in enforcing the blockade and the level of force the US military employs to secure passage, could escalate the situation into armed conflict.

Facing these uncertainties, it is essential for both Taiwan and the United States to work together to keep maritime and airspace areas open before a blockade occurs. This serves as a preventive measure by making it more difficult for the CCP to implement a blockade, while also providing Taiwan and its allies with opportunities to practice defense and enhance their cooperation. In recent years, this measure has been consistently implemented by the US military through exercises in the Taiwan Strait. These frequent exercises yield benefits: such as boosting confidence among regional allies; providing real-world military training in potential conflict zones; collecting intelligence on regional geography and the real-time military activities of the PLA for strategic and tactical considerations.<sup>54</sup>

### ***Minor Gray Zone Related Conflicts***

Scholars generally interpret Article 51 as being limited to the use of armed or physical force.<sup>55</sup> However, Article 51 is not seen

53 Appu K. Soman, 2000, *Double-Edged Sword: Nuclear Diplomacy in Unequal Conflicts, the United States and China, 1950–1958* Bloomsbury Publishing USA, 183.

54 Yang, L. J., 2024, *From dependency to independence: How the United States supports the Taiwanese military in defending against a potential Chinese invasion*.

55 A. Randelzhofer, ‘Article 2(4)’, in B. Simma in collaboration with H. Mosler, A. Randelzhofer, C. Tomuschat and R. Wolfrum (eds.), *The Charter of the United Nations: a commentary*. Vol. I (Oxford University Press, 2002), pp. 114–37, at 117–18; D. Kritsiotis, ‘Topographies of force’, in Y. Dinstein and M.N. Schmitt (eds.), *International law and armed conflict exploring the fault-lines: essays in honour of Yoram Dinstein* (Leiden: Martinus Nijhoff, 2007), pp. 29–77, at 68; L.M. Goodrich and E. Hambro, *Charter of the United Nations: commentary and documents* (Boston, MA: World Peace Foundation, 1946), p. 70; M. Virally, ‘Article 2: paragraphe 4’, in J.-P. Cot and A. Pellet, *La Charte des Nations Unies*, 2nd edn (Paris: Economica, 1991), pp. 115–28, at

as conflicting with the broader customary right of self-defense, which supposedly permits self-defense in certain situations even where no armed attack has taken place. There are three ways in which minor conflicts could pose serious risk to Taiwan's defense: the CCP interpreting minor or routine actions from the US or Taiwan as pretext for conflict; the CCP using minor conflict gray zone tactics to slowly erode US-Taiwan defense capabilities; or the CCP fabricating a minor military conflict as pretext to justify an invasion.

The CCP may cite actions by Taiwan or the United States that seem to disrupt PLA's territorial integrity as reasons for initiating potential military conflicts. For instance, US officials cautioned the CCP against using Speaker of the House Nancy Pelosi's 2022 visit as a "pretext" to alter the status quo. The CCP could also interpret routine events, such as arms sales to Taiwan or US military exercises in Asia, as provocations that justify PRC escalation.

While CCP-initiated maritime isolation or military conflicts would easily justify the exercise of self-defense, if the CCP gradually invades Taiwan, the United States might miss the opportunity for collective legitimate defense. This would provide the CCP with a prime opportunity to swiftly occupy Taiwan, making it too late for the United States to find a legitimate reason for intervention.

Alternatively, the CCP might manufacture a military pretext in order to justify conflict: similar to how Japan's military orchestrated a fabricated explosion in 1931 to justify the invasion of Manchuria in northern China; or how Nazi Germany created false events of Polish aggression to

invade Poland;<sup>56</sup> or how Russia fabricated false images of being attacked by Ukraine as a pretext for attacking Ukraine.<sup>57</sup> In the Taiwan Strait, some of the issues most likely to cause or disputes between Taiwan and China are discussed below:

### ***PLA Ship Incursions***

Currently, the PLA does not engage in military activities in Taiwan's territorial waters. However, recent incidents highlight the lack of intelligence-sharing mechanisms between Taiwan's Navy (whose long-range radar monitors armed vessels and military ships beyond 24 nautical miles) and the Coast Guard's (whose near-shore radar monitors non-armed civilian vessels within 24 nautical miles). For example, on June 9, 2024, a 60-year-old Chinese national entered the Taipei Tamsui River mouth and went into Taiwan's territorial waters without interception.<sup>58</sup>

Allowing foreign ships to traverse or land in Taiwan's territorial waters could reveal the inadequacies in Taiwan's defense preparedness. If similar situations arise in the future, the Taiwanese military could establish

56 James Weland, 1994, "Misguided Intelligence: Japanese Military Intelligence Officers in the Manchurian Incident," *Journal of Military History* 58, no. 3: 445.

57 Dotson, John. "Beijing's Propaganda Support for Russian Biological Warfare Disinformation, Part 2: Historical Context and Contemporary Motivations," *Jamestown*, July 15, 2022, "<https://jamestown.org/beijings-propaganda-support-for-russian-biological-warfare-disinformation-part-2-historical-context-and-contemporary-motivations/>

58 "Court approves detention of Chinese suspect in boat incursion case," *Taipei Times*, Jun 18, 2024, <https://www.taipetimes.com/News/taiwan/archives/2024/06/18/2003819528>

The CCP may cite actions by Taiwan or the United States that seem to disrupt PLA's territorial integrity as reasons for initiating potential military conflicts.

a clear policy stance: such as enforcing a controlled zone within the prescribed 12-nautical-mile radius under international law, and strictly upholding laws concerning its territorial waters. Practical measures could include joint patrols with the Coast Guard, the use of unmanned aerial vehicles (UAVs) or underwater detection technologies to monitor incursions, and the deployment of undersea cable surveillance systems to prevent potential sabotage. Given that the PLA uses various probing methods to cross into Taiwan's territorial waters, the Taiwanese government could adopt a firm position against these attempts to establish *de facto* PRC sovereignty. More effective Taiwan responses would serve as a deterrent to these probing actions.

Besides sovereignty issues, PLA interference with Taiwan's ships involves freedom of navigation rights in the EEZ. In light of the dispute between the United States and China in June 2022 over whether the Taiwan Strait is considered "international waters," the CCP has thus far maintained that the Taiwan Strait includes China's internal waters, territorial sea, and exclusive economic zone.<sup>59</sup> According to the *Financial Times*, the CCP's marine research vessels have significantly increased operations within 24 nautical miles of Taiwan – which blurs the lines between scientific and military navigation while enhancing the PLA's naval reconnaissance abilities, thus creating ambiguity. Spire Global tracking data indicates that from September 2023 to now, Chinese research vessels have violated Taiwan's maritime zone up to nine times, a significant increase compared to only two incidents annually in the previous three years. The most recent incident involved the unmanned research vessel *Zhuhai Cloud* making an unprecedented passage along Taiwan's eastern maritime

zone in November 2024.<sup>60</sup>

Thus, we can observe that the CCP not only claims sovereignty over the Taiwan Strait but also actively conducts operations within its waters. In formulating a response to these actions, Taiwan and its allies, especially the United States, may encounter the following challenges:

### ***US Maritime Law and the CCP's Ambiguous Intentions***

In maritime law, the legal status of waters around Taiwan should be distinguished carefully among territorial seas, contiguous zones, exclusive economic zones, and other maritime areas where freedom of navigation applies. The US Navy, Marine Corps, and Coast Guard's Commander's Handbook on the Law of Naval Operations treats all waters seaward of the territorial sea as 'international waters' for operational purposes, including contiguous zones, exclusive economic zones, and the high seas. This does not mean that coastal states have no rights in those areas; rather, their rights differ by zone and are more limited than territorial sovereignty.

This is especially relevant when the naval vessels of the two countries do not maintain a safe distance, and one party has the intent of colliding with the other's naval vessel.<sup>61</sup> If damage is inflicted on the other party's military vessel, this constitutes a "use of force" that would justify the other party taking retaliatory measures. The standard for this justification is that both naval vessels represent states – and if one party demonstrates intent and actual acts of aggression, any form of attack could naturally be interpreted as a use of force, thereby allowing the other party to invoke the right to self-defense.

Therefore, the US military needs to have internal rules of engagement to address these scenarios. In simpler terms, US

59 "Taiwan Strait is an international waterway, Taipei says, in rebuff to China," *Reuters*, June 12, 2023, <https://www.reuters.com/world/asia-pacific/taiwan-strait-is-an-international-waterway-taipei-says-rebuff-china-2022-06-14/>

60 "Chinese research ships increase activity near Taiwan," *Financial Times*, Feb 26, 2024, <https://www.ft.com/content/0d-fb94d7-e140-4d6c-97b9-18ec410d6a7c>

61 Azubuike, E. C., 2011, Probing the Scope of Self Defense in International Law. *Ann. Surv. Int'l & Comp. L.*, 17, 129.

commanders would judge whether PLA research vessels are acting as legitimate scientific platforms; or, whether by operating in a threatening manner or gathering intelligence, are effectively conducting military or espionage activities that justify a defensive response.

### ***Ambiguous Actors***

In the South China Sea, the CCP often employs a strategy wherein general fishing boats are followed by maritime militias and protected by the CCP Coast Guard, along with the Chinese Navy. This means that, rather than the Chinese Navy taking the frontline role in maritime collisions or conflicts with US naval vessels, the task might be undertaken by armed maritime militias. Given that US rules of engagement and the *San Remo Manual on International Law Applicable to Armed Conflicts at Sea* both address the principle of distinction in armed conflict or warfare – which prohibits the use of force against civilian objects or people – this approach is significant.

Taiwan can learn from how Japan deals with dangerous civilian vessels through the following procedures employed by the Japanese Self-Defense Forces (JSDF). Under three specific conditions, the JSDF takes measures regarding civilian merchant ships. First, if the JSDF identifies illegal activities, the merchant vessel is handed over to the Japan Coast Guard (JCG), which has judicial authority to investigate and prosecute the individuals involved in criminal activities. Second, if the vessel has not violated any laws, but the JSDF deems that the ship threatens public order in Japanese territorial waters, it may expel the ship from Japan's territorial waters.<sup>62</sup> Third, the JMSDF (Japan Maritime Self-Defense Force) may use weapons against civilian vessels for self-defense and to overcome resistance when necessary, but the use of weapons that cause injury to personnel is limited to

<sup>62</sup> *Act on Navigation of Foreign Ships through the Territo-*

“avoiding immediate danger.”<sup>63</sup>

### ***PLA Incursions into Taiwanese Airspace***

In the air domain, Taiwan should distinguish among territorial airspace violations, ADIZ incursions, missile overflights, drones, balloons, and aircraft operating near offshore islands. Not every incident should trigger the same response, but each should fall within a pre-defined classification framework. Taiwan's response framework could distinguish among warning, interception, de-escalation, and lawful self-defense measures. Allowing the PLA to conduct these activities unchallenged effectively supports their legal warfare strategy, which aims to assert the PRC's sovereignty over Taiwan through *de facto* military actions.

The purpose of Taiwan's Air Defense Identification Zone (ADIZ) is to identify and manage these kinds of air-domain risks. Under the U.S. Navy, Marine Corps, and Coast Guard's Commander's Handbook on the Law of Naval Operations, ADIZ procedures are generally tied to aircraft approaching national airspace with an intent to enter it.<sup>64</sup> At the same time, repeated PLA aircraft crossings of the Taiwan Strait median line and operations inside Taiwan's ADIZ are not legally or strategically irrelevant: they can normalize PRC military presence, test Taiwan's response thresholds, and compress Taiwan's practical room for action. Taiwan should therefore distinguish ADIZ incursions from territorial airspace violations, missile overflights, drones, balloons, and aircraft operating near offshore islands, and develop separate response standards for each category. In Taiwan's case, however, the government has not consistently applied such measures in response to the PLA aircraft activity in its ADIZ. Instead, Taiwan has generally limited its response to radio warnings, radar monitoring, and occasional fighter scrambles. This restrained

<sup>63</sup> Police Official Duties Execution Act, Law No. 136 of 1948, art. 7.

<sup>64</sup> HEADQUARTERS, U., CORPS, M., & GUARD, U. C., 2007, *THE COMMANDER'S HANDBOOK ON THE LAW OF NAVAL OPERATIONS*.

approach reflects both the legal ambiguity of ADIZ rules under international law and the practical need to avoid escalation, given the frequency of PLA incursions and the resource constraints faced by Taiwan's armed forces.

Beyond these general concepts, each operational detail of Taiwan's ADIZ could be further discussed by Taiwan's military, and a practical guidebook could be established to provide a basis for responses by Taiwan. This guidebook would offer operational considerations for various PLA methods of entering airspace, territorial waters, ADIZ, or economic zones. *The Sanremo Handbook on the Rules of Engagement (RoE)*, published in 2009, is the only book that explains in a practical way the complex procedures and methodology governing responses in conflict conditions. Therefore, in response to missile flights over Taiwanese airspace, aircraft flights over offshore islands, aircraft crossing the Taiwan Strait median line, and spy balloons entering Taiwanese airspace, appropriate preparatory measures could be taken.

For example, in cases before the International Court of Justice, Uganda claimed to have suffered a series of attacks perpetrated by anti-government rebels that were cumulatively tantamount to an armed attack against Uganda: "The planning, size, frequency and destructiveness of these assaults against Ugandan territory and nationals demonstrate that they were not mere 'frontier incidents,' but full-fledged 'armed attacks' within the meaning of Article 51<sup>65</sup>."

Taiwan can follow the examples of how other countries have responded to aggression against their territory. For Taiwan, the lesson is that even when operating outside of another state's territorial sea, Chinese forces may still employ aggressive maneuvers to manufacture incidents. Taiwan therefore needs to establish clear rules of engagement

65 ICJ, 2021, Case Concerning Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Uganda), Counter Memorial Submitted by the Republic of Uganda, para 366.

and incident-management protocols to avoid miscalculation while exposing such provocations as violations of international law. Therefore, if the PLA frequently approaches Taiwan's airspace, Taiwan would be prepared to initiate self-defense measures in response.

According to *US Department of Defense Instruction 4540.01* (2015), "US military aircraft and missile and projectile firings operate with due regard for the safety of all air and surface traffic," and "reasonable warning procedures with regard to the military aircraft of all States would need to be observed." However, in 2019, a US Global Hawk drone (RQ-4 Global Hawk) was shot down near Iranian airspace. Iran claimed that the US drone had violated its airspace, in contravention of international law and Article 2(4) of the United Nations Charter, and thus had the right to shoot it down under Article 51 of the UN Charter, which provides for the right to self-defense. However, the United States contended that the drone had not entered Iranian airspace.<sup>66</sup> Therefore, Taiwan could also develop a clear, standard response procedure for aircraft entering the airspace over the Taiwan Strait or ADIZ.

66 "Letter dated 20 June 2019 from the Permanent Representative of the Islamic Republic of Iran to the United Nations addressed to the Secretary-General," UN Security Council, June 20, 2019, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N19/187/91/PDF/N1918791.pdf?OpenElement>.

## Integrating Rules of Engagement into Legal Warfare

The *Sanremo Handbook on the Rules of Engagement* could help Taiwan and its allies with three objectives: accomplishing missions effectively, providing criteria for when to use the right of self-defense, and preventing the CCP from establishing a new *de facto* legal status through incremental actions. These three objectives will not be addressed in separate sections, but rather integrated into the following discussion of rules of engagement and legal deterrence, so that the reader can see how they operate together as part of Taiwan's broader strategy.

### Taiwan's Standing Rules of Engagement

The "Taiwan Strait Median Line" is an invisible boundary that was established in 1955, and it served as an important feature for stabilizing the situation in the Taiwan Strait at the time. However, as the PLA's military strength increases, it may become necessary to adjust Taiwan's boundaries, including both the Median Line and the ADIZ.

Taiwan's "Standing Rules of Engagement," issued by the MND in 2017 and revised in 2023,<sup>67</sup> represents a positive step. However, practical implementation still faces challenges. Under the current system, frontline soldiers often struggle with interpreting the CCP's ambiguous actions and intentions during gray zone operations –therefore leading them to seek approval from higher authorities, which can result in delays and potential misjudgments. Additionally, unlike the US system, where the inherent authority of com

manders is well-established through Supreme Court rulings, Taiwan lacks a similar source of authority. Without clear legal authorization from the Legislative Yuan (LY, 立法院), rules of engagement become ambiguous. This ambiguity can lead to responsible agencies being hesitant to take responsibility, while frequently seeking instructions from higher authorities.

### Comprehensive and Integrated Legal Authorization

Under the current system, frontline soldiers often struggle with interpreting the CCP's ambiguous actions and intentions during gray zone operations –therefore leading them to seek approval from higher authorities, which can result in delays and potential misjudgments.

Taiwan's ROE framework should be grounded in clear and integrated legislative authorization. The Legislative Yuan should expressly authorize the ROE system, define its legal status, and require the Ministry of National Defense (MND) to implement it through operational and tactical rules. This framework should also clarify the division of authority among the Mainland Affairs Council (MAC), the Ocean Affairs Council (OAC), the Coast Guard Administration (CGA), and the

Navy, especially in maritime grey-zone scenarios where law enforcement, national defense, and cross-strait affairs overlap.

At present, Taiwan's maritime legal framework remains underdeveloped. The *Organization Act of the Ocean Affairs Council* (海洋委員會組織法) and the *Coast Guard Act* (海岸巡防法) provide general institutional mandates, but they do not clearly define enforcement thresholds, command relationships, escalation procedures, or operational checklists. By contrast, the PRC's *Coast Guard Law of the People's Republic of China* (中華人

67 “新版接戰規定去年完成精進,今年漢光演習首度驗證”, April 9, 2024, China times, <https://www.chinatimes.com/realtime-news/20240409002764-260407?chdtv>

民共和國海警法) and *Maritime Traffic Safety Law of the People's Republic of China* (中華人民共和國海上交通安全法) provide more detailed statutory bases for maritime enforcement, even though their coercive and expansionist features should not be emulated. This would ensure that personnel at all levels have sufficient authorization, clear duties, and a defined division of labor when responding to grey-zone coercion or armed attack.

### ***Judge Advocates as a Team***

In addition, Taiwan can follow the example of the ROE planning cell concept employed by the US military,<sup>68</sup> which includes judge advocates: military lawyers in the Judge Advocate General's (JAG) Corps who provide legal advice on rules of engagement, the law of armed conflict, and military justice, and who participate in discussions with high-ranking officers such as those on the Joint Chiefs of Staff.

### ***International Cooperation***

The entire ROE planning cell would establish an information exchange mechanism with Taiwan's allies to ensure that these rules of engagement form a consensus among Taiwan and its allies, thereby creating a protective network to ensure the security of the Taiwan Strait. In addition, Taiwan would participate in, or at least observe, a wider range of allied exercises: both military and non-military humanitarian operations, in order to strengthen its ability to anticipate and respond to gray-zone activities.

---

68 Joint Staff, Standing Rules of Engagement, June 13, 2005, [https://www.esd.whs.mil/Portals/54/Documents/FOID/Reading%20Room/Joint Staff/20-F-1436\\_FINAL\\_RELEASE.pdf](https://www.esd.whs.mil/Portals/54/Documents/FOID/Reading%20Room/Joint%20Staff/20-F-1436_FINAL_RELEASE.pdf)

## Conclusion

This paper has argued that legal warfare should not be understood merely as rhetorical confrontation with Beijing. In Taiwan Strait contingencies, law functions as a strategic framework for preserving legitimacy, clarifying lawful response options, reducing the risk of miscalculation, and coordinating with democratic partners before a crisis occurs.

For Taiwan, the first priority is to strengthen legal preparedness in ways that reinforce the existing status quo, rather than disrupting it. The *Taiwan Relations Act* is premised on the expectation that Taiwan's future will be determined by peaceful means. Beijing's use of force or coercion would therefore undermine the legal and political foundation on which cross-strait stability has long rested. Taiwan's task is to ensure that its own responses remain consistent with international law, proportionality, and democratic accountability, so that Beijing cannot exploit legal ambiguity or portray Taiwan's defensive measures as escalation.

Second, Taiwan should preserve its effective self-defense space by improving the legal and institutional mechanisms that govern maritime and airspace incidents. Repeated PLA activities around Taiwan's ADIZ, the Taiwan Strait, and adjacent waters are not only operational challenges: they also create legal and political pressure by normalizing PRC presence and compressing Taiwan's room for response. Clearer incident-classification standards, evidence-preservation procedures, public attribution mechanisms, and interagency coordination would help Taiwan respond to gray-zone coercion without unnecessarily escalating a crisis.

Third, Taiwan's rules-of-engagement framework should be renewed as part of a broader system of legal resilience. This does not mean publicizing sensitive operational details. Rather, it means ensuring that the legal basis, institutional responsibilities, and decision-making procedures behind ROE are sufficiently clear before a contingency occurs. A more integrated framework would involve legislative authorization, participation by judge advocates and national security lawyers, and coordination among the Ministry of National

Defense, Coast Guard Administration, Ocean Affairs Council, Mainland Affairs Council, and other relevant agencies. For the United States and other democratic partners, the key question is not only whether they would support Taiwan in a crisis, but whether their legal and political positions are sufficiently clear to deter Beijing from exploiting ambiguity. Advance coordination on maritime security, supply-chain resilience, investment screening, cyber defense, and evidence preservation would strengthen deterrence without requiring premature recognition decisions or unnecessary escalation. In this sense, legal preparedness can complement military deterrence by making the costs of coercion more visible and credible.

International law alone cannot determine the outcome of a Taiwan contingency. Power, geography, military capability, and political will remain decisive. Yet law still matters because it shapes legitimacy, alliance coordination, escalation control, and the international narrative surrounding a crisis. If Taiwan can integrate international law, domestic authorization, ROE, and allied coordination into a coherent framework, it will be better positioned to preserve stability in the Indo-Pacific and resist Beijing's attempt to alter the status quo through coercion.