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USINDOPACOM J06/SJA TACAID SERIES



TOPIC: THE PRC'S ANTI-SECESSION LAW

(COUNTERING PRC'S OVERREACHING DOMESTIC LEGAL PRETEXT TO SEIZE TAIWAN)

OVERVIEW

- Enacted by the PRC in 2005.
- Consists of only nine short articles.
- Declares that China and Taiwan belong to one sovereign territory.
- Establishes so-called "reunification" as a "sacred duty".
- Calls for "one country, two-systems" upon "reunification."
- States that peaceful "reunification" is preferred.
- Sets forth three conditions under which the PRC "shall" use "non-peaceful means": 1) Taiwan secedes; 2) "major incidents" entailing secession occur; or 3) possibilities for peaceful reunification are exhausted.

WHY THIS MATTERS



- Establishes domestic legal pretext for the PRC to use force against Taiwan – basically provides Xi Jin Ping with discretion to order an invasion.
- Representative of PRC instrumental legal warfare: Uses domestic law as a tool to advance PRC's strategic policy objectives: deter secession and preempt third-party involvement.
- Undercuts other nations' interests in preserving peaceful cross-strait relations.

J06 ASSESSMENT



- The anti-secession law evokes the U.S. Taiwan Relations Act (TRA) in its use of the term "non-peaceful means":
 - The TRA says that any effort to determine the future of Taiwan by "other than peaceful means" is a threat to peace and security and of "grave concern" to the United States.
 - The Anti-Secession Law responds to the TRA by stating – in effect – that Taiwan's future is no other nation's business, and that the PRC is prepared to employ "non-peaceful means" to force "reunification."
- Article 8 of the Anti-Secession Law (setting out conditions which the PRC will use "non-peaceful means") is the most problematic from a legal and policy standpoint:
 - It lacks a basis in international law in that execution risks compromising international peace and security in violation of UN Charter.
 - It also sets conditions for the use of "non-peaceful means" which are vague and subjective (e.g. "major incidents", all possibilities of reunification exhausted).

PROPOSED COUNTER-LAWFARE APPROACH



- Article 8 of the anti-secession law establishes a domestic legal pretext to use for the PRC to use force against Taiwan subject to vague and loosely articulated conditions.
- The anti-secession law threatens the use of force in violation of the UN Charter.
- Peaceful cross-strait relations are indisputably a matter of international concern, notwithstanding the Anti-Secession Law's casting of Taiwan's status as an internal affair.
- The international community should reject the anti-secession law as inconsistent with international law and contradictory to the international rules-based order.
- The PRC's rhetoric surrounding the anti-secession law will continue to a matter of concern for nations committed to maintaining international peace and security in accordance with the UN Charter.