



USINDOPACOM Office of the Staff Judge Advocate

Legal Vigilance Dispatch

Promoting the Rule of Law to Ensure a Free and Open Indo-Pacific

Issue 1

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Key points:

- PRC uses domestic legislation to support military ambitions
- Senior legal advisors and operators strengthen partnerships at MILOPS 22 to promote Free and Open Indo-Pacific
- USINDOPACOM conducts multi-lateral legal engagements
- PRC's fishing fleet evades international law
- DPRK launches breach UNSCRs
- U.S. 'One China Policy' differs from PRC's 'One-China Principle'

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The PRC's Anti-Secession Law: What's Behind the Rhetoric

Chinese Communist Party (CCP) leaders and state media are amplifying rhetoric on the People's Republic of China's (PRC) Anti-Secession Law. During a press conference on September 22, PRC Foreign Minister Wang Yi warned that the PRC would act if the Anti-Secession Law was "eventually violated." Two days earlier, Xinhua reported that Wang Yi told Henry Kissinger that the PRC would take "all necessary measures" if the Anti-Secession Law was violated.

MFA Spokesperson Wang Wenbing echoed Wang Yi's comments in a daily press briefing where he added that the PRC would "not hesitate to sacrifice thousands of troops" to defend "even an inch of land."

At a September 21 Central Committee Propaganda Department press conference on Taiwan, Chinese Communist Party spokesperson Zhu Fenglian reiterated the Anti-Secession Law's importance in providing a "legal guarantee" for the PRC to achieve "reunification."

The Anti-Secession Law and the rhetoric surrounding it are representative of the PRC's use of domestic law as a tool to gain what PRC doctrine on legal warfare refers to as "legal principle superiority." The PRC sees "legal principle superiority" as a way to legitimize its objectives on Taiwan. Those objectives are clearly spelled out in the Anti-Secession Law. Enacted in 2005, the Anti-Secession law consists of only nine short articles. It declares that China and Taiwan belong to "one sovereign territory"; establishes "reunification" as a "sacred duty"; embraces "one country-two systems" upon "reunification"; and states that "peaceful reunification" is "preferred."

Most troubling, however, is Article 8 of the Anti-Secession Law, which sets out the following three conditions under which the PRC "shall" use "non-peaceful means" to force



President Xi Jin Ping at a meeting of China's National People's Congress. Photo Credit: NY

unification: (1) Taiwan "secedes"; (2) "major incidents" entailing "secession" occur; or (3) possibilities of peaceful "reunification" are exhausted.

In effect, Article 8 establishes a domestic legal pretext for the PRC to use force against Taiwan should it be determined that any of these loosely articulated and subjective conditions are met. Given that the PRC may cite the Anti-Secession Law as its domestic legal basis to use force against Taiwan, the rhetoric surrounding the law will continue to be matter of concern for nations committed to upholding peace and security underpinned by the longstanding rules-based international order.

SPECIAL: MILOPS 22

Strengthening Legal Partnerships



Senior lawyers meet from across the Indo-Pacific.
Photo credit: PO1 James Downs

Senior legal advisors, military officers, government officials and academics from more than 20 allied and partner nations convened in Bangkok, in August 2022 to strengthen partnerships in the Indo-Pacific and to uphold the rule of law at the 33rd annual Military Law and Operations Conference (MILOPS).

Participating nations included Australia, Bangladesh, Canada, the Federated States of Micronesia, Fiji, India, Indonesia, Japan, Malaysia, the Maldives, Mongolia, Nepal, Papua New Guinea, Palau, the Philippines,

Singapore, South Korea, Sri Lanka, Thailand, Vietnam, the United Kingdom and the United States. NATO and the International Committee of the Red Cross also sent delegates.

MILOPS built relationships and forged consensus around norms that support the rules-based international order. As the PRC and other authoritarian regimes seek to erode fundamental tenets such as freedom of the seas, MILOPS highlighted the importance of international law in maintaining regional peace and prosperity.

Commander USINDOPACOM Stresses Urgency

“Your commitment to each other and to advancing the rule of law in this region has never been more important”

Adm. John C. Aquilino, USINDOPACOM Commander, emphasized the urgency of the problem and the importance of a network of like-minded lawyers. “Your commitment to each other and to advancing the rule of law in this region has never been more important,” Aquilino said, according to a

USINDOPACOM news release.

“Strengthening our shared understanding and building consensus on key components of international law is necessary work, and I am grateful that you have assembled for this purpose.”



Adm. John C. Aquilino
Commander,
USINDOPACOM

High Power IUU Fishing Panel

Day 2 of MILOPS 22 featured a panel of experts discussing illegal unregulated and unreported (IUU) fishing. Comprising the Attorney-General of the Republic of Palau, a Distinguished Fellow of the Maritime Institute of Malaysia, and a Commander from the

U.S. Coast Guard’s 14th District, the panel reinforced the threat posed by IUU fishing to national sovereignty. IUU fishing is an affront to international law and merits robust legal cooperation to ensure both information sharing and enforcement

efforts. Of particular concern were small island nations that have large EEZs and limited capacity to patrol and enforce their legitimate rights against the increase in illegal fishing. Partnering with states to share resources and prosecute offenders is vital.



IUU fishing experts
Photo credit: PO1 James Downs

U.S. Indo-Pacific Command Multi-lateral Legal Engagements

Over the past year, the USINDOPACOM Office of the Staff Judge Advocate (OSJA) conducted legal engagements with a wide array of ally and partner legal advisors from across the region. Together, USINDOPACOM OSJA and ally and partner legal advisors discussed shared commitments to upholding the rules-based order, including in the maritime environment under the law of the sea; acknowledged the mutual benefits the order provides to the community of nations; and identified common threats to the order, such as excessive maritime claims, unlawful

fishing bans, or using force or coercion to advance excessive maritime claims or impede other lawful uses of the seas and airspace. They also identified cooperative ways to uphold the rules-based order, such as through legal exchanges, cooperative legal papers, and other mechanisms to develop shared understanding on core legal issues.

By bringing legal partners together, these legal engagements are an example of legal vigilance focused on upholding rule of law against activities that undermine

or threaten it. USINDOPACOM OSJA looks forward to future engagements with legal partners across the region. If you are interested in participating in a legal engagement, please contact USINDOPACOM OSJA at the email address on the back of this dispatch.

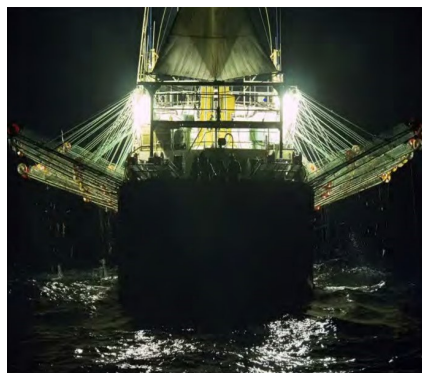


PRC's Fishing Fleet: A Breeding Ground for Violations of International Law

According to a New York Times report, the PRC's massive deep-water fishing fleet consists of as many as 3,000 ships that operate year-round off the coasts of South America and other resource-rich waters in the Indian Ocean and South Pacific. In 2020, nearly 300 PRC vessels reportedly hugged the boundary of Ecuador's EEZ, off the Galapagos Islands, causing considerable depletion of fish stocks and economic harm, prompting Ecuador to lodge a protest in Beijing.

The industrial scale and tactics of the PRC's fishing fleet raise concerns regarding international law and the effect of illegal, unregulated, and unreported fishing (IUU fishing). The New York Times report notes that, "China now fishes in any ocean in the world, and on a scale that dwarfs some countries' entire fleets

near their own waters." It goes on to describe the economic impact of IUU fishing by the PRC, and how PRC fishing practices are linked to violations of international law, including infringement on resources rights within other countries' EEZs, labor abuses, and catch of endangered species.



Chinese ship fishing for squid off the west coast of South America in Jul 21.
Photo Credit: New York Times

Source: Steven Lee Myers et al, *How China Targets the Global Fish Supply*, N.Y. TIMES (Sep. 26, 2022)

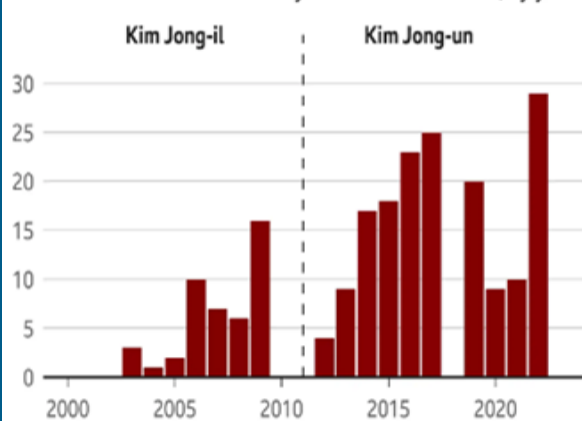
With "worrisome signs of depleted stocks" that could "foreshadow a broader ecological collapse," many countries are stepping up to counter IUU fishing.

The New York Times report cites Argentina's addition of four new patrol boats for enforcement in its coastal waters. Further, in July, President Biden issued a memorandum promising increased monitoring of IUUF. The Administration also pledged to triple American assistance to help Pacific island nations patrol their waters, offering \$60 million a year of financial support over the next decade.

All Nations Must Uphold UN Security Council Resolutions on North Korea

The Democratic Republic of Korea (DPRK) has conducted over 40 unlawful ballistic missile launches in 2022, more than in any year. Recently, a long-range ballistic missile launched from North Korea traveled over the sovereign territory of Japan, causing Japanese citizens to take shelter. Open-source reports also indicate that the DPRK may be preparing to conduct a nuclear test. The International Atomic Energy Agency has said that DPRK's nuclear program is going "full steam ahead," with work on plutonium separation, uranium enrichment and other activities.

Missile tests have risen under Kim Jong-un
Number of missiles launched by North Korean forces, by year



Source: Center for Strategic and International Studies (data to 9 Jun 2022) BBC

In fact, from 2006-2018 the UNSC unanimously adopted 20 resolutions* related to these ballistic missile and nuclear programs. UNSCRs are binding international law pursuant to the UN Charter, which is the preeminent treaty in international relations ratified by all UN member states. Collectively, the UNSCRs compel the DPRK to abandon its ballistic missile and nuclear programs and impose a range of

requirements on UN member states to prevent the DPRK from acquiring resources needed to advance these programs.

Upholding the force of international law inherent in UNSCRs is the responsibility of all nations that desire to maintain int. peace and security in accordance with the UN Charter, but as a senior State Department official noted following the DPRK's Oct 3 launch, "the failure of the PRC and Russia to fully and completely fulfill their obligations ... has only, we fear, emboldened the DPRK in undermining the UN Security Council, the international rules-based order and global non-proliferation regime."

The PRC and Russia vetoed a proposal for new UN sanctions in May 2022 following a series of DPRK missile launches, and attempted to block the UNSCR from meeting publicly to discuss strengthening sanctions, following the DPRK's October launch over the territory of Japan. The DPRK's new domestic legislation that purports to formalize its nuclear status and permit preemptive use of nuclear weapons is yet another example of how DPRK's disregard for international law – emboldened by the PRC and Russia's failure to act – threatens security across the region.

Notwithstanding, USINDOPACOM is committed to the rule of law, and is working closely with legal partners across the region, including counterparts in Japan and the Republic of Korea on combined efforts to uphold international law.

* Unanimously adopted UNSCRs: 1695, 1718, 1874, 1887, 1928, 1985, 2050, 2087, 2094, 2141, 2207, 2270, 2276, 2321, 2345, 2356, 2371, 2375, 2397, 2407



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Ensuring a Free and Open Indo-Pacific

What is Legal Vigilance?

‘Legal vigilance’ refers to monitoring and assessment of the legal environment. Maintaining legal vigilance ensures United States Indo-Pacific Command (USINDOPACOM) and its allies and partners are able to identify threats (including “legal warfare” by the People’s Republic of China), integrate across the combined joint force, and implement action to uphold the rule of law.

The Legal Vigilance Dispatch is an informal, non-comprehensive survey of open-source information on the legal environment. Unless otherwise noted, content is produced by USINDOPACOM Office of the Staff Judge Advocate (OSJA) and may not reflect official positions of the U.S. government.

In addition to identifying threats in the legal environment, the Legal Vigilance Dispatch highlights cooperative efforts by the United States and its allies and partners to uphold the rule of law. USINDOPACOM OSJA is committed to building legal partnerships and working with allies on partners to preserve peace and stability in the Indo-Pacific.

If you have comments, feedback, or vignettes to share, please contact us.

PRC “One-China Principle” vs U.S. “One China Policy”

The PRC’s “One-China principle” asserts that Taiwan is “indisputably” part of China. A CCP white paper released on August 10, argues the “One-China principle” reflects a “universal consensus of the international community” that is “supported by history and the law.” The PRC claims that UN General Assembly Resolution 2758 is based on the “one-China principle” and that, through it, member states have determined that Taiwan is a part of China. The PRC’s constitution reinforces the “One-China principle” by characterizing Taiwan as “part of the sacred territory of China.” Various PRC domestic laws such as the Anti-Secession Law (2005) and the law on the territorial sea and contiguous zone (1992) purport to exercise sovereignty over Taiwan.

The U.S. One China Policy is not the same as the PRC’s One-China Principle.

U.S. One China Policy	PRC One-China Principle
<ul style="list-style-type: none">Guided by the Taiwan Relations Act, three US-PRC Joint Communiques, and Six Assurances to TaiwanAcknowledges, but does not endorse PRC’s position that Taiwan is part of ChinaRests upon the expectation that Taiwan’s future will be determined by peaceful meansDoes not recognize PRC sovereignty over Taiwan	<ul style="list-style-type: none">Based on the PRC’s misrepresentation of various nations’ one China policies and UNGAR 2758Asserts that “Taiwan is part of China” and that this is an “indisputable fact”Provides that “non-peaceful means shall be used” if possibilities of peaceful unification exhaustedAsserts that Taiwan is part of the sovereign territory of China

Unlike the PRC’s “one-China principle” which purports to represent a “universal consensus,” the U.S. one China policy is guided by the Taiwan Relations Act, Three U.S.-PRC Joint Communiques, and Six Assurances to Taiwan. It provides a framework for a diplomatic relations with the PRC, enables robust unofficial ties with Taiwan, and helps maintain peace and stability across the Taiwan Strait.

As documented in the communiqués, the United States regards the PRC as the sole legal government of “China” (which is not defined) and “acknowledges,” but does not endorse the PRC’s position that Taiwan is part of China. In addition, the United States does not recognize Taiwan as a state or its authorities as a national government, but also does not take a position on Taiwan’s ultimate status.

UNGAR 2758 and most of the international community hold ambiguous positions regarding PRC’s claim over Taiwan. Many nations, including Japan and South Korea also use ambiguous language (e.g. “take note of” or “respect”). As such, the PRC’s portrayal of its “one-China principle” as an “international consensus” is demonstrably inaccurate.