

# The Legal (Warfare) Implications of China's Naval Blockade of Taiwan

**Jyun-Yi Lee**  
**Associate Research Fellow**

Division of National Security Research

Topic: International Trend

## 1. News Highlights

In August 2022, China held military exercises in the Taiwan Strait on the occasion of US House Speaker Nancy Pelosi's visit to Taiwan, which was interpreted as sending a message that the PLA was capable of blockading Taiwan. Since then, maritime blockades have increasingly become part of the scenarios where there is rising tension across the Taiwan Strait. Most of these commentaries, however, focus on Taiwan's will and ability to resist as well as possible US responses "after" the Chinese blockade takes shape rather than "how" the action could occur. On

January 30, 2023, Australian scholar Rob McLaughlin wrote an article exploring the implications of China's maritime blockade of Taiwan in the context of the law of armed conflict and law of naval warfare, arguing that it is as legally complex as the blockade itself and that China was on the disadvantaged side in all the different interpretations. As "legal warfare," which is part of the PLA's "three warfares" doctrine, stresses the use of law to justify its conduct of war and limit the opponent's space for maneuvering, it can be inferred that for China to blockade Taiwan, it has to address the legal issue first.<sup>1</sup>

A successful blockade not only

---

1. 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>; For more information on the concept of China's "Three Warfares," see Ming-shih Shen, "The Levels and Strategies of the CCP's Three Warfares and Taiwan's Countermeasures," *Fu Hsing Kang Academic Journal*, Vol. 90 (2007), p. 232; For the theory of blockade and the conditions of success, see Adam Biggs et al., "Theories of Naval Blockades and Their Application in the Twenty-First Century," *Naval War College Review*, Vol. 74, No. 1 (Winter 2021), <https://tinyurl.com/2p8v37yv>.

depends on military power but also involves complex legal, political, diplomatic, economic, technological, and psychological factors. The scope of this article will be limited to the legal (warfare) aspect; other issues, such as the different forms and elements of blockades, will be discussed in a separate article.

## 2. Security Implications

### 2-1. Blockade could mean recognition of Taiwan as a sovereign state

If China tries to blockade Taiwan, how will it resort to international law to justify its actions and limit the scope for intervention by other countries? Taiwan's status in international law will be the primary consideration. Blockades

are one of the legitimate means of war, and the subjects of war are sovereign states. Calling the Chinese action against Taiwan a "blockade" implies that China recognizes Taiwan as a nation or at least a belligerent and that the two sides are at war. Consequently, both sides of the Taiwan Strait are subject to the norms of the law of armed conflict and the law of naval warfare. For instance, for a blockade to be deemed legitimate, it must be effective. This means all ships and aircraft of all countries, including the attacking side, will be blocked from entering and leaving the enemy ports and coasts by force. The beginning date, duration, location, and extent of the blockade should be made public. Different measures will also be applied when it comes to the enemy and neutral ships trying to run the blockade.<sup>2</sup>

Acknowledging Taiwan as a state

---

2. About Implications of the blockade on Taiwan's legal status, see Rob McLaughlin, "The Law of Armed Conflict, the Law of Naval Warfare, and a PRC Blockade of Taiwan"; Bradley Martin et al., "Implications of a Coercive Quarantine of Taiwan by the People's Republic of China," *RAND*, 2022, pp. 1-2, <https://tinyurl.com/u6sbann6>. The main international legal norms regarding maritime blockade are the "Declaration concerning the Laws of Naval War" of 1909 and the "San Remo Manual" of 1994. Although the former is not in force and the latter was compiled only by a group of legal and maritime scholars, both incorporate principles of international humanitarian law and the law of the sea and are still important reference documents. See "Declaration concerning the Laws of Naval War," *International Committee of the Red Cross*, n.d., <https://tinyurl.com/5afchhdh>; "San Remo Manual on International Law Applicable to Armed Conflicts at Sea," *International Committee of the Red Cross*, 1995, <https://tinyurl.com/39tdufs2>.

is something China must not accept. Hence, to legitimize China's blockade of Taiwan, Chinese scholars have raised the following assertions. First, China claims sovereignty over Taiwan, and therefore the conflict between the two sides is a "non-international armed conflict." Second, while blockades are not originally applicable to the "non-international armed conflict" principle, Chinese scholars believe that China can still legally blockade Taiwan under its assertion of sovereignty and territorial integrity. They argue that by the principle of non-interference enshrined in Article 2.7 of the UN Charter and Article 3 of the 1977 Additional Protocol Relating to the Protection of Victims of Non-International Armed Conflicts, a government may use all lawful means of warfare to preserve national unity and territorial integrity; this also applies to the blockades used in international armed conflicts. Third, although most literature advocates that

the disposal of foreign vessels must conform to international law and the PLA's treatment of wounded combatants, civilians, and victims to the international humanitarian law, some argue that the blockade of Taiwan is a "domestic matter," and so there is no need to make a public announcement as required by international law.<sup>3</sup>

However, even in the case of "non-international armed conflict," the location or scope of a Chinese blockade is still questionable. Some believe that in the case of an international armed conflict, the blockade can be enforced on the high seas, but since a "non-international armed conflict" is a domestic matter, the blockade should not extend beyond the territorial waters of the country in question. In other words, it's questionable that China could legally block the vast majority of the Taiwan Strait that is not its territorial waters and harass other countries' vessels traveling through those

---

3. The author has reviewed the "China National Knowledge Infrastructure" database and found little blockade-related literature in Chinese academia. These Chinese papers mostly introduce the evolution of relevant international law, general principles, and important cases. Only two directly discuss the blockade of Taiwan, while another explores the possibility of a US maritime blockade of China in the context of US-China strategic competition. For literature on the blockade of Taiwan, see Yao Jiakun and Zhao Linjie, "A Study of the Legal Aspects of the Maritime Blockade," *Fazhi bolan*, Issue 11, 2019 (April 2019), pp. 118-119; Yin Fei, "Some International Law Aspects of PLA's Implementation of the Maritime Blockade," *Journal of Xi'an Political Science Academy*, Vol. 13, Issue. 4 (August 2000), pp. 68-71.

waters.<sup>4</sup> This will bring a challenge to the PLA's attempts to deny foreign military intervention.

## **2-2. Blockade by another name an alternative for China**

To circumvent the aforementioned problem, commentators believe that China may use other notions for the purpose of the blockade. In this regard, much of the research points to the “quarantine” policy adopted by the US during the 1962 Cuban missile crisis. The term “quarantine” has not been clearly defined in international law, but the John F. Kennedy administration argued that “quarantine” was intended only to prevent the entry of contrabands (offensive weapons) into Cuba, and so its nature was situation control or peaceful intervention, which is in contrast to a state of war implied by the blockade. From here it can

be argued that since “quarantine” does not necessarily have an explicit military nature, the means available to China are not limited to the PLA's naval and air forces but also include the Chinese Coast Guard (CCG) and even maritime militia. For instance, China could designate a zone and prohibit specific goods or vessels from approaching Taiwan, or force them to divert to a nearby Chinese port for inspection through patrols, interceptions and forced diversions by the PLA Navy and the CCG. Chinese maritime militias could gather in key waterways near Taiwan to block other countries' vessels from reaching the island. The PLA Navy and Air Force could hold military exercises in the waters surrounding Taiwan to intimidate Taiwan and escalate the situation when “quarantine” becomes ineffective.<sup>5</sup>

Although the effect of “quarantine” is similar or equivalent to a blockade, its

---

4. Rob McLaughlin, “The Law of Armed Conflict, the Law of Naval Warfare, and a PRC Blockade of Taiwan,” Some Chinese scholars have argued that there are still doubts about the applicability of international law on the blockade in the context of civil war. In any case, it is necessary to properly deal with the relationship with third-country vessels during the blockade. See Niu Baocheng, “Exploration on Modern Maritime Blockade Operations,” *National Defense Technology*, Vol. 1, No. 1, 2004, p. 17.

5. Bradley Martin et al., “Implications of a Coercive Quarantine of Taiwan by the People's Republic of China,”; Song Xiaolu, “The Use of Law of War in the Competition of Maritime Supremacy,” *Journal of Naval Engineering University* (Comprehensive Edition), Vol. 11, No. 2 (June 2014), p. 48. Yann-huei Song, “The Possibility of a PRC Naval Blockade against Taiwan and the Related International Law Issues,” *Issues and Studies*, Vol. 35, No. 4 (April 1996), p. 14. Professor Song believes that in addition to “quarantine,” China may also set up “exclusion zones” and “enclosures of ports” against Taiwan.

functions not so much as a precursor or prelude to war as creating an economic and energy security crisis in Taiwan. It also conveys the message that China has the ability to actually blockade Taiwan so as to influence the perceptions of Taiwanese society. In this regard, “quarantine” is meant to be a form of coercion and is more akin to a “gray zone” conflict that keeps the use of force below the threshold of war. However, “quarantine” is not easy or costless for China. First, because the legal meaning of “quarantine” is still unclear, the PLA Navy’s enforcement of such policy and coercive actions upon third-country vessels may still be interpreted by other countries as a blockade and therefore constitute a state of war. Second, China’s “quarantine” moves to ban goods, ships, aircraft, and personnel from entering Taiwan may also be interpreted by Taiwan as provocative or even war actions, leading to a greater chance of military conflict and international intervention. Third, the intrusion of Chinese maritime militia also gives Taiwan and neighboring countries the legitimacy to intervene with their coast guards; the continuous presence of these law enforcement units in the relevant waters functions to control

the situation and reduce the chance of military conflicts.

### 3. Trend Observation

#### 3-1. China’s legal warfare an indicator of its Taiwan blockade and other actions

For China, the most favorable scenario for unifying Taiwan is to have a “legitimate course” for all kinds of its actions to minimize Taiwan’s will to resist and intervention of other countries. For this reason, although it is logical that China may simply block Taiwan and ignore possible international law issues, this is not its best policy. The ways in which China claims the legitimacy of its actions, including blockade and “quarantine,” through legal warfare is therefore an indicator of whether it is escalating or accelerating its threats to Taiwan.

China’s legal warfare may manifest itself in two aspects. First, China’s international law discourse deliberately highlights the principles of sovereign equality and non-interference enshrined in Article 2 of the UN Charter and, by extension, asserts that states may

legitimately use force and other acts to preserve their sovereignty and territorial integrity. This interpretation deliberately ignores that the UN Charter also emphasizes peaceful resolutions of disputes and gives the UN the power to intervene in cases of threats to the peace, acts of aggression, and other breaches of the peace. Admittedly, given that China is a permanent member of the United Nations Security Council with enormous influence on third-world countries, it is not likely that UN norms and resolutions will restrict China's actions. However, in order to claim legitimacy of its actions, China will continue to selectively promote the international law discourse in its favor. In his "Global Security Initiative," Xi Jinping denies the security structure formed by the US and European countries without an explicit referencing. He emphasizes "insisting on respecting the sovereignty and territorial integrity of all countries and non-interference in the internal affairs of other countries" and "attaching

importance to the legitimate security concerns of all countries." It's, in essence, an attempt to create an international legal order favorable to China by ostensibly echoing universal values and principles.

Second, China is also attempting to change the legal status of the Taiwan Strait. The more China can convince the international community of its power and rights in the Taiwan Strait, the more it will be in an advantageous position to blockade Taiwan or launch other coercive acts against it. In the June 2022 dispute between the US and China over whether the Taiwan Strait is "international waters," China has so far considered that the Taiwan Strait contains China's internal waters, territorial waters, and exclusive economic zone; and China is entitled to sovereignty, sovereign rights, and jurisdiction in that order. But China may try to extend its claims, for example, by asserting its jurisdiction over the foreign Navy vessels passing the Strait to further strengthen its control thereof.<sup>6</sup>

---

6. For Xi Jinping's "Global Security Initiative" and related analysis, see "Xi Jinping's Keynote Speech at the Opening Ceremony of the 2022 Annual Meeting of the Boao Forum for Asia (full text)," *Xinhua News Agency*, April 21, 2022, <https://tinyurl.com/2p9dzhah>; "China's 'Global Security Initiative' Not Widely Embraced, Experts Warned about the Consequences," *Central News Agency*, July 19, 2022, <https://tinyurl.com/ff4xjeuh>; "U.S. Scholars: Xi Jinping's 'Global Security Initiative' Maybe An Excuse of Starting A War," *Radio Free Asia*, October 5, 2022, <https://tinyurl.com/2p9986j7>. Regarding the debate about whether the Taiwan Strait is "international waters," see Lynn Kuok, "Narrowing the Differences between China and the US over the Taiwan Strait," *IJSS*, July 13, 2022, <https://tinyurl.com/ymb4z962>.

### **3-2. Democracies in need to respond to China's possible legal warfare**

When exploring the norms of international law related to blockades, Chinese scholars do not merely declare the necessity to comply with international law but also explore the flexible use of international law to achieve their political objectives. For instance, some studies have cited the blockade of Confederate ports by the Union during the American Civil War as evidence of the legality of the blockade in a state of civil war. Some argue that the facts of the enemy's violations of the law in naval warfare should be collected to restrict its maritime operations. Some suggest to use the law to hold major powers (such as the US) accountable so that they cannot aid their allies (such as Taiwan) in the name of neutrality. Some even argue that China can or should use false flags to disguise its actions and ambush enemy ships in naval warfare.<sup>7</sup>

While these studies may have their points, Taiwan and other democracies should be aware of possible "misuses."

Once China decides to blockade or "quarantine" Taiwan, it will invoke the American Civil War and the Cuban missile crisis as precedents for legitimizing its actions. During the blockade, "quarantine," and even naval war, China may also create alleged law-violating facts to confuse the international community. While the public is concerned about China's ability to blockade Taiwan, the possible response of democratic countries such as the US, and Taiwan's resilience and will to resist, it is also imperative to include legal (warfare) issues in different levels of military simulations and prepare countermeasures.

(Originally published in the 73<sup>rd</sup> "National Defense and Security Biweekly", February 17, 2023, by the Institute for National Defense and Security Research.)

(The contents and views in the assessments are the personal opinions of the author, and do not represent the position of the Institute for National Defense and Security Research.)

---

7. Song Xiaolu, "The Use of Law of War in the Competition of Maritime Supremacy," pp. 47-48; Niu Baocheng, "Exploration on Modern Maritime Blockade Operations," *National Defense Technology*, p. 17.