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# A Politico-Legal Toolkit to Respond to a Taiwan Straits Conflict under a UN Framework

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This discussion document proposes a toolkit of diplomatic and legal options available to nation-States under the auspices of the United Nations to respond to a potential conflict scenario in the Taiwan Straits. The document explores historical and political stances on the status of Taiwan in international law, and makes a case for the island's right of defence and for the illegitimacy of a Chinese campaign using force through a multilateral lens.

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# Executive Summary

The Taiwan question, referring to the status of the island of Taiwan or ‘Republic of China’, has been a source of political contestation since the founding of the People’s Republic of China (PRC) in 1949. This discussion document explores the grounds for Taiwan’s right of self-defence tied with its ability to exercise sovereignty under United Nations-led legal frameworks, in a conflict scenario in the Taiwan Straits. Such an exploration looks at the recent history of the ‘One China’ principle and arguments on the status of the Republic of China, as well as the United Nations’ and United States’ policies on the issue.

Further, the document proposes a toolkit of options available to States under UN auspices to respond to such a conflict scenario based on historical stances and contemporary international legal ambiguities and frameworks. The goal behind proposing such a toolkit is to explain the significance of multilateral law to achieve peace and stability in the Straits, especially when the benefits of its use may supersede unilateral, bilateral or minilateral efforts against a particular party (in this case, the People’s Republic of China). The suggestions of the document are broad and applicable to most countries willing to act under a UN-led international legal framework to mobilise support for Taiwan (whether or not they recognise it). The politico-legal recourses hence discussed are foreign policy agnostic but diplomatic prowess-dependent.

This document has been formatted to be read conveniently on screens with landscape aspect ratios. Please print only if absolutely necessary.

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# I. Introduction

The Taiwan question, referring to the status of the island of Taiwan or ‘Republic of China’ (ROC), has been a source of political and geopolitical contestation since the founding of the People’s Republic of China (PRC; here, used interchangeably with ‘China’) in 1949. The PRC has argued that Taiwan is part of ‘One China’ and that cross-Straits “reunification” is a domestic issue of the PRC. Its campaign in this regard has led to wavering international support for Taiwan’s security and sovereignty. Moreover, in the past few years have witnessed heightened tensions across the Straits. **This is due to four main factors.**

The first is the changing nature of Taiwanese politics under the government of the Democratic Progressive Party (DPP) since 2016. The DPP is a more independence-minded and progressive party than its primary opposition, the nationalist Kuomintang party (KMT). Under the presidency of Tsai Ing-Wen of DPP, Taiwan’s China policy has become sterner as compared to that of the KMT, focusing more on building the island’s defence capabilities and diplomatic standing, while subsequently inviting the ire of Beijing. Tsai has also repudiated the ‘1992 consensus’, which Beijing perceives as fundamental to dialogue, peace and stability between the two sides of the Straits. Since 2017, Beijing has hence suspended any meaningful negotiation with the DPP.

The second factor is the strengthening sentiment of self-identity and political sovereignty in Taiwan. This has been exacerbated by the election of Tsai, and her subsequent emphasis on Taiwan's de-facto independent identity as well as its vibrant democratic institutions. More specifically, a variety of poll numbers<sup>1</sup> indicate that the young middle class in Taiwan is increasingly identifying itself more as 'Taiwanese' and not 'Han Chinese', and does not share the Chinese view that a "one country, two systems" model will be mutual beneficially for "compatriots" on both sides of the Straits.

The third factor is that the US and Taiwan have drawn closer to each other as part of an 'unofficial bilateral relationship'. This is manifested in the historical US support for Taiwan's technological growth (as seen from the booming semiconductor industry on the island), as well as arms sales from the US to Taiwan, which are aimed at deterring China. Through the US-Taiwan Initiative on 21<sup>st</sup> Century Trade, the two sides are also attempting to deeply integrate each other's economies.

The fourth factor is that China has become more powerful and assertive under Xi Jinping. This has translated into the strengthening of its political will to realise the Chinese dream of 'Great Rejuvenation', of which 'reunification' with Taiwan is a significant part. Since August 2022, the Chinese People's Liberation Army (PLA) has twice flexed its military muscle by conducting extensive exercises in live-fire zones around Taiwan, thereby also altering and deteriorating the status quo in

the Straits. This is in addition to the regular fly-bys and naval sorties conducted by the PLA's fighter jets, Unmanned Aerial Vehicles, balloons, and naval vessels beyond the median line of the Taiwanese Air-Defence Identification Zone (ADIZ), thereby coaxing the island to keep its defences on-guard. China has also deployed an arsenal of political and economic coercive tactics, ranging from election interference in the recently concluded Taiwanese elections of January 2024, to suspending preferential tax rates for Taiwanese imports under the Cross-Straits Economic Cooperation Framework Agreement (ECFA), and sanctioning US defence firms for selling arms to Taiwan.

The above-mentioned factors have created fundamental fault-lines in the cross-Straits dynamics, and may even lead to an escalatory ladder ending in a conflict scenario, endangering the interests of not just parties directly involved, such as the US, China and Taiwan, but also other countries around the world. In this regard, what are the politico-legal options available to concerned States at multilateral forums like the United Nations to protect their interests in case of a conflict?

This paper shall attempt to answer this question by offering a toolkit of options under a UN framework, keeping in context the history of cross-Straits relations as well as the involvement of US and multilateral institutions like the UN since 1949.

## A Short Note on the Significance of this Exercise

Cross–Straits dynamics are of great significance to regional and global peace and stability, as well as economic security. As per a recent ‘Bloomberg Economics’ report<sup>2</sup> which deploys quantitative modelling to study the estimated impact of a war over Taiwan, such a war will deliver a \$10 trillion shock to the global economy, which is larger than the economic shocks witnessed during the COVID–19 Pandemic or the 2008 global financial crisis. This can be explained by a host of reasons – that 88 per cent of the world’s largest ships by tonnage pass through the Taiwan Straits,<sup>3</sup> thereby making the passageway critical to global maritime trade, or that the island itself fulfils 90 per cent of the world’s advanced semiconductor chip requirement, and 60 per cent of the overall requirement of such chips.<sup>4</sup> In this regard, any conflict in the Straits engenders the risk of the quarantining of Taiwan’s exports and the blockade of a crucial maritime trade passageway.

Moreover, results from tabletop wargame exercises such as those conducted by Washington D.C–based think tank Center for Strategic and International Studies show that in protracted conflict, lives of hundreds of thousands of American, Chinese and Taiwanese servicemen will be lost.<sup>5</sup> Further, as the Russia–Ukraine and Israel–Gaza wars have demonstrated, no war is just the participating parties’ business, and due to the above–mentioned implications, a study of cross–Straits dynamics and potential responses to a conflict becomes essential.

## II. A Brief Recount of Stances on ‘One China’<sup>6</sup>

Since the culmination of the 1949 civil war in China, which resulted in the Communist Party of China (CPC) establishing the PRC (or ‘mainland China’), while the nationalist Kuomintang Party (KMT; 國民黨) retreated to the island of Taiwan (or ‘Republic of China’, ROC), the legality of Taiwan’s existence as an independent entity has been a consistent debate. As per the opening text of the PRC State Council Taiwan Affairs Office’s 2022 white paper,<sup>7</sup> titled “The Taiwan Question and China's Reunification in the New Era”:

*“Resolving the Taiwan question and realising China's complete reunification is a shared aspiration of all the sons and daughters of the Chinese nation. It is indispensable for the realisation of China's rejuvenation. It is also a historic mission of the Communist Party of China (CPC). The CPC, the Chinese government, and the Chinese people have striven for decades to achieve this goal.”*



This was also iterated in two previous White Papers of 1993 and 2000. These papers also state that Beijing considers the Taiwan question “purely an internal matter for China.” Clearly, the stance presented by the CPC across decades is that Taiwan is an inalienable part of ‘One China’, while Taiwan’s stances have differed with changes in governments since March 1950. For example:

1. As per Chiang Kai-Shek, the first elected President of the National Assembly of the ROC, both PRC and ROC comprised a single China, whose legitimate ruler was Chiang himself.<sup>8</sup> In believing that there existed ‘One China’, he saw eye-to-eye with his contemporary in the PRC, Mao Zedong, but that was not the case when it came to who would be recognised as the legitimate leader of said ‘One China’.
2. The KMT continued to follow a similar stance under subsequent leaders of the ROC, such as Chiang Ching-Kuo and Lee Teng-Hui. It was in Lee’s tenure of 1990–96 that, for the first time, ROC articulated its understanding of ‘One China’. In a document titled “The Meaning of “One China””,<sup>9</sup> published on August 1, 1992, the National Unification Council of the ROC stated the following:
  - *Both sides of the Taiwan Straits agree that there is only one China. However, the two sides of the Straits have different opinions as to the meaning of "one China." To Peking, "one*

*China" means "the People's Republic of China (PRC)," with Taiwan to become a "Special Administrative Region" after unification. Taipei, on the other hand, considers "one China" to mean the Republic of China (ROC), founded in 1912 and with de jure sovereignty over all of China. The ROC, however, currently has jurisdiction only over Taiwan, Penghu, Kinmen, and Matsu. Taiwan is part of China, and the Chinese mainland is part of China as well.*

- *Since 1949, China has been temporarily divided, and each side of the Taiwan Straits is administered by a separate political entity. This is an objective reality that no proposal for China's unification can overlook.*
- *In February 1991, the government of the Republic of China, resolutely seeking to establish consensus and start the process of unification, adopted the "Guidelines for National Unification." This was done to enhance the progress and well-being of the people, and the prosperity of the nation. The ROC government sincerely hopes that the mainland authorities will adopt a pragmatic attitude, set aside prejudices, and cooperate in contributing its wisdom and energies toward the building of a free, democratic and prosperous China.*

3. Despite the KMT governments' unwavering stances that there exists 'One China' wherein both PRC and ROC are inalienable parts of the singular Chinese nation, the above-mentioned articulations indicate that throughout history, governments in Taiwan disagree with the CPC's conception of 'One China'. There is also explicit acknowledgement that ROC is a separate political entity (albeit temporarily) and if unification were to happen, this political reality is necessary to be taken into account.
  
4. With the coming in of Chen Shui-Bian's government in the national elections of 2000, the change in the leading political party from KMT to the Democratic Progressive Party (DPP) led to greater expression of Taiwan's sovereign identity and deepening democratisation. For example, in his inaugural address<sup>10</sup> after coming to power in May 2000, Chen stated that "*so long as the Communist regime does not use military force against Taiwan, the National Unification Council and the Guidelines for National Unification will not be abolished.*"
  - However, on February 27, 2006, Chen announced<sup>11</sup> that the National Unification Council will "cease to function" and the "Guidelines for National Unification" will "cease to apply." The rationale behind this decision was argued in the "Position Paper on the National Unification Council Ceasing to Function and the Guidelines for

National Unification Ceasing to Apply,”<sup>12</sup> published by the Taiwanese Mainland Affairs Council (MAC).

- It said: *This decision was based on the democratic principle of popular sovereignty, and in consideration of China's continuous intentions to unilaterally change the status quo in the Taiwan Straits by non-peaceful means such as military intimidation and passage of its “anti-separation law” (the so-called anti-secession law). More importantly, it was based on the need for the Taiwan government to safeguard the important principles of upholding democracy and maintaining the status quo.*

5. As DPP has continued to remain in power in the period between 2012 and 2024, acknowledgment of a sovereign Taiwanese identity has become a subject of importance for domestic political legitimacy. As per a report published<sup>13</sup> by MAC in 2021:

*“...ROC is a sovereign and independent nation, which was established 38 years prior to the founding of PRC and has stood firm for the past 110 years. The ROC currently exercises jurisdiction over Taiwan, Penghu, Kinmen, and Matsu, and has never been ruled by the PRC. The president's position that “the two sides across the Taiwan Straits should not be subordinate to each other” is a solemn clarification of the fact about and current status quo of the Taiwan Straits.”*

The US, which is another important actor in the Cross–Straits dynamic, has had a stance which acknowledges the ‘One China’ principle in word and recognises the PRC as the legitimate Chinese government at the international stage, but also supports the status quo, peace and stability.

It is also vital to note that the US continues to maintain an “unofficial relationship” with the ROC that, in some ways, benefits the case the latter makes regarding its sovereign status. To begin with, there is a conception that the US’s 1979 ‘Taiwan Relations Act’ (TRA; PUBLIC LAW 96–8—APR. 10, 1979)<sup>14</sup> limits the scope of US intervention in a Cross–Straits conflict and favours the PRC’s narrative on reunification by acknowledging the termination of official relations between the US and ROC. However, significant provisions of the law provide for the same guarantees to Taiwan as for any other nation–State. For example:

1. Articles 2–6 of Section 2(b) of the TRA declare that it is incumbent upon the US to preserve the status quo by use of force as required, as it is in American national security interest to maintain stability and security in the Western Pacific region. It also recognises that peace in the Taiwan Straits is a matter of “international concern.”

- Article 3, in specific reads that “*[It is US policy] to make clear that the United States decision to establish diplomatic relations with the People's Republic of China rests upon the expectation that the future of Taiwan will be determined by peaceful means.*”
  - Similarly, article 4, in specific, reads that “*[It is US policy] to consider any effort to determine the future of Taiwan by other than peaceful means, including by boycotts or embargoes, a threat to the peace and security of the Western Pacific area and of grave concern to the United States.*”
2. Further, as per Article 1 of Section 4(B) of the TRA, “*Whenever the laws of the United States refer or relate to foreign countries, nations, states, governments, or similar entities, such terms shall include and such laws shall apply with respect to Taiwan.*”

Notably, the TRA is the true legally binding text vis-a-vis US cross-Straits policy. On the other hand, the three joint communiqués agreed upon between the US and China in 1972, 1979 and 1982, wherein the US government “acknowledges” the Chinese position that there is but one China and Taiwan is part of China, are not legally binding. Therefore, they have no effect as an assurance made by the US to PRC on backing away from the Taiwan question or withdrawing support from Taiwan’s security or democratic institutions.

At the multilateral level, the Taiwan question has remained unaddressed in that the status of Taiwan as a sovereign nation-State is undetermined. The United Nations General Assembly Resolution 2758 of 1971,<sup>15</sup> which explicitly restored the PRC to the seat representing China at the UN while expelling representatives of Chiang's government in Taiwan, has often been cited by the CPC as the fundamental factor underpinning the international agreement that Taiwan is non-independent and an inalienable part of China. In September 2023, Chinese Foreign Ministry Spokesperson Mao Ning said during one of her regular press briefings:<sup>16</sup>

*“Taiwan is part of China. Despite that fact and legal basis, the DPP authorities have been distorting UNGA Resolution 2758, openly challenging the internationally recognized one-China principle, and spinning lies to pursue “Taiwan independence”. These are extremely dangerous separatist provocations.”*

However, legal opinion<sup>17</sup> presented by scholars of the subject has contended with evidence that this is a misreading of the provisions of the Resolution 2758, in that even though the Resolution effectively truncates ROC's independent membership in the UN, it does not determine the status of Taiwan as a part of China in international law.

Even going back further in history, as per the Cairo declaration of 1943,<sup>18</sup> signed in the presence of Chiang Kai-Shek (who had already established a regime in Taiwan when the KMT was also in power across the mainland), all territories Japan won over from China, including ‘Formosa’ (Taiwan), would be “restored to the ‘Republic’ of China.” In no way is this an indication that Taiwan’s legal existence has been subsumed by history under that of the PRC’s. In fact, the above backdrop places Taiwan in a legal “grey-zone” vis-a-vis the applicability of international law in determining the status of the island.

Taking into account factors such as US support for Taiwan’s right of defence and security, as well as the legal understanding that Taiwan is not a renegade or breakaway province of the PRC but rather its status is in a grey-zone, in the event of a cross-Straits conflict between China and Taiwan, there are multiple multilateral political and legal options available to countries to express support to Taiwan, despite its status as a non-member of the UN.



### III. The Toolkit

#### 1. Debating the merits of China's claim of 'Non-Interference' based on the assumption that the Taiwan question is "purely an internal matter"

Customary international law on the determination of statehood for any territory flows largely from state practice as well as the criteria for statehood enshrined in the 1933 Montevideo Convention.<sup>19</sup> Article 1 of the Convention states:

*The state as a person of international law should possess the following qualifications: a) a permanent population; b) a defined territory; c) government; and d) capacity to enter into relations with the other states.*

It is undisputed that the case of Taiwan's statehood aligns with the first three criteria, i.e. possessing a defined territory, a permanent population of about 23 million people, and a government elected by said people. In its most simplest interpretation, Taiwan also fulfils the fourth criterion, in that it has the capacity to enter into relations with other states, and it has currently done so with 12 partners. In the past, Taiwan has had many more diplomatic partners, indicating capacity. Moreover, as per the TRA, Taiwan maintains "extensive, close, and friendly commercial, cultural, and other relations between the people of the United States" (in other words, an "unofficial relationship with the US government").

The case for Taiwan's statehood is furthered by Article 3 of the Montevideo Convention itself, which states:

*“The political existence of the state is independent of recognition by the other states. Even before recognition the state has the right to defend its integrity and independence, to provide for its conservation and prosperity, and consequently to organise itself as it sees fit, to legislate upon its interests, administer its services, and to define the jurisdiction and competence of its courts.”*

However, so far, the matter of determining Taiwan's statehood in international law has remained contested and ambiguous because of the two theories of statehood<sup>20</sup> — declaratory and constitutive. The declaratory theory argues that an entity is a state in 'fact' and not in 'law'. This means that if the facts of the entity's existence conform with the criteria for statehood, recognition only indicates acceptance of such facts by other States, and not a compulsory legal criteria for statehood.

From the perspective of this paper, Taiwan fulfils the Montevideo criteria and more, which indicates that it also possesses the right to defend itself based on its government's understanding of self-sovereignty. Constitutive theory, however, argues that an entity's statehood is determined largely by its international relations, and Taiwan may not fulfil that criteria by terms of the theory.

But, and most importantly, a contested State's rights are a geopolitical matter and their interpretation under the declaratory or constitutive theories is based on governmental will. This is because providing support to or withdrawing support for contested States' rights under international law can serve national interests of other States in various ways. For example, since the invasion of Ukraine by Russia began in February 2022, Russian President Vladimir Putin has furthered the argument<sup>21</sup> that Ukraine has historically been an inalienable part of triune nationality, i.e. Russian, Belorussian, and Ukrainian, or 'Malorussia'. In saying so, Putin has argued that Ukraine has no historical-legal basis for independent statehood. On the other hand, as soon as the invasion began, Putin signed on a decree recognising the independent statehood of what he referred to as the two "breakaway provinces" of Ukraine — Donetsk and Luhansk — despite there being no international legal grounds to interpret so.

Similarly, while the US does not agree with Russia's interpretation of statehood for Donetsk and Luhansk, it does recognise Ukraine as a sovereign, independent State, and has accordingly taken action to internationalise the Russian invasion of Ukraine and aid the latter's defence. Hence, the subject of recognition of statehood is not only legally contested, but also geopolitically determined.

In this regard, in the event of a cross-Straits conflict, it will be most opportune for a country to express at the international stage its political view that a country's sovereign interpretation of the Montevideo Convention allows room for Taiwan to consider itself a 'State', thereby possessing rights to defend itself. Further, a country can interpret the provisions of the Cairo Declaration of 1943 as well as the Potsdam Declaration of 1945 to support its legal claim that in the aftermath of Japan's defeat in the second World War, the island of 'Formosa'/Taiwan was to be returned to 'ROC' and not PRC. Hence, in response to a conflict, a country's initial statements at the UN or via the press remarks of representatives of its Foreign/ External Affairs Ministry, can present the view that the country's interpretation and articulation of customary international law allows Taiwan to defend itself, thereby dismissing the Chinese view that cross-Straits conflict is an internal affair of China and therefore exempt from international interference. This articulation does not interfere with any country's stance that there exists 'One China' and the PRC is the legitimate government of China. It only furthers the country's support for Taiwan's right to defend itself as a sovereign entity by the standards laid in geopolitics and international law.

An additional consideration for any country, in this regard, could be to propose an ancillary criteria for statehood — the election of a government by democratic and popular means. Some legal scholars opine<sup>22</sup> that the existence of a democratically-elected government that

upholds the rule of law and human rights of its citizens garners additional support in its cause for statehood. In this regard, countries' ability to mobilise support for Taiwan's deep democratic roots and respect for human rights among countries that adhere to the values of the liberal international order, may add to its diplomatic arsenal on the UN stage.

## **2. Supporting Collective Endeavours on Taiwan's Security**

States can provide diplomatic support for collective endeavours on Taiwan's defence, including by proposing to co-sponsor a resolution in the UN General Assembly as well as the UN Human Rights Council on the Taiwan question. Such a resolution may seek cooperation from UN member States on aiding Taiwan to defend itself, to urge China to respect human rights of the Taiwanese people as well as the principles of 'distinction' and 'necessity' enshrined in international humanitarian law, and to refrain from disrupting peace and stability in contravention to the provisions of the UN Charter.

Additionally, there is a case to be made for the power of Resolutions filed with the UNGA on the suspension of China's membership from specialised UN organs such as the Human Rights Council. Such a punitive measure was most recently taken against Russia through UNGA Resolution ES-11/3,<sup>23</sup> owing to its gross human rights violations in the Bucha region of Ukraine. Russia's suspension from the

UNHRC was approved by 93 states voting in favour of the Resolution. Similarly, suspending China's membership through a resolution authored by any country (if the conflict occurs at a time when China is indeed elected to the UNHRC as a three-term member) can be part of a major global campaign against its disregard of human rights.

### **2.1. An Argument Against the Violation of PRC's Sovereignty and Territorial Integrity**

Jurists and nation-States that recognise Taiwan as indeed an inalienable part of China, may also argue that arms sales to Taiwan are thereby provocative and violative of PRC's sovereignty and territorial integrity. However, precedent of US's intervention in South Vietnam tells us that if a territorial entity that is unable to defend itself calls on international support, the invited actors may accept such a call.

Even at the time, US support of South Vietnam invited legal critique, which argued<sup>24</sup> that because North Vietnam's military posture against the South could not be termed as an "armed attack" but rather a "civil strife," and because the South Vietnam government was a "client government" of the US, such a call for support was illegitimate.

However, in the Taiwan case, neither is true. Because of the grey-zone nature of Taiwan's independent status, with international law favouring its statehood, any attack by PRC against Taiwan can be deemed an

“armed attack.” Additionally, the government of Taiwan, elected by popular vote since 1986, is only a client to the Taiwanese population, and not the US. Moreover, in the history of ROC, not once has a legal claim against arms sales to Taiwan from say, the US, been made by PRC or any other international party. The only countermeasures China has resorted to are political, and include diplomatic protests and sanctioning of American defence enterprises.

### 3. Urging an ICJ Advisory Opinion on ‘The Taiwan Question’

The International Court of Justice, the law-administering and justice-dispensing arm of the UN, issues by special provision ‘Advisory Opinions’ on controversial and contested questions of international law, thereby clarifying legal status of unsettled questions. Even though they are non-binding in nature, over time, they contribute significantly to the development of international law. As Savoie (2005) has argued, “*The advisory opinion is a mode of social ordering that stands somewhere between consultation and adjudication.*”<sup>25</sup>

In the past, the UNGA has requested the ICJ for an advisory opinion<sup>26</sup> on the determination of the international legal status of the ‘South West Africa’ territory, a request with the ICJ granted in 1950. The promulgation of such an opinion was necessary as the SWA territory was administered first by the League of Nations, and after its dissolution, the UN Charter made no provision for the administration of the

territory. ICJ has also issued opinions on the legality of the construction of a wall in occupied Palestinian Territory, as well as the legality of the use of nuclear weapons.

In this regard, one of the options available for any country to use in a cross-Straits conflict scenario is to request the UNGA by letter to seek an ICJ advisory opinion on the Taiwan question and a contested State's right to self or collective defence. As per articles 96(1) and (2) of the UN Charter, an advisory opinion from the ICJ can only be requested by the UNGA, the UN Security Council (UNSC), or an organ or specialised agency of the UN authorised by the UNGA to do so. Hence, the country may also file a letter of request with noted agencies and bodies to mobilise the UNGA and the ICJ for an advisory opinion on specific issues of a Taiwan Straits conflict, such as the legality of China's information warfare or cybersecurity-related disruptions (filed potentially by the International Telecommunications Union), or on the preservation of the human rights and identity of the Taiwanese people in the context of its absence from UN-led frameworks on human rights and justice (filed potentially by the UN Human Rights Council).

The legal force advisory opinions carry is time-sensitive, in that they can settle contested issues of international law at critical junctures. Preceding a conflict or in the midst of it, a UNGA resolution requesting the advisory opinion on the Taiwan issue can carry the word "urgently" in it, as it did when the UNGA resolution 49/75 K was adopted on 15



December 1994 to seek the ICJ’s advisory opinion on the legality of the threat or use of nuclear weapons. Once the letter of request is filed by the UNGA, the ICJ accepts written and oral testimonies from party-States on the question posed, and state practice on said question is taken into account in the articulation of the court’s opinion. In this regard, it will be a testament to a country’s diplomacy at the multilateral stage if submitting parties favour Taiwan’s rights of self or collective defence, as well as the self-determination rights of the Taiwanese people in international law.<sup>27</sup>

#### **4. Emphasising Legality of Operating in the Taiwan Straits**

Often, US media<sup>28</sup> and government officials<sup>29</sup> have referred to the Taiwan Straits as “international waters/waterway.” Not only is this reference inaccurate in legal parlance, but it also creates an opportunity for China to rebuke navigational rights of other nations’ vessels in the Straits. In this regard, it is necessary to understand the provisions of the UN Convention on the Law of the Seas (UNCLOS) for a country to make legally sound claims against Chinese intervention in their freedom of navigation operations in the Straits.

China claims various regions within the Taiwan Straits as territorial seas (which is inclusive of a 12 nautical mile inland waterway and a 24 nautical mile contiguous zone from the Chinese shoreline), where China can exercise sovereignty and sovereign jurisdiction (respectively).

Further, it claims the waterway beyond the contiguous zone as the Chinese Exclusive Economic Zone (EEZ).

However, in the EEZ, China only has sovereign rights as described in Article 56 of the UNCLOS to explore, exploit, manage living and non-living resources, and conduct scientific research. This clearly does not provide China with a right to disallow passage of a foreign state's vessels from the waters or aircraft from the airspace above the EEZ. Additional evidence for this is provided by Article 58(1), in which the UNCLOS provides other States the same freedoms of navigation and overflight in an EEZ as they enjoy on the high seas (as described in Article 87).

If in the event of a conflict Chinese operations in the Taiwan Straits disrupt a foreign State's right of passage in the Straits, it can be contested under the above-mentioned provisions of the UNCLOS. In such a scenario, China may attempt to seek refuge under the provisions of Article 58(3) of the Convention, which argues: "*In exercising their rights and performing their duties under this Convention in the exclusive economic zone, States shall have due regard to the rights and duties of the coastal State and shall comply with the laws and regulations adopted by the coastal State in accordance with the provisions of this Convention and other rules of international law in so far as they are not incompatible with this Part.*" This would essentially imply that China can claim that vessels of some States passing through its EEZ are in violation of its laws on conflict with Taiwan.

Such a move may be contested by arguing either of the following:

- China's sovereign rights in its EEZ are confined only to exploring and exploiting, conserving and managing the natural resources, and marine research and conservation. None of these rights, despite the existence of relevant conflict-related laws in the land of the coastal State, prevent foreign States' vessels from navigation or overflight in the EEZ.
- As discussed above, there is enough ground for proving the international nature of the Taiwan conflict. And as per Article 58(3) of the UNCLOS, the compliance with the laws and regulations of a Coastal State in its EEZ is to be done conjointly with rules of international law. In this regard, concerned countries can make the claim that any Chinese law authorising war with Taiwan and thereby violating rules of international law by deploying measures such as quarantining Taiwan from vessels carrying aid, or using the waterway for military operations against a population, is in violation of Article 58(3) as well.

## 5. Pointing to the Business Angle

The cost of conflict is significantly borne by businesses firms engaged in defence and weapons manufacturing. In China, such firms are key actors in contributing to the development of a commercial ecosystem for technologies that also have dual-use applications in defence. There also exist multiple purely defence-oriented state-owned enterprises (SOEs) and universities that assist the endeavours of the Chinese People's Liberation Army.

Because such businesses will play an important role in enhancing the PLA's defence technology, the ideal scenario would be that the assets of their key stakeholders be frozen through a resolution in the UNSC, as part of the SC's sanctions regime. But such a resolution is likely to be vetoed by the PRC, which is a permanent member of the UNSC.

In this regard, a country may adopt a recourse for seeking remedy from the UN Office of the High Commissioner for Human Rights (OHCHR), under its Working Group on Business and Human Rights. Established in 2011, this Working Group is mandated to issue documents pertaining to potential violations of human rights by businesses, thereby implementing the 'Guiding Principles on Business and Human Rights (UNGPs)'.<sup>30</sup>

From the OHCHR report on business activities related to settlements in the Occupied Palestinian Territory,<sup>31</sup> issued in 2020, it is evident that the Business and Human Rights Working Group consulted multiple States, civil society organisations, think tanks, academics, and business officials, and carefully compiled a database of Israeli companies potentially engaged in unlawful occupation activities in Palestinian territory.

Seeking such a report for Chinese defence and commercial SOEs involved in human rights violations in Taiwan directly or indirectly can be fundamental in a country's diplomatic campaign. Such a request and a subsequent report may not create any judicial grounds for prosecution for Chinese SOEs, but may be cited as evidence by members of the UN in their condemnation of China in committee sessions. Additionally, such a report may form the basis for sanctions regimes of the US and the European Union.

## IV. Conclusion

The inconsistency of Taiwan's status in international law, as well as the disputed nature of opinions on Taiwan's rights as a contested State between powerful stakeholders such as China and the US, create both hurdles and opportunities for any country. In this regard, some of the above-mentioned UN-led measures can provide remedy for an otherwise flawed international legal framework. Measures such as the issuance of an advisory opinion by the ICJ or the publication of a report on Chinese SOEs by the OHCHR may take months, while other measures such as condemnation of Chinese activities through resolutions UNGA and UNHRC are more immediate. **Either way, these measures collectively contribute to the de-legitimation of a Chinese campaign in Taiwan, and further the cause of Taiwan's self or collective defence.**

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- The ‘One China’ Principle is a conceptualisation of the PRC and the ROC. It has been agreed upon in the 1992 consensus to mean that there is only one China, and both PRC and ROC are inalienable parts of it. However, as per the points of view presented by the two sides in the process of reaching the 1992 consensus, ROC articulated that for it, the legitimate ruling government of the ‘One China’ is the ROC, while for the PRC,



it is the CPC. The KMT's understanding is articulated popularly as 'One China, different expressions' (中各表) or 'One China, respective interpretations' (個中國各自表述).

- 'One China' policy is a generic term to refer to any country's cross-Straits policy. In the US's case, for example, the 'One China policy' has multiple components – the US's acknowledgment of the PRC's interpretation of the 'One China Principle', US's recognition of PRC as the legitimate government of one China, US's unofficial relations with ROC, and its position that there is a need to maintain the status-quo in cross-straits relations.

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