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China's Anti-Secession Law: Background, Legal Significance, and Recent Developments

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I. INTRODUCTION

What is the significance of China's 2005 Anti-Secession Law (ASL)[1] specifically as a *legal* document? In other words, how if at all is it different for any practical purpose from a policy announcement? Would anything be different if it did not exist at all? What was the point of having the National People's Congress issue it instead of, for example, the State Council (whose Taiwan Affairs Office in 2022 issued a White Paper)?[2] What was the point of calling it a law, instead of something like "An Announcement to Taiwanese Compatriots," as the NPC Standing Committee had done in 1979?[3] This paper explores these questions, as well as the significance of an interpretive document jointly issued in May 2024 by the Supreme People's Court and several other state bodies.

It finds that while the ASL itself is of minor *legal* significance in the strict sense, the interpretive document represents a major escalation in China's campaign of intimidation against Taiwan and the Taiwanese.

II. FEATURES OF THE ASL

a. Summary

The ASL was passed on March 14, 2005, and became effective on the same date. It consists of a mere nine substantive articles, as well as a tenth specifying the effective date. Article 1 makes it clear that it is specifically aimed at Taiwan, not at secession generally.

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[1] 全国人民代表大会, "反分裂国家法," March 14, 2005, https://perma.cc/B8AJ-UXG8 (unofficial English translation available at https://perma.cc/485S-YP69).

[2] State Council of the People's Republic of China, "White Paper: The Taiwan Question and China's Reunification in the New Era," August 2022, http://us.china-embassy.gov.cn/eng/zgyw/202208/t20220810_10740168.htm.

[3] National People's Congress Standing Committee, "告台湾同胞书," January 1, 1979, https://perma.cc/93U5-RMRL.

Article 5 promises a "high degree of autonomy" to Taiwan after peaceful unification. Interestingly, while Hong Kong was promised only fifty years of autonomy, Taiwan seems to get it forever. Unlike the Basic Law of the Hong Kong Special Administrative Region, the ASL does not go into any detail about what will be within Taiwan's scope of autonomy and what will not be. This reinforces the impression that the ASL is just a statement of principle and should not be taken seriously as a law. In any case, given that the PRC also promised a "high degree of autonomy" to Hong Kong, the latter's fate suggests that Taiwanese would clearly be ill-advised to put much store in a verbal formula.

Seventeen years later, the State Council's August 2022 White Paper on Taiwan shows a similar lack of detail about what "One Country, Two Systems" (1C2S) might specifically involve in the case of Taiwan, and in fact notes proudly how well it has been carried out in Hong Kong, citing the successful suppression of anti-government forces. Such tone-deafness is unlikely to win supporters in Taiwan.

Article 7 calls for talks on peaceful unification. It does not specify any preconditions, and in fact says that conditions can be flexible. In particular, it does not require that Taiwan accept China's One China Principle or the alleged 1992 Consensus. That is a condition that the PRC government later imposed as a matter of policy.

Article 8 calls for the use of non-peaceful means if (a) "Taiwan independence forces" create the fact of Taiwan's separation from China; (b) a serious incident occurs that will lead to Taiwan's separation from China; or (c) the possibility of peaceful unification is completely extinguished.

b. Evaluation

Many commentators, not just outside of China but inside China as well, have noted that the ASL isn't very law-like in the usual sense. Well-known Party-aligned scholars such as Zhou Yezhong[4] and Tian Feilong[5] have both made this point.

In its brevity—just around 1,000 characters—and vagueness, it is not only unlike laws in the U.S., but it is also unlike most laws in China. The law generally reads

[4] 周叶中, "论反分裂国家法律机制的问题意识与完善方向," *法学评论*, no. 1 (2018): 1–8, at 2.

[5] 田飞龙, "完全统一是《反分裂国家法》的唯一使命," *统一论坛*, no. 4 (2020): 10–13, at 11.

like a government communique, not a piece of legislation. It states many principles and makes many assertions, but contains no actual rules saying you must do this or must not do that. It specifies no sanctions. It has no enforcement mechanism within the legal system; the only enforcement, so to speak, is via military action—the "non-peaceful means" referred to in Article 8.

The Chinese legal system is not without vague and brief laws, but a custom has developed in which they are usually followed up by detailed implementing regulations and judicial interpretations. This is what happened, for example, with the 1979 Law on Sino-Foreign Equity Joint Ventures, whose purpose was to declare a policy of openness to foreign investment, but at well under 2,000 characters clearly could not provide a detailed regime for corporate governance.

At the time the ASL was passed and for many years later, Chinese commentators were noting the need for these kinds of implementing regulations.[6] In fact, however, at the time it was passed a spokesman for the Taiwan Affairs Office quite unusually made a specific announcement that no such implementing regulations or interpretations would be forthcoming,[7] and indeed none have been up until now, 19 years later.[8] The ASL was evidently intended from the start to be an unelaborated statement of vague principles that would never be modified through the legal process. This does not of course mean that China's Taiwan policy could not and has not changed over time; clearly it has. And Chinese interpretations of the ASL have changed accordingly. But the change has been accomplished through Party and government statements together with media and academic commentary, not via legal institutions.

In particular, the feature of the ASL that presents the biggest problem for legal analysis, suggesting that it is all irrelevant, is what it is *not*: unlike the U.S. Taiwan Relations Act, to which PRC scholars like to compare it, it's *not* an enabling law that allows or requires the Chinese government to do anything it could not already do without the law. As Richard Bush accurately commented in 2005,

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[6] See, e.g., Keyuan Zou, "Governing the Taiwan Issue in Accordance with Law: An Essay on China's Anti-Secession Law," *Chinese Journal of International Law* 4, no. 2 (January 1, 2005): 455–63, at 458; 周叶中, *supra* note 4, at 5.

[7] You Ji, "China's Anti-Secession Law and the Risk of War in the Taiwan Strait," *Contemporary Security Policy* 27, no. 2 (August 2006): 237–57, at 239.

[8] There is a very important legal interpretation discussed below that came out just last May, but it is an interpretation of the Criminal Law, not the ASL.

> The ASL does not create any authority where it did not exist, and the actions of China's leaders will not change because it is on the books.[9]

China's political system is Leninist, and does not accept any legal limitations on government. Particularly in the realm of foreign and military affairs, the state can do whatever it chooses to do and does not need to pass a law enabling itself.

III. History and Policy

The ASL was drafted and passed quite quickly—apparently in a kind of panic over political developments in Taiwan. Chen Shui-bian narrowly won re-election as President in March 2004 after having promised during the campaign to hold a referendum on a new constitution in 2006, and China feared the Pan-Green coalition would win a majority in the subsequent Legislative Yuan election in December. China saw the referendum and constitutional change as a kind of lawfare on Taiwan's part: the attempt to give legitimacy via legal measures to what they saw as the Greens' objective of formal independence. The ASL was China's effort to fight law with law.

In that election, however, the Pan-Blue coalition retained its majority. That should have comforted China considerably, but it seems that the process for formulating and passing the ASL was too far advanced to call off.[10]

One aspect of the ASL's history worth highlighting is that it was not universally perceived as particularly aggressive at the time. To be sure, some saw it that way. The U.S. government made strong representations at several levels to the Chinese government, urging it not to go through with the law, which it saw as

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[9] Richard C. Bush, "Taiwan Should Exercise Restraint in Reacting to the Challenge of China's Anti-Secession Law," Brookings, March 24, 2005, https://www.brookings.edu/articles/taiwan-should-exercise-restraint-in-reacting-to-the-challenge-of-chinas-anti-secession-law/. See also Anthony Lawrance, "Much Ado about Nothing," *South China Morning Post*, March 15, 2005 ("It changes nothing in the cross-strait balance, and serves no practical legal purpose, domestically or internationally."). To the same effect are Chien-peng Chung, "Has China's Anti-Secession Law Made the World a Safer Place?," *China Report* 41, no. 4 (October 2005): 437–44, at 439; and Suisheng Zhao, "Conflict Prevention Across The Taiwan Strait and The Making of China's Anti-Secession Law," *Asian Perspective* 30, no. 1 (2006): 79–94, at 86.

[10] Zou, *supra* note 6, at 455; Zhao, *supra* note 9, at 86–87.

provocative, but to no avail.[11] And Taiwan's Mainland Affairs Council viewed it as expanding the conditions under which China could use force against Taiwan.[12]

But other commentators—by no means all China sympathizers—saw it as conciliatory, pointing out that it could be read as a signal that China did not intend to move militarily provided Taiwan respected the status quo; that the goal of the law was not active unification, but rather the passive prevention of formal separation.[13] Indeed, the name of the law was changed at the last moment from "Law on Unification" to "Anti-Secession Law," although other commentators argue that that was for a completely different reason: the premise of "unification" is that China is separated, whereas the premise of "anti-secession" is that it is already one body, which of course is China's official position.[14]

The law never uses the term "People's Republic of China"; indeed, it appears to be *the only statute ever passed* by the National People's Congress or its Standing Committee that is not prefaced with the words "People's Republic of China."[15] It does not require fealty to the One-China Principle or the alleged 1992 Consensus as a precondition for talks, and says the two governments should engage in dialog as equals—quite a change from PRC policy today.

The vagueness of the law's provisions means that as a policy statement, it can be plausibly interpreted in many ways, and the absence of any implementing regulations or explanatory interpretations over the years shows that the Chinese

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[11] Statement of Randall Shriver, in "China's Anti-Secession Law and Developments Across the Taiwan Strait: Hearings Before the Subcommittee on Asia and the Pacific of the Committee on International Relations of the House of Representatives," April 6, 2005, https://commdocs.house.gov/committees/intlrel/hfa20403.000/hfa20403_0f.htm (hereinafter *ASL Hearing*).

[12] Mainland Affairs Council, Republic of China (Taiwan), "The Official Position of the Republic of China (Taiwan) on the People's Republic of China's Anti-Secession (Anti-Separation) Law," March 29, 2005, https://perma.cc/98AE-N7VC.

[13] Chung, *supra* note 9, at 439; Chunjuan Nancy Wei, "China's Anti-Secession Law and Hu Jintao's Taiwan Policy," *Yale Journal of International Affairs* 5, no. 1 (2010): 112–27, at 124–25; Ralph A. Cossa, "China's Anti-Secession Law: Much Ado About Something?," Japanese Institute of Global Communications, March 4, 2005, https://perma.cc/4GPP-S2BJ; Zhao, *supra* note 9, at 88.

[14] Zou, *supra* note 6, at 458; Zhao, *supra* note 9, at 88.

[15] Ji, *supra* note 7, at 262.

government likes it that way. Interestingly, the more hostile interpretations of the law have recently come not just from foreign observers, but from Chinese sources as well. Tian Feilong, a law professor at Beihang University, is a leading hardline nationalist intellectual. In an article elaborating on a 2020 speech by Li Zhanshu, then Chairman of the NPC Standing Committee and the number three man on the Politburo Standing Committee, he argued that the goal of the ASL is nothing less than "complete unification" (完全统一).[16] In case there was any doubt, he stressed that this meant there was no room for "appeasement" (绥靖主义) or "opportunism" (机会主义), presumably meaning compromise of any kind over the PRC's absolute authority over Taiwan affairs after unification.

Unlike other PRC commentators who are apparently oblivious to everything that happened in Hong Kong and so point to it enthusiastically as an outstanding example of the resounding success of the 1C2S arrangement,[17] Tian is very much aware of what happened and views developments in Hong Kong as providing important lessons for the central government in its management of a post-unification Taiwan. He tells his readers they must not romanticize the notion of 1C2S or local autonomy, and that the PRC central government must have control over education—to make sure children are inculcated into the right kind of thinking—and over the legal system in the realm of national security, which of course can be (and has been) stretched to cover almost anything.[18]

What all this shows is that it would be a mistake to read much determinate policy content into the ASL. Certainly it means, "We don't want Taiwan to declare formal independence." But beyond that, current policy can be more reliably gleaned from various official statements and actions than from the text of the ASL.

Nevertheless, the very existence of the ASL is a clear statement of one very important policy: that in any armed conflict with Taiwan, China does not consider itself bound by the international law of armed conflict. China—or if not

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[16] 田飞龙, *supra* note 5, at 10.

[17] See, e.g., 游志强, "《反分裂国家法》第五条实施研究," *海峡法学*, no. 3 (2021): 20–30.

[18] 田飞龙, *supra* note 5, at 12. A recent example of such stretching is the conviction under colonial-era anti-sedition laws of five speech therapists who published illustrated children's books that offended the authorities. "Hong Kong: Conviction of Children's Book Publishers an Absurd Example of Unrelenting Repression," Amnesty International, September 7, 2022, https://perma.cc/JWD6-ELC8.

technically "China," then a prolific and apparently approved academic commentator, You Zhiqiang—takes the extreme position that all states have an inherent unconditional right to preserve their territorial integrity. Ignoring examples to the contrary such as the voluntary breakup of Czechoslovakia, it insists that the commitment to maintaining territorial integrity is an inherent feature of a state's sovereignty. Moreover, it argues that any measures a state undertakes to maintain its territorial integrity, at least within the claimed boundaries of that state, are not governed by international law.[19] This is simply false; Article 3 of the Geneva Conventions of 1949, for example, specifically applies to conflicts not of an international character.[20]

But of course the fact that China does not consider a conflict with Taiwan to be of an international character does not mean it is not. Conflicts of an international character are conflicts between states, and as Taiwan's Mainland Affairs Council correctly noted in its 2005 commentary on the ASL,[21] Taiwan meets all the conditions for statehood under the Montevideo Convention of 1933 on the Rights and Duties of States.[22] Here it is important to note that under the Convention, recognition by other states is explicitly *not* a condition for statehood. While China is not a signatory to the Convention, it is generally considered declaratory of customary international law and is thus a mandatory norm. In short, customary international law says that Taiwan is a state; a conflict between states invokes duties under the international laws of war; and China has declared that it will ignore those duties.

IV. Legal Effects

Given that the ASL does not give to China's government any power or authority to use military force that it did not already have, what then does it do that is specifically legal?

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[19] 游志强, "法教义学视域下的《反分裂国家法》," *海峡法学*, no. 2 (2019): 13–25, at 17, 19.

[20] The Geneva Conventions of 12 August 1949 (International Committee of the Red Cross, n.d.), https://perma.cc/HCN7-3XQH.

[21] Mainland Affairs Council, *supra* note 12.

[22] Convention on Rights and Duties of States Adopted by the Seventh International Conference of American States, in *Treaty Series 1761*, by United Nations Office of Legal Affairs, United Nations Treaty Series (United Nations, 1999), 411–12, https://doi.org/10.18356/57a42223-en-fr.

a. Lawfare effects

China hopes it will accomplish a number of lawfare objectives. Before laying these out, however, it is important to note that China's concept of lawfare is somewhat different from what one might think. The term was first popularized in the early 2000s by Major General Charles Dunlap, who defined it as "the strategy of using—or misusing—law as a substitute for traditional military means to achieve an operational objective."[23]

China's conception is subtly different: it is not the use of law as a substitute for traditional military means, but rather the use of law as an *accompaniment* to traditional military action. Thus, it is the province not of diplomats but of the PLA. Its purpose is to expand the scope for military action by obtaining understanding and support internationally, sapping the enemy's will, and boosting morale at home.[24] That the ASL is very much a PLA lawfare tool and not a regular piece of legislation can be seen in the secrecy, suddenness, and irregular procedures surrounding its drafting and passage.[25] Thus, concerned observers are not wrong to see a greater military threat behind it than might otherwise appear from its text and institutional source.

China's lawfare objectives here are primarily those of legitimation. As cynical Leninists, China's leaders do not believe that separation of powers is actually real. Thus, they view the Taiwan Relations Act and the Taiwan Security Enhancement Act of 2001 not as grants of authority as well as instructions from Congress to the President, but as lawfare: nothing more than would-be legitimating exercises for what America wants to do anyway. The ASL is their answer.[26]

Beyond simply answering U.S. legislation, China believes that putting its Taiwan policy in legal form will enhance the legitimacy of that policy internationally by giving it a certain heft and permanence.[27] In particular, China wants through this

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[23] Charles J. Dunlap, Jr., "Lawfare Today: A Perspective," *Yale Journal of International Affairs* (Winter 2008): 146–54, at 146, It has also been similarly defined as "the use of law as a weapon of conflict." "A Brief History of the Term and the Site," *Lawfare*, n.d., https://www.lawfaremedia.org/about/our-story.

[24] 刘燕, "法律战视角下的《反分裂国家法》," *法制与经济*, no. 12 (2008): 89–90, at 89.

[25] Zou, *supra* note 6, at 455; Ji, *supra* note 7, at 239.

[26] Chung, *supra* note 9, at 439.

[27] Statement of Shelley Rigger, in *ASL Hearing*, *supra* note 11.

law to press its view that what it does in Taiwan is purely its domestic affair. China also expects that putting policy in legislative form enhances the legitimacy of that policy domestically.[28] Moreover, game theory teaches that you can enhance the credibility of your threat by limiting your options if challenged. Here, putting the policy in legal form arguably makes it more difficult—not of course as a legal matter, but as a political matter—for the PRC government to back down, and establishing a line beyond which salami-slicing tactics by Taiwan cannot proceed.[29]

b. Domestic legal effects

What about domestic legal effects? It turns out that the ASL is not completely insignificant as a matter of domestic Chinese law. In other words, Chinese law with the ASL is not the same as Chinese law without it.

1. Civil and administrative litigation

First, it has been used in domestic litigation, but it seems only rarely and without much effect. One senior Chinese legal scholar, Zhou Yezhong, expressed the hope in 2018 that Chinese courts could add substance and prestige to the ASL by producing well-reasoned opinions involving its application, in the same way that norms can be strengthened in common law countries through court opinions.[30] For better or for worse, the court cases so far have been quite minor and do not show this happening.

Searching Pkulaw.cn, a major legal database, I have found only five cases in which courts were asked to address arguments made by one side or the other based on the ASL.

In one case involving a non-compete agreement, the employer plaintiff argued that the geographic scope of the non-compete agreement, which used the word "China," included Hong Kong, Macau, and Taiwan, basing the latter argument on the ASL.[31] The court did not address this argument in its judgment.

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[28] Chung, *supra* note 9, at 439.

[29] Ji, *supra* note 25, at 238.

[30] 周叶中, *supra* note 4, at 3.

[31] 上海励欣展览有限公司与胡某竞业限制纠纷一审民事判决书, Dec. 31, 2019, https://perma.cc/36CY-GUDL. In lieu of an otiose full citation, I am providing the URL of archived copies of the judgments discussed here for readers who desire more detail.

In a divorce case, both parties were residents of Taiwan without a long-term residence in China, but they had property in China.[32] One party argued that PRC law should apply to the division of property. There are a number of PRC laws, regulations, and judicial interpretations that discuss when to apply Taiwanese law, but the plaintiff cited the ASL in support of the argument that there is only one China, Taiwan is part of China, and therefore both parties should be considered Chinese citizens subject to PRC law. The court did not specifically reject the argument, but implicitly rejected it by applying Taiwanese law—as indeed the specific PRC rules call for in this kind of case.

In a copyright case, the plaintiff was a Taiwanese company complaining about infringement.[33] It argued that the ASL promised that the lawful rights and interests of Taiwanese compatriots would be respected.[34] The court found for the plaintiff on the merits without needing to address the argument about the ASL; the plaintiff deserved protection because Taiwan as a member of the WTO got the benefit of the TRIPS Agreement for its citizens and firms.

Even more desperate was the argument made by the defendant in a trademark infringement case brought by a South Korean cosmetics company.[35] The defendant's first and most prominent argument was the utterly irrelevant one that the plaintiff's website listed Hong Kong and Taiwan as "countries" along with China. The court declined the invitation to punish this insult to the feelings of the Chinese people and found for the plaintiff.

There was only one case in which a provision of the ASL seemed to carry some legal weight.[36] An advertising design firm was assessed an administrative fine by a

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[32] 胡某某与江某某离婚后财产纠纷一审民事判决书, Sept. 11, 2018, https://perma.cc/9Y9Y-XSPT.

[33] 陈体忠与马桶国际洋行有限公司侵害著作财产权及不正当竞争纠纷上诉案, Sept. 8, 2011, https://perma.cc/XMC3-4AWZ.

[34] The ASL does make this promise in Article 9, but that is about times when non-peaceful means are used to accomplish unification, and so is not only vague and superfluous, but also inapplicable as a technical matter. Presumably the plaintiff's lawyer was trying the kitchen-sink approach.

[35] 株式会社纳益其尔与全椒县宜妆日用化妆品店侵害商标权纠纷一审民事判决书, Feb. 7, 2021, https://perma.cc/WYS6-7EHY.

[36] 原告上海xx发展有限公司（以下简称"xx公司"）不服行政处罚决定诉被告上海市xx工商行政管理局案, Oct. 18, 2013, https://perma.cc/CHH3-WDRU.

local Administration of Industry and Commerce for designing a map of China that showed the mainland in red, but not Taiwan, Hainan, and various disputed islands in the Pacific. The fine was specifically based on Article 2 of the ASL, which carries the declaration that Taiwan is part of China. The firm objected on the grounds that the ASL contained no provision for sanctions, and that imposing a fine on such grounds violated the principle of administration according to law. The court found against the firm, specifically citing the ASL as a proper basis for the fine.

It may or may not be notable that the only case giving any teeth to the ASL occurred more than ten years ago. All the other cases occurred after it, and in those cases the courts essentially ignored the ASL-based arguments.

2. Criminal law

Second—and this is worth taking some time to discuss—the ASL has been cited as the partial basis for an important new legal interpretation of China's Criminal Law issued jointly by the Supreme People's Court (SPC) and several other government agencies. The interpretation can stand on its own without the ASL, but as the Chinese authorities thought it worth invoking, we should make the connection as well.[37]

(a) Introduction to recent SPC et al. Opinion

On May 26, 2024, the SPC along with the Supreme People's Procuratorate, the Ministry of Justice, the Ministry of Public Security, and the Ministry of State Security issued a joint document entitled "Opinion on punishing according to law crimes of splitting the country and incitement to split the country committed by 'Taiwan independence' die-hards" (关于依法惩治"台独"顽固分子分裂国家、煽动分裂国家犯罪的意见).[38] The Opinion is in the form of an instruction to security authorities, including courts, police, and prosecutors, about how to handle cases of splittism, but also for that reason functions as a law prescribing offenses and punishments. That is why it was made public.

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[37] The possibility of this supplementary use of the ASL was noted by 游志强, *supra* note 19, at 20, and Keith J. Hand, "Waging External Struggle Through Law," at 7 (UC San Diego School of Global Policy and Strategy, 21st Century China Center, October 12, 2022).

[38] 最高人民法院 et al., "关于依法惩治'台独'顽固分子分裂国家、煽动分裂国家犯罪的意见," May 26, 2024, http://politics.people.com.cn/n1/2024/0621/c1001-40261576.html [https://perma.cc/K9C6-JECC] (hereinafter *Opinion*).

The Opinion purports to be based on the 2005 Anti-Secession Law and the Criminal Law; it functions as an interpretive document, spelling out in more detail the actions and sanctions in Article 103 of the Criminal Law. In principle, there is no problem with this type of document in China's legal system. Statutes are necessarily general, and it is common for bodies such as the SPC to issue documents under various names—interpretations, replies, and in this case opinions—putting meat on the bones of vague statutory terms. It is not clear why the document is labeled an Opinion (*yijian* 意見) and not an Interpretation (*jieshi* 解釋). The reason may be that it is jointly issued by several different bodies, whereas formal interpretations tend to come only from the Supreme People's Court or the Supreme People's Procuratorate.

The big-picture summary of the Opinion is that it represents a major escalation in China's war of intimidation against the people of Taiwan. The following discussion examines first what it criminalizes, next the punishments, and finally jurisdiction: who is liable. In brief, the reaction of Taiwan's Mainland Affairs Office—to issue a travel alert discouraging all non-essential travel to the PRC—is not an overreaction and is quite justified.[39]

(b) What the Opinion criminalizes

Article 23 of the Criminal Law criminalizes actions of "organizing, plotting, or carrying out the splitting of the country and the sabotaging of the country's unity" (Art. 23(a)), as well as "instigating splitting of the country and the sabotaging of the country's unity" (Art. 23(b)).

Paragraph 2 of the Opinion adds detail to Article 23(a), laying out all the activities associated with what it calls "Taiwan independence" that constitute crimes under that Article. The coverage is very broad, including efforts to change Taiwan's legal status through changes to Taiwan's domestic law, efforts to gain entry for Taiwan into international organizations whose membership is limited to states, using one's authority of office to "wantonly distort" "the fact that Taiwan is part of China," and finally, "any other actions that seek to separate Taiwan from China."

[39] 中華民國大陸委員會, "大陸委員會即日起調升中國大陸及香港澳門旅遊警示為「橙色」燈號，建議國人避免非必要旅行," June 27, 2024, https://perma.cc/V32U-9QD5.

The overall thrust of Paragraph 2 seems to be aimed at government officials, but private citizens could of course commit many of the offenses listed, and so are by no means safe.

As if the provisions of the Paragraph 2 were not broad enough, Paragraph 7 adds detail to Article 23(b) of the Criminal Law on "instigation" of secession. It spells out that it is a crime to "stubbornly spread advocacy" of Taiwan independence and related programs and plans of action. Like Paragraph 2, Paragraph 7 adds a catch-all clause covering "other actions instigating the separation of Taiwan from China."

Somewhat absurdly, Paragraph 11 stipulates a heavier punishment for those who violate Paragraphs 2 or 7 "in collusion with" foreign or overseas (*jingwai* 境外) entities or individuals. "Overseas" here is a term of art designed to cover places in which PRC jurisdiction is limited (Hong Kong and Macau) or absent (Taiwan) but that cannot, for political reasons, be called "foreign." Thus, any violation by one Taiwanese person not carried out in complete, hermit-like isolation from all other Taiwanese will be collusive and therefore subject to a heavier punishment.

(c) Punishments

The range of punishments for the various offenses is already spelled out in the Criminal Law. They range in most circumstances from the most minor—deprivation of political rights, for example—to life imprisonment. Article 113 of the Criminal Law states that in the very worst cases of violation of Article 103(a), "where the harm to the state and the people is especially serious and the circumstances especially odious," the death penalty may be imposed. The Opinion repeats this to make sure everyone gets the message.

(d) Who can be liable

China's Criminal Law covers all actions committed on Chinese territory. As China deems Taiwan to be its territory, it covers actions committed in Taiwan.

The Criminal Law also covers all actions committed by Chinese citizens anywhere in the world.[40] As China deems Taiwan to be part of China, so it deems Taiwanese to be citizens for purposes of the Criminal Law. Thus, it covers actions by Taiwanese not just in Taiwan, but outside Taiwan as well.

[40] There is one minor quasi-exception. Where the highest potential penalty is under three years' imprisonment, prosecutors *may* elect not to prosecute.

Finally, if either the action or its effect takes place in Chinese territory, it is covered by the Criminal Law. Chinese authorities would certainly argue that advocacy of Taiwan independence has an effect in Chinese territory, so even where the above bases for liability do not exist—for example, with non-Taiwanese, non-PRC citizens outside of Taiwan and the PRC—the Criminal Law can still be made to apply.

Thus, it is hard to avoid the conclusion that anything that the PRC authorities deem to be advocacy of Taiwan independence, undertaken by *anyone anywhere on the planet*, constitutes a criminal offense. The actor is liable to prosecution if they come within reach of the PRC authorities. It is unlikely that this extensive scope is an accident of drafting. The threat is clear and intentional.