



SPECIAL POINTS OF INTEREST:

- PRC's commitment to honoring Ukraine sovereignty on shaky ground
- Australia, Japan and U.S. legal advisors conduct talks reaffirming Free and Open Indo-Pacific
- PRC's ROROs and unsafe intercepts a cause for concern
- Cooperation between US and COFA states on the rise
- FONOPS peacefully reinforce Rule of Law

INSIDE THIS ISSUE:

Tri-lateral Legal Talks 2

ROROs risk to Civilians 2

Unsafe Air Intercepts 3

CARAT 22 in Indonesia 4

Vietnam: SCS conference 4

DIILS in Palau 5

Partnership with COFA 5

FONOPS 6

USINDOPACOM Office of the Staff Judge Advocate

Legal Vigilance Dispatch

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

ISSUE 2, WINTER

JANUARY 2023

PRC's Commitments to Ukraine Under Scrutiny

In November 2022 nuclear-capable bombers from the People's Republic of China (PRC) and Russian Federation flew a [combined patrol](#) over the Sea of Japan and East China Sea. Weeks later PRC and Russian naval forces took part in a weeklong naval exercise designed to "further deepen strategic partnership", according to a [statement](#) by the PRC's Eastern Theater Command.



Chinese and Russian naval fleets conducting joint drills on 23 Oct 2021 in the East China Sea - CNN, 19 Dec 22

These events reflect growing military ties between the PRC and Russia, in contrast to assurances made by the PRC to Ukraine, particularly:

- Upon Ukraine's nuclear disarmament in 1994, the PRC recognized Ukraine's sovereignty, independence, and territorial integrity in a statement to the United Nations (UN) General Assembly; urged all nations to never threaten nuclear aggression against Ukraine; and stated "disputes and differences should be settled peacefully through consultations on an equal footing."
- In 2001 the PRC and Ukraine signed a [Joint Statement](#) in which the PRC noted its respect for Ukraine's "independence, sovereignty and

territorial integrity" and "reiterated its commitment of guaranteeing nuclear safety" to Ukraine.

- In 2013, the PRC and Ukraine entered into a Treaty of Friendship signed by Xi Jinping in which the PRC agreed to "immediately begin discussions to develop countermeasures" against any threat to Ukraine's territorial integrity. A [statement accompanying the Treaty](#) "pledge[d] unconditionally to not use or threaten to use nuclear weapons" against Ukraine and to provide Ukraine with "corresponding security guarantees" if faced with a nuclear threat.

The PRC reportedly [opposes](#) the threat or use of nuclear weapons in Ukraine, but continues to operate with Russian strategic bombers, despite its guarantee of nuclear safety to Ukraine and in the face of [Russia's nuclear threats](#).

Additionally, despite the PRC's recognition of Ukraine's independence, sovereignty and territorial integrity, and espousal of a "UN-centered international system", it chose to [abstain](#) from backing UN action against Russia's UN Charter violations in Ukraine, in favor of "deepen[ing] strategic partnership".

The PRC-Ukraine Treaty of Friendship is subject to the Vienna Convention on the Law of Treaties, which binds states to act "in good faith" and "refrain from acts which would defeat the object and purpose of a treaty." Members of the international community should take note of the PRC's security guarantees and treaty obligations to Ukraine in considering reliance on similar assurances.

Tri-lateral Legal Talks Advance Free and Open Indo-Pacific



Collaborating on a tri-lateral statement reflecting shared legal understandings and a commitment to a Free and Open Indo-Pacific

From Dec 14-16, 2022, the INDOPACOM Office of the Staff Judge Advocate hosted tri-lateral talks with senior legal advisors from the Japan Joint Staff and Australia Joint Operations Command.

The legal teams exchanged views, identified areas for collaboration, and built legal products on matters of mutual concern.

Discussion focused on developments in national defense policy, expanding tri-lateral cooperation, and collective efforts to counter gray-zone activities.

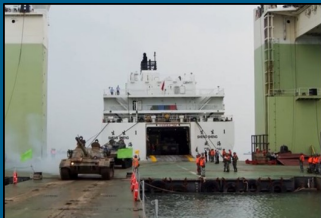


Senior military lawyers from AUS, JPN, and U.S. meet in Hawaii for Dec 22 talks

The talks culminated in a tri-lateral commitment to continued legal collaboration, interoperability, development of bi/multi-lateral information papers on topics relating to a Free and Open Indo-Pacific, and a collective focus on legal vigilance.

Follow-on engagements are planned in spring 2023, which will include additional allies and partners.

Commercial ferries offloading tanks and participating in PLA amphibious exercises.



CIMSEC, 9 Sep 21



News.com.au, 2 Oct 22



USNI News, 26 Jul 21

Use of Roll-On Roll-Off Ferries by the PLA Risk Harm to Civilians

The People's Liberation Army's (PLA) use of commercial roll-on roll-off (RORO) ferries may increase the risk of harm to civilians by blurring the principle of distinction under the law of armed conflict (LOAC). The LOAC requires parties to a conflict distinguish combatants from civilians and military objectives from civilian objects. Increasingly over the last two years, the PLA has blurred the line between civilian and military objects by employing commercial ROROs as a [frontline maritime force](#) responsible for over-the-beach insertion of troops and equipment, according to the 2022 report by US DoD [Military Security Developments Involving the PRC](#).

[Since 2012](#), the PLA has established support ship fleets in major state-owned shipping companies, including companies that operate ferries used primarily to transport civilians. The first publicized evidence of RORO usage in PLA operations came [in 2019](#) when the 15,000-ton ferry, Bang Chui Dao, was incorporated into a PLA amphibious assault exercise. Despite the central role of commercial ROROs in the PLA's amphibious force, the PLA has taken no measures to ensure that ROROs can be visually distinguished from civilian ferries, such as by applying a gray paint scheme or affixing markings consistent with state practice for military vessels.

The PLA's intentional mixing of civilian/military objects, under the veil of domestic legitimacy created by the PRC's domestic law and regulations, sets a dangerous pretext for the use of civilian vessels to fulfill belligerent functions in armed conflict. This increases the risk of harm to legitimate civilian vessels and crews in future conflicts.

Unsafe Intercept of U.S. Aircraft over South China Sea

On Dec 21, 2022, a People's Liberation Army - Navy (PLAN) J-11 fighter conducted a dangerous intercept of a U.S. Air Force RC-135 operating lawfully in international airspace over the South China Sea.

The [video](#) released by the U.S. government shows the close proximity (20 feet) of the two aircraft as the J-11 cuts toward the nose of the RC-135, causing the larger and slower RC-135 to take evasive action to avoid collision.



Screenshot from USINDOPACOM released intercept video

A [statement](#) from USINDOPACOM characterized the PLAN pilot's maneuver as "unsafe," and said that all countries are expected to use international airspace safely "in accordance with international law." The "due regard" principle is paramount to safe operations under international law, particularly during close intercepts when pilots have reduced maneuver space and limited time to respond to unforeseen situations.

The "due regard" principle is derived from customary international law and international treaties, including [Article 58](#) of the [U.N. Convention on the Law of the Sea \(UNCLOS\)](#). It serves as a lodestar for state-to-state interaction in the skies, requiring states to respect each other's lawful exercise of rights and freedoms in international airspace (see Justice Liang's discussion of the freedom of navigation and the exercise of "due regard" [here](#)).

[Article 3 of the Chicago Convention](#) on International Civil Aviation and implementing advice from the International Civil Aviation Organization (ICAO) informs the international community's understanding and application of the "due regard" principle. Of note, ICAO advises that "military aircraft... avoid flying in such proximity to the intercepted aircraft that a collision hazard may be created and the need to avoid crossing the aircraft's flight path[.]"

By forcing evasive action at close range, the PLAN pilot failed to exercise "due regard" as required by international law. This interaction reflects a pattern of conduct by the PLA, exemplified by recent [dangerous intercepts](#) by the PLA of Canadian and Australian military aircraft operating lawfully over the South China Sea. Despite the international community's [rejection](#) of the [PRC's sweeping and excessive claims](#) in the South China Sea (Arbitration ruling [here](#)), the PRC's claims to [sovereignty](#) in international airspace over the South China Sea seem to be precipitating the uptick in dangerous intercepts. It is nevertheless incumbent on all nations to continue to fly, sail and operate at sea and in international airspace with due regard for the safety of all vessels and aircraft under international law.

Cooperation Afloat Readiness and Training Report (CARAT 2022): Indonesia and U.S. Judge Advocates Strengthen Legal Partnerships

Legal advisors from 13th Marine Expeditionary Unit and CTF 73 participated in an exchange with legal officers from the Indonesian National Military-Naval Force (TNI-AL) in Dec 22, at Surabaya, Indonesia. The TNI-AL JAG Corps number 200 legal professionals and advise a combined Navy and Marine force of over 100,000 personnel. Topics included the Law of Armed Conflict, rules of engagement (ROE) development, and Law of the Sea (specifically freedom of navigation and military activities in the Exclusive Economic Zone).

The newly published Newport ROE Handbook was used for ROE training focused on how to advise commanders.



CARAT exercises build professional relationships and consensus on international maritime legal issues with partners across Southeast Asia including Indonesia. The overarching theme of the exchange focused on high seas freedoms, collective obligations to enforce the rule of law at sea, and cooperative legal integration as critical to a rules-based international order and ensuring a free and open Indo-Pacific.

U.S. and Indonesian JAGs participating in CARAT December 2022.



Vietnam Hosts South China Sea Conference in Da Nang

On 16-17 Nov 22, the Diplomatic Academy of Vietnam hosted the 14th South China Sea Conference in Da Nang. The conference included an array of presenters/panelists and topics, including a focus on the rules based maritime order.

During [opening remarks](#), Vietnam's Deputy Minister of Foreign Affairs set the tone by emphasizing that Vietnam's policy on the South China Sea is to always to respect and implement international law and to

resolve disputes peacefully (rather than by force or coercion).

Representatives from U.S. Indo-Pacific Command attended as both a panelist and observers. The U.S. and Vietnam are trusted partners with a friendship grounded in mutual respect. By including a focus on upholding the rules-based maritime order and peaceful dispute resolution, the conference exemplified shared regional interest in maintaining peace and stability.

U.S. Judge Advocates Build Legal Partnerships in Palau

In partnership with the Defense Institute of International Legal Studies (DIILS), U.S. Indo-Pacific Command supported a legal Institutional Capacity Building (ICB) and Human Rights (HR) engagement in Palau from 19-23 Sep 22, which included training on rules for the use of force, maritime security and law enforcement.

Palauan attorneys, customs and border agents, security personnel, and law enforcement officials participated in a series of group discussions to understand, improve, and build their maritime legal frameworks. ICB topics ranged from maritime threat assessment and resolution to interagency cooperation, bi-lateral agreements, and international partnerships. Presentations occurred in an interactive classroom with lessons covering topics such as the right against torture, international fisheries law, and boarding and search procedures.

ICB/HR engagements help establish legal frameworks, improve processes for allies and partners, and deepen the professional experience of U.S. participants. The engagement exemplified the shared commitment of the U.S. and Palau to preserving the rules-based international order as well as peace and prosperity in the Indo-Pacific.



U.S. and Palau attorneys discuss maritime legal frameworks and the rule of law

INDOPACOM Helps Reaffirm Partnerships with Compact of Free Association (COFA) States

INDOPACOM OSJA participated in recent national level meetings with the COFA States (Republic of Palau, Republic of the Marshall Islands, and Federated States of Micronesia), reaffirming close ties. Under the COFA, the U.S. provides economic development assistance to these countries.

Bilateral engagements with each of the COFA states reflect shared values and common support and commitment by the parties to a free and open Indo-Pacific underpinned by the rules based international order.

The engagements also provided an opportunity to reinforce longstanding friendships between the nations. The unwavering commitment to each other demonstrates how countries committed to transparency and accountability can shape a stable and prosperous Indo-Pacific region.



Delegates from the U.S. and Republic of Palau



Delegates from the U.S. and Federated States of Micronesia

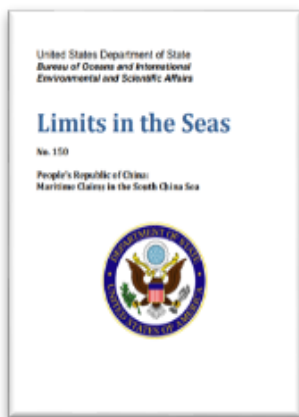


Delegates from the U.S. and Republic of Marshall Islands States of Micronesia

Freedom of Navigation Operations (FONOPS): Legal Vigilance in Execution

By challenging excessive maritime claims, FONOPs help preserve the rights, freedoms, and uses of the sea guaranteed to all nations under international law. FONOPs also advance a free and open Indo-Pacific by supporting the free flow of goods and people, and by upholding global mobility of forces that could be used in peacetime for humanitarian assistance and disaster response, or in crisis to deter or defend against threats to peace. Nations across the globe, large and small, share in the benefits of freedom of navigation.

In their execution, U.S. FONOPs are conducted in accordance with international law and are not directed against any particular country. They are peaceful exercises of navigational rights focused on specific excessive maritime claims and restrictions to navigation. The U.S. conducts FONOPs against a wide array of maritime claims, including claims of competitors, potential adversaries, allies, partners, and others. FONOPs are just one component of the broader U.S. freedom of navigation program, which also includes diplomacy (e.g., bilateral and multilateral consultations) to address excessive maritime claims.



The U.S. maintains transparency in its freedom of navigation program, including its [origins](#), [purpose](#), and [other details](#). The U.S. also publishes extensive analyses of excessive maritime claims in the U.S. Navy's [Maritime Claims Reference Manual](#) and U.S. State Department's [Limits in the Sea](#) series, in addition to annual [freedom of navigation reports](#). This transparency and detail exemplifies a commitment to legal vigilance.

While FONOPs are not directed against any particular country, Secretary Blinken [observed](#) that “[n]owhere is the rules-based maritime order under greater threat than in the South China Sea. The PRC continues to coerce and intimidate Southeast Asian coastal states, threatening freedom of navigation in this critical global thoroughway.”



U.S. Indo-Pacific Command

Joint Operational Law Team
Office of the Staff Judge Advocate
Camp H.M. Smith
Hawaii, United States

Phone: (808) 477-6378

Email: j06.pacom@pacom.mil

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

What is Legal Vigilance?

Legal vigilance refers to the monitoring and assessment of the legal environment. Maintaining legal vigilance ensures the 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 the USINDOPACOM Office of the Staff Judge Advocate (OSJA) and does not necessarily 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 and partners to preserve peace and stability in the Indo-Pacific. If you have comments, feedback, or vignettes to share, please contact us.

The threat to rules-based maritime order caused by extent of the PRC’s excessive maritime claims underscores the importance and utility of FONOPs, notwithstanding the PRC’s attempts to paint FONOPs as destabilizing or provocative. To the contrary, the PRC’s sweeping, expansive maritime claims, and attempts to enforce them, threaten others’ rights, freedoms, and uses of the sea.

FONOPs remain an important legal vigilance tool to uphold freedom of navigation guaranteed to all nations. Legal advisors across the Indo-Pacific preserve freedom of navigation through focused efforts to advance international law and counter misperceptions and flawed narratives.



*Arleigh Burke-class guided-missile
destroyer USS Benfold (DDG65)
conducting routine underway
operations in Philippine Sea
– INDOPACOM 22.*