

USINDOPACOM J06/SJA TACAID SERIES

TOPIC: THE USE OF ROLL-ON / ROLL-OFF (RORO) FERRIES IN MILITARY OPERATIONS

BLUF

- The direct insertion of troops into conflict is a belligerent act normally reserved for warships, yet the People's Liberation Army (PLA) appears intent to use commercial ROROs (non-warships) for this purpose.
- The PLA has integrated commercial ROROs into its amphibious invasion force rehearsals, but has taken no measures to distinguish ROROs from civilian ferries, such as by applying gray paint schemes or affixing markings consistent with state practice for military vessels.
- Although ROROs engaged in war-supporting roles or operating under PLA control in conflict may be objects of a lawful attack, the PLA's use of commercial ROROs serves as a means of deterrence by exploiting the law-abidingness of opposing forces that may be averse to use force against vessels that appear civilian in character.
- By demonstrating intent to use commercial ROROs during an amphibious invasion, the PLA is eroding the principle of distinction under the law of armed conflict (LOAC) and obscuring crucial lines between warships and non-warships, civilians and combatants, and civilian objects and military objectives.
- In contrast, U.S. policy does not allow the use of non-warships for belligerent acts and permits arming of auxiliary vessels only for self-defense purposes.
- Upholding the principle of distinction under the LOAC is critical to civilian harm mitigation in conflict.
- As such, the international community should illuminate and condemn the PLA's use of commercial ROROs to reduce risk of civilian harm in future conflicts and preserve fundamental principles of the LOAC.

WHY THIS MATTERS

- The LOAC protects civilians, but if PLA practice continues to erode distinction such that parties to a conflict cannot effectively apply it, civilians will face greater risk of suffering in future conflicts.
- The PLA's use of commercial ROROs during amphibious invasion rehearsals undermines the current rules-based international order because it ignores legal principles under the LOAC and sets a dangerous precedent that increases risk of civilian harm not just in a conflict over Taiwan, but in future conflicts in other parts of the world where civilians may find themselves in harm's way.
- Upholding the efficacy of the LOAC now – in peacetime – is in the best interest of all nations because it ensures that all civilians will continue to enjoy protections they are due under international law.

DETAILED DISCUSSION

1. Background

- The People's Republic of China's (PRC) Military-Civil Fusion (MCF) strategy aggressively seeks to eliminate barriers between the PRC's civilian and commercial sectors, and its military and defense industrial sectors.ⁱ
- The MCF's guidelines for defense mobilization govern the use of commercial ROROs for military purposes.
- In 2012, pursuant to the MCF, the PLA established "strategic projection support ship fleets" in major shipping companies consisting of commercial ROROs, container vessels, bulk carriers, tankers, auxiliary crane ships, barges, and semi-submersibles organized to provide transport for units, fuel, and cargo.ⁱⁱ

- In 2016, the PRC's National Defense Transportation Law compelled medium and large transport companies to use their "strategic projection support forces" to support PLA operations with "rapid, long-distance, and large-scale national defense transportation support."ⁱⁱⁱ
- The first publicized evidence of commercial RORO usage during PLA operations came in 2019 when the 15,000-ton ferry, Bang Chui Dao, participated in a PLA amphibious assault exercise.^{iv} In 2022, 30 separate commercial ROROs were observed in the integration of large-scale lift exercises involving PLA troops.^v
- Open-source reporting suggests that the PLA envisions a variety of military functions for commercial ROROs in or leading up to conflict, from delivery of forces, to mine emplacement, reconnaissance, and deception.^{vi}
- While the PRC's MCF and domestic law may provide the PLA with a domestic legal framework to control civilian shipping for military purposes, it does not obviate the PLA's obligations under the LOAC.
- 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, which could increase risk of harm to legitimate civilian vessels and crews in future conflicts.

2. LOAC Considerations

- Under the LOAC, the principle of "distinction" requires that parties to a conflict distinguish combatants from civilians, and military objectives from civilian objects (i.e., protected property or places).^{vii}
- Parties to a conflict may direct force only against combatants / military objectives and must: "(1) take certain measures to help ensure that military forces and civilians can be visually distinguished from one another; (2) physically separate, as feasible, their military objectives from the civilian population and other protected persons and objects; and (3) refrain from the misuse of protected persons and objects to shield military objectives."^{viii}
- Civilian objects are generally protected from intentional attack or destruction, but may lose that protection and be considered military objectives based on their "nature, location, purpose, and use."^{ix}
- Military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization offers a definite military advantage.^x
- Civilians enjoy protection from direct attack unless and for such time as they take a direct part in hostilities.^{xi}
- Those who directly participate in hostilities may be attacked in the same manner as combatants, but lack any of the distinct privileges of combatants (e.g., combatant immunity).^{xii}
- States are obligated to take "constant care" to "spare the civilian population, civilians and civilian objects."^{xiii}

3. How the PLA's use of ROROs Abuses the LOAC

- The PLA has taken no measures to ensure that ROROs are visually distinguishable from civilian ferries, such as by applying gray paint schemes or affixing markings consistent with state practice for military vessels.
- Likewise, instead of taking "constant care" to mitigate civilian harm and to separate civilians and civilian objects to the extent feasible, the PRC has instead instituted domestic law and policy that permits the integration of ostensibly civilian platforms into frontline maritime forces.
- Belligerent acts – e.g. the direct insertion of troops in to conflict – are the province of warships, yet the PLA appears intent to use commercial ROROs for more than mere auxiliary / self-defense functions.^{xiv}
- The civilian façade of ROROs affords the PLA deniability and pretext for accusations of civilian harm when a RORO is lawfully attacked in conflict.
- Commercial ROROs enable the PRC to exploit the law-abidingness of opposing forces that may be apprehensive to face blowback in the public domain or constrained by policy from attacking vessels that appear civilian in nature.
- In this sense, the PLA's use of commercial ROROs exploits not only the LOAC principle of distinction, but also the LOAC principle of honor and its prohibition on the abuse of the LOAC to gain an advantage over adversaries.^{xv}

4. Assessment of the PRC's Potential Legal Positions

- PRC officials could argue that the LOAC is not controlling in peacetime, and therefore does not constrain the PLA's use of ROROs in military exercises, drills, and other activities outside of armed conflict.
- This argument overlooks the PLA's apparent intent to use ROROs in armed conflict and fails to appreciate the interactive dynamic between legal regimes – i.e., a state's conduct in peacetime is liable to influence how other states will respond to like conduct in conflict or how other states will behave in future conflicts.^{xvi}
- Peacetime conduct does not exist in isolation from the LOAC – the efficacy of the LOAC depends on adhering to LOAC principles during all military operations, to include ensuring military forces are trained and aware of LOAC principles as required by common articles to the Geneva Conventions.^{xvii}
- For this reason among others, U.S. personnel are required by policy to act consistent with the LOAC's fundamental principles and rules in all military operations, including military operations in peacetime.^{xviii}
- In addition, the United States and many of its allies and partners have established regulations to preserve the LOAC in peacetime, such as by arming auxiliary vessels only for self-defense.^{xix}
- PRC officials could also argue that the requirement cited above that non-warships refrain from acts of hostility pertains only in international armed conflict (IAC) between two or more states, and not to an "internal matter," which is how the PRC views Taiwan's status.
- This argument may also be refutable because conflict between PRC and Taiwan could bear the characteristics of an IAC, to include the presumption that Taiwan will follow LOAC principles much like any state party to a conflict – it would be paradoxical to hold Taiwan to LOAC principles while the PRC bends the rules.
- In contrast to the PLA's conduct, U.S. policy mandates compliance with the LOAC during all armed conflicts, however characterized (including non-international armed conflicts).^{xx}

5. Targeting Considerations

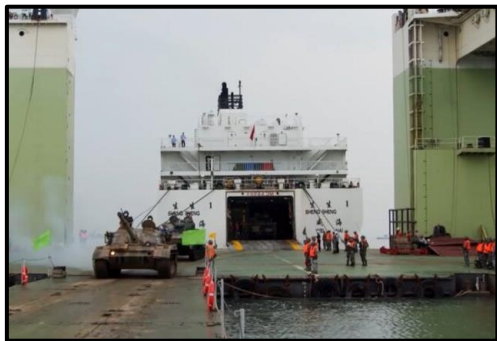
- ROROs owned by or under the exclusive control of the PLA may be considered auxiliary vessels, which are valid military objectives in armed conflict.^{xxi}
- ROROs may also be determined as valid military objectives by their nature, purpose, use, war-sustaining, or war-supporting roles, unless such vessels are innocently employed.^{xxii}
- A vessel is *not* innocently employed if:
 - Persistently refusing to stop upon being duly summoned to do so;
 - Actively resisting visit and search or capture;
 - Sailing under convoy of enemy warships or enemy military aircraft;
 - Armed with systems or weapons beyond that required for self-defense;
 - Incorporated into or assisting in any way, the intelligence system of the enemy's armed forces;
 - Acting in any way as a naval or military auxiliary to an enemy's armed force; or
 - Integrated into the enemy's war-fighting war-supporting war sustaining effort
- Current intelligence and specific circumstances will inform whether civilian crew onboard a vessel determined to be a valid military objective are assessed as direct participants in hostilities or civilians accompanying the force.^{xxiii}

PROPOSED COUNTER-LAWFARE APPROACH

- The PLA incorporates commercial ROROs as key elements of its amphibious invasion force, but takes no measures to distinguish these ROROs from civilian ferries, such as by applying gray paint schemes or affixing markings consistent with state practice for military vessels.
- The PLA's use of commercial ROROs erodes the LOAC principle of distinction by obscuring crucial lines between warships and non-warships, civilians and combatants, and civilian objects and military objectives.
- Upholding the principle of distinction under the LOAC is a legal requirement critical to civilian harm mitigation.

- The LOAC benefits all of humanity by protecting civilians, but if PLA practice continues to erode distinction such that parties to a conflict cannot effectively apply it, civilians will face greater risk of suffering in future conflicts.
- The PLA abuses the LOAC by leveraging the civilian façade of commercial ROROs to create a veneer of deniability and a pretext for accusations of civilian harm.
- The PLA is poised to use commercial ROROs for deterrence by exploiting the law-abidingness of opposing forces that may be averse to use force against vessels that appear civilian in character.
- The PLA’s use of commercial ROROs sets a dangerous precedent that could increase risk of civilian harm not just in a conflict over Taiwan, but in other conflicts where civilians may find themselves in harm’s way.
- Commercial ROROs under PLA control or engaged in war-supporting roles may be the object of a lawful attack by an opposing force during armed conflict.
- U.S. policy requires U.S. personnel to act consistent with the LOAC during all military operations, and to comply with the LOAC during all armed conflicts however characterized.
- The international community should expose and condemn the PLA’s use of commercial ROROs to ensure the continued efficacy of the LOAC and reduce risk of civilian harm in future conflicts, while also citing it as another example of broader intent by the PRC to undermine the current rules-based international order.

GRAPHICS



Civilian ferry Sheng Sheng 1 off-loading tanks onto semi-submersible barge and offshore mobile pier system during August 2020 PLA exercise Eastern Transportation-Projection 2020A.

Source: M. Dahm and C. Kennedy, *Civilian Shipping: Ferrying the People’s Liberation Army Ashore*, CENTER FOR INTERNATIONAL MARITIME SECURITY (9 Sep 21).



The Bang Chui Dao, a 20-year-old civilian passenger Ro-Ro, took part in People’s Liberation Army amphibious exercises in August 2020. The vessel, which plies ferry routes in northern China across the Yellow Sea and Bohai Gulf, participated in training activities off the southern Chinese city of Zhanjiang in Guangdong province.

Source: *China Reportedly Converted Civilian Ferries for Military Assault Operations*, HUMAN EVENTS (17 Aug 21).



Chinese main battle tanks are seen being loaded aboard the commercial RORO ferry Zhong Hua Fu Zing.

Source: J. Seidel, *Ominous Sign China is Quietly Preparing to Invade Taiwan*, NZ HERALD (2 Oct 22).

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ⁱ See [What-is-MCF-One-Pager.pdf \(state.gov\)](#)

ⁱⁱ Crossing the Strait: China's Military Prepares for War with Taiwan, NATIONAL DEFENSE UNIVERSITY (2022).

ⁱⁱⁱ See press release: *Explaining and Clarifying the Matter Regarding the Media Coverage of '60 Micro-Class Missile Assault Boats Reduced from the Initially Recorded \$1.67 Billion to Merely \$1.04 Million*, MINISTRY OF NATIONAL DEFENSE (2 Sep 19).

^{iv} See "Helping Civilian Ships Join the Army," <http://tv.cctv.com/2019/05/14/VIDEciAU5Xo9SVOQVYhz8zht190514.shtml>; see also J. Seidel, *Ominous Sign China is Quietly Preparing to Invade Taiwan*, NZ HERALD (2 Oct 22).

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^{vii} Protocol Additional to the Geneva Conventions of 12 August 1949 [hereinafter AP I], at art. 48 and 52. Although the United States is not a party to AP I, it does accept the majority of AP I's provisions as customary international law. See also DOD LAW OF WAR MANUAL, at § 2.5.

^{viii} DOD LAW OF WAR MANUAL, at § 2.5.3.

^{ix} AP I, at art. 52(2); see also DOD LAW OF WAR MANUAL, at § 5.6.3.

^x AP I, at art. 52(2); see also *San Remo Manual on International Law Applicable to Armed Conflicts at Sea*, art. 60 (1994) [hereafter *San Remo Manual*]

^{xi} *Id.*, at art. 51(3).

^{xii} DOD LAW OF WAR MANUAL, at § 5.8.

^{xiii} Article 57 of Additional Protocol (AP) 1. The United States is not a party to AP 1, but considers many of its provisions binding customary international law.

^{xiv} See e.g., *The Oxford Manual of the Laws of Naval War (1913)* (prohibiting non-warships from conducting "acts of hostility"); see also, *German Law of Armed Conflict Manual*, p 145 (2013), ("The following vessels and persons may not perform acts of naval warfare: state ships other than warships, even when carrying out support services for the naval forces; merchant ships; fishing vessels and other civilian ships; prize crews of captured ships; state aircraft other than military aircraft; and civilian aircraft.")

^{xv} DOD LAW OF WAR MANUAL, at § 2.6 and Article 37, Additional Protocol I. Honor is sometimes called chivalry and is based on notions of trust, good faith, justice, and professionalism. The concept of chivalry informs the LOAC's express prohibition of treachery and perfidy, defined as "bad faith."

^{xvi} For discussion on the "interactive dynamic" see *Law of Naval Warfare*, Stephens & Stubbs, Chapter 15 (Non-Traditional Vessels, Tim Boyle) LexisNexis Australia; 1st edition (7 October 2019)

^{xvii} Nations are required to "include the study [of the law of armed conflict] in their programmes of military . . . instruction, so that the principles thereof may become known to all their armed forces." See Common Articles 47, 48, 127, 144 to the Geneva Conventions.

^{xviii} DODD 2311.01, Department of Defense Law of War Program

^{xix} Leading navies typically arm auxiliaries only for defensive purposes. See generally, S Saunders, *Jane's Fighting Ships 2018–2019*, 118th ed, IHS, Coulsdon, 2018; see also E Wertheim, *The Naval Institute Guide to Combat Fleets of the World*, 16th ed, Naval Institute Press, Annapolis, 2016.

^{xx} DODD 2311.01, Department of Defense Law of War Program

^{xxi} Warships are those that bear external markings of such class of ship, under the command of an officer, "and manned by a crew which is under regular armed forces discipline." Auxiliary vessels normally fulfill supporting roles (unable to commit belligerent acts), are not warships, but are "owned by or under the exclusive control of the armed forces of a State and used for the time being on government non-commercial service. Importantly, auxiliary vessels may be considered military objectives and targeted during conflict, the same as a warship. See *San Remo Manual* at art. 13(g), 13(h), 60(b).

^{xxii} See *San Remo Manual* Art 59-66; see also U.S. Commander's Handbook on the Law of Naval Operations (NWP 1-14), Section 8.6

^{xxiii} This assessment may be relevant for LOAC proportionality assessments and combatant immunity / prisoner of war status.