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Distress at Sea: Civilian Evacuees, Refugees, Migrants and Seafarers in Conflict

Protection of Civilians in the Maritime Domain Research Series



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Cover photo: The sun sets over the USS Green Bay (LPD-20) in Okinawa, Japan, August, 2016.
Marines of the 31st MEU are continuously forward-deployed for a range of military operations in the Asia-Pacific region, including maritime security to humanitarian assistance and disaster relief. Credit: DVIDS.

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Introduction

For more than a century, nations have codified the duty to render assistance to civilians in distress at sea.[1] The United States considers this duty a principle of customary international law, applicable in times of peace and, with some limits, times of war.[2] Fulfilling the duty to render assistance in a scenario of armed conflict in the Asia-Pacific, however, raises operational and policy questions. A conflict in the Asia-Pacific region, such as over Taiwan or a North Korea crisis, could place thousands of civilians in jeopardy, with large numbers of evacuees fleeing potentially terrifying conflict by sea. In addition, the number of commercial vessels, from supertankers to small fishing boats, passing through these waters is without equal. Civilian vessels may not be the focus of attacks by conflict parties, but they may still become shipwrecked or distressed through unseaworthiness, targeting errors, or collateral impacts of conflict. The impact of civilian deaths at sea should not be underestimated. Such deaths can alter regional and international opinion at a time when maintaining strong alliances is essential. Failures to plan for civilian harm at sea can place operators in dangerous situations when they are forced to improvise solutions in the middle of crisis.



NGO SOS Méditerranée performs a rescue.
Credit: Maud Veith, SOS Méditerranée

The risk of large numbers of civilian in distress at sea during a potential large-scale, high-intensity armed conflict in the Asia-Pacific region has yet to receive meaningful attention from military planners, policymakers, or humanitarian actors. Global trends and the experience of other regions, however, clearly indicate that this likely risk to civilian lives requires advance preparation. The moral, legal, and policy imperative to mitigate civilian harm and protect civilians in armed conflict-at-sea is clear;[3] how to effectively implement such protections is not.

This brief explores the issue of the duty to render assistance to civilians in distress at sea, how armed conflict impacts that duty, and the policy and operational choices that states will face in potential Asia-Pacific conflict scenarios. It begins by reviewing the law and policy of the duty render assistance and examines key categories of civilians in distress at sea, including evacuees, refugees and migrants, and merchant seafarers. It then considers risks to these civilians at sea, including challenges to search-and-rescue, and ashore, including disembarkation. It concludes with actions for government, military, and humanitarian actors to better prepare for contingencies around civilians in distress-at-sea in armed conflict.

Legal and policy overview: The Duty to Render Assistance in Peace and War

The duty to render assistance to civilians in distress at sea is well established in peacetime through a successive series of treaties and today is widely recognized as a principle of customary international law.[4] International law has protected shipwrecked crews for hundreds of years, but the duty to render assistance took on prominence at the turn of the 20th century when the use of shipboard radio made distress calls possible beyond the line of sight.[5]

More than 100 years of the duty to render assistance

As far back as 1910, the Salvage Convention codified the duty of ship masters "to render assistance to everybody, even though an enemy, found at sea in danger of being lost,"[6] and subsequent treaties reinforced this principle. The Convention on the Safety of Life at Sea (SOLAS) of 1974 similarly requires ship masters to proceed to persons in distress at sea.[7] The SOLAS Convention has 168 states parties representing more than 98% of the gross tonnage of the world's merchant fleet.[8]

In view of the deep connection between communication technology and processes to the possibilities of rescue at sea, the SOLAS Convention also requires contracting parties to establish coordination and communication arrangements in specific geographic areas of responsibility.[9] The International Convention on Maritime Search and Rescue provides standards and details for search and rescue (SAR) coordination requirements contained in the SOLAS Convention.[10] The 1982 U.N. Convention on the Law of the Sea, which also binds 168 states parties, similarly restates the duty to render assistance.[11]

The treaties creating the duty to rescue bind states but also require them to ensure, through their national laws, that these duties apply to all flagged vessels, including merchants and other non-government craft. The general requirements of ensuring the necessary arrangements for rescue apply to states, not civil society or non-governmental organizations (NGOs). There are many NGOs engaged in rescue-at-sea operations but these efforts do not absolve governments of their responsibilities.

The duty to render assistance is generally framed as obligatory, with limited discretion to deny or delay response to requests from vessels in distress. The SOLAS Convention, Law of the Sea Convention, and the Salvage Convention (see text box) each include three fundamental elements, which have remained consistent over nearly a century of multilateral negotiations: (1) an imperative obligation to render assistance, (2) the requirement to render assistance swiftly and directly, and (3) a limited exception to the duty to render assistance in order to prevent danger or harm to the master's ship, crew and passengers, or other extenuating circumstances. The SOLAS Convention emphasizes that, absent danger or risk of harm, any other exception to the general duty constitutes a "special circumstance" and requires the ship's master to enter in the logbook the reason for failing to proceed to the assistance of the distressed vessel.[12]

A similar duty to render assistance continues during times of war. The Second Geneva Convention requires that parties to conflict "shall, without delay, take all possible measures to search for and collect the shipwrecked, wounded and sick, to protect them against pillage and ill-treatment, to ensure their adequate care, and to search for the dead and prevent their being despoiled."[13]

The wartime duty to render assistance is very similar to the peacetime duty, with some important differences. Rather than merely responding to distress calls, conflict parties have the obligation to search for the shipwrecked, wounded, sick and dead. The duty to rescue in war is also a duty of each party to the conflict, not a duty specific to each warship or vessel, and conflict parties can appeal for assistance to charities, neutral vessels, or can organize other rescue craft.[14] However, this obligation is balanced against the reality of combat in two ways. First, the duty to render assistance only takes effect "after each [military] engagement" (emphasis added), making clear that warships need not search for survivors in the middle of a confrontation.[15] Second, the duty is limited to "all possible measures," with the nature of such possibility conditioned by the circumstances of armed conflict. The U.S. Department of Defense Law of War Manual highlights two categories of circumstance that render rescue impractical: (1) risks of harm to the rescuing force, such as searching for bodies in mined waters; and (2) military necessity, such as small craft like submarines that lack the capacity to take on wounded and shipwrecked passengers.[16]

The exact parameters of the exception to the duty to render assistance in wartime is beyond the scope of this paper.[17] Military necessity is a bounded limitation on the duty to render assistance, however, as made clear in the USS Dubuque case, where a Navy captain was court-martialed for failing to provide assistance to maritime refugees fleeing Vietnam (see boxed section). The Dubuque's captain was tried for violating Navy regulations, not violating the law of war, and the duty to rescue involved would be a customary or treaty duty to rescue vessels in distress, not the Second Geneva Convention's duty to rescue wounded or shipwrecked sailors after an engagement. It is still notable, however, that military necessity did not serve as a defense, even though the Dubuque was en route to an important military operation.[18]

The tragedy of the USS Dubuque case does not hinge on the commander's moral fiber, or even his attempted fidelity to Navy regulations, but rather, as Lt. Martin Harry, Navy Judge Advocate General Corps, noted, a lack of contingency planning.[19] Encountering refugees near Southeast Asia was hardly uncommon in the 1980s, and the USS Dubuque's commander had prior personal experience with maritime refugees.[20] But without clear plans and corresponding capabilities, the commander was left to interpret the very general language of U.S. Navy regulations.

The USS Dubuque Case

The USS Dubuque case is an illustration of the U.S. military's commitment to the duty to render assistance, even for warships during periods of armed conflict. In 1988, the USS Dubuque was steaming to the Persian Gulf from its home port in Japan, deploying to serve as a control ship for minesweeping operations during the Iran-Iraq "Tanker War."[21] While the U.S. maintained official neutrality during the Iran-Iraq war, sea mines presented the most serious threat to the U.S. fleet in the Persian Gulf and the Dubuque was arguably on an important military mission.[22]

En route, the Dubuque spotted a Vietnamese boat waving a white flag. The Dubuque's motor whale boat approached the Vietnamese vessel and the ship's Executive Officer (XO) and a Vietnamese-speaking sailor assessed the condition of the ship and the people on board. During this process, the Dubuque crew saw an estimated 50-70 refugees, including women and children, in emaciated states. Some refugees attempted to swim to the whale boat; when the whale boat crew began throwing life rings on their own initiative, they were instructed to stop. Other refugees attempted to climb onto the whale boat's lines and crew members were ordered to shake them loose. The refugees told the crew that they had been at sea for 10-14 days, the previous seven days without fresh water, that 20 people had died in that time, and that the boat was taking on water.



USS Dubuque in the Pacific, 2010. Credit: Seaforces.org

The Dubuque's XO deemed the refugees' vessel seaworthy and the captain ordered that the refugees be provided with enough food and water for four days for fifty people, and a navigation map with instructions written in Vietnamese "to go in the direction the sun rises." But none of the refugees were given medical assessments or brought on board the U.S. vessels. Eighteen days later, the refugee vessel was discovered by Filipino fisherman. Nineteen additional refugees had died since the encounter with the USS Dubuque. According to refugee accounts, they had resorted to killing and eating dead shipmates. The Captain of the USS Dubuque faced a court martial, where he was found guilty of five acts of dereliction of duty. The court concluded that he had the duty to embark the refugees or otherwise effect their rescue.

Risks to Civilians in Distress at Sea

Categories of Civilians at Risk

Recognizing that the duty to render assistance to vessels in distress continues in wartime, three categories of civilians will be at risk in a potential conflict in the Asia-Pacific region: Evacuees; refugees and maritime migrants; and merchant seafarers. These categories are defined by circumstance and scenario, rather than by legal definition, and there may be overlap between them. They are useful, however, from an operational planning perspective to ensure adequate readiness to ensure the protection of civilians in the maritime domain.

Evacuees

Civilian evacuations from conflict areas can help save lives but they can also be dangerous journeys, as witnessed recently in Afghanistan, Ukraine and Sudan. There is also ample precedent for supporting civilian evacuations in conflict in the Asia-Pacific region. During the U.S. exit from Vietnam in 1975, Operation Frequent Wind transported up to 80,000 evacuees in two days,[23] and the Korean War saw further evacuations (see box section on the SS Meredith Victory).

A Taiwan conflict scenario could witness significant numbers of evacuees, including many travelling by sea. While many aspects of civilian displacement of Taiwan's population of 23 million are unknown and the precise dynamics will depend greatly on the scenario envisioned (swift amphibious assault, blockade, etc.), it is likely the 800,000 or so foreigners in Taiwan will seek to leave the island in the event of armed conflict.[24] Even with the best evacuation plans (including military non-combatant evacuation operations), many people fleeing Taiwan in the event of conflict may do so through their own means and methods. This may include people fleeing on civilian vessels which cannot withstand large numbers of passengers on the high seas. These scenarios require planning to avoid loss of civilian life at sea.

The sheer numbers involved, and the likelihood that Taiwanese airspace will be contested, suggest that large-scale sea crossings (state-organized or informal and spontaneous) will take place. Japan, the Philippines, and Indonesia have resident nationals in Taiwan, numbering 20,000, 150,000, and 350,000, respectively.[25] Taiwan also hosts around 60,000 foreign students from India, Indonesia, Malaysia, Philippines, Thailand, and Vietnam, who will also likely seek to leave, as was the case for foreign students in Ukraine following Russia's invasion of in 2022.[26] In a Taiwan conflict scenario, civilians may also seek to depart from points of embarkation targeted by military operations, such as the major seaports of Taipei and Kaohsiung or beaches that may be potential landing zones in an amphibious assault.[27]

The SS Meredith Victory



Thousands of Koreans wait in line to board the USS Meredith Victory, 1950. Credit: U.S. Marine Corps Archives, bbc.com

At the outbreak of the Korean War, U.S. naval forces played a critical role in the evacuation of civilians. The SS Meredith Victory was among the ships that evacuated UN forces and civilians from the North Korean port of Hungnam. Designed to accommodate just 35 crewmembers and 12 passengers, the Meredith Victory managed to embark more than 14,000 Korean civilians and steamed to South Korea unescorted, navigating naval mines and air attacks. Captain Leonard LaRue of the Meredith Victory ordered weapons and cargo dumped overboard to make room for refugees, who were crammed standing-room-only on the deck and in five cargo holds. The ship sailed for two days without additional food, water, or protection. Five babies were born during the voyage. The vessel holds the record for the largest evacuation from land by a single ship.[28] It is also the vessel that rescued former South Korean President Moon Jae-in's mother, who was among the refugees on board the evacuation voyage.[29]

Refugees, Asylum-seekers, and Maritime Migrants

Current and past conflicts in the Asia-Pacific region have produced significant numbers of refugees, including many who have fled by boat, and a future conflict could witness similar dynamics. In the aftermath of the Vietnam War, nearly two million people fled Vietnam by sea from 1975 to 1992. Refugees escaped on small boats unsuited for the high seas, and headed to Hong Kong, Malaysia, Indonesia, Philippines, and as far as Japan.[30] Drownings, piracy, dehydration, and starvation caused high rates of fatalities. The United Nations High Commissioner for Refugees (UNHCR) estimates that approximately one third of those who attempted the sea journey perished.

More recently, Rohingya refugees and other migrants fleeing by sea led to significant deaths, in some years up to three times as many migrant casualties as in the Mediterranean.[31] In 2015, thousands of Rohingya refugees fleeing conflict and persecution in Myanmar ended up stranded at sea for months. Thailand, Malaysia, and Indonesia refused to disembark vessels carrying migrants and asylum seekers, and instead responded by pushing or towing boats back out to sea, in what was criticized as a game of "human ping-pong."[32] At one point, Malaysia stationed an oil tanker off the eastern coast of Trengganu to repair and resupply Vietnamese refugees so that the Malaysian navy could tow refugees back out to sea.[33] This occurred even though Rohingyas fleeing ethnic and religious persecution in Myanmar are a textbook application of the refugee definition in the 1951 Refugee Convention.[34] These approaches resulted in high-profile refugee desperation and drownings, and the reputational cost of perceived disregard for human life.[35] While a major conflict in the Asia-Pacific region will likely push refugees and maritime migrants to seek land routes or delay their journeys, many vessels may already be at sea. Without safe options for maritime refugees to disembark, parties to conflict will be faced with the likelihood of having to respond to a large flow of maritime refugees stranded in what may become a maritime battlespace.

Merchant Seafarers

Merchant seafarers are a third category of civilians at sea. Even in peacetime, the crews working aboard commercial and passenger vessels (seafarers), large and small, face risks of exploitation and modern-day slavery. Many vessels in international waters are only under the legal jurisdiction of flag States, and flags are often chosen for the government's willingness to turn a blind eye to labor practices.[36] Southeast Asia has been the epicenter of such exploitation.[37] The International Transport Federation found that, in 5,000 vessel inspected in Australia over a decade, 70% of ships failed to meet minimum standards for wage payments and labor conditions.[38]



Ships waiting for bunker in Port Klang, Malaysia.
Credit: Maria Borova, devpolicy.org

Conflict can bring even greater challenges to this often-invisible group. At the outbreak of conflict in Ukraine in 2022, approximately 2,000 seafarers in 112 ships were stranded in Ukrainian ports across the Black Sea when the conflict erupted.[39] Attacks on commercial shipping also place seafarers in direct danger, significantly during the Iran-Iraq "Tanker War" (1980-88), where more than 400 civilian mariners were killed in a conflict where civilian ships were intentionally attacked.[40] At the time of writing, Houthis rebels in Yemen are targeting commercial shipping in the Red Sea and are holding 25 crew members of the *Galaxy Leader* hostage.

A Taiwan conflict will likely result in similar threats to merchant seafarers: Taiwan's Kaohsiung port is one of the world's largest container handling facilities, with an average of 240 merchant vessels daily.[41] With bulk carriers having crews between 20-30 individuals, on an average day 4,800 to 7,200 seafarers are travelling to Taiwan's seven seaports. These merchant seafarers face the risk of being attacked, interdicted, or detained by belligerent forces or militias, in the event of armed conflict in Taiwan. Risks to seafarers are further heightened by maritime militias, employed extensively by China, which can blur the lines between civilian vessels and warships.[42]

Risks at Sea

Coordinating Search-and-Rescue

Search-and-rescue for people fleeing conflict zones around Taiwan, North Korea and the South China Sea will be challenged by the absence of a strong, existing SAR framework. The 1979 SAR treaty requires coordination and cooperation around SAR activities but has limited acceptance in the region due to the costs of SAR infrastructure and geo-political sensitivities.[43] Singapore effectively covers much of the South China Sea but there are many overlapping zones of responsibility. The majority of Taiwan rests in the vast Northwest Pacific Search and Rescue Region (SRR). Japan, China, South Korea, and Russia, which collectively guarantee to meet their obligations under the SAR Convention in this SRR, have not defined areas of responsibility within it.[44] The disappearance of Malaysia Airlines flight MH 370 in 2014 highlighted the challenges created by a lack of clear, formal structures for SAR coordination in the South China Sea as well.[45] In addition, unlike the Mediterranean, there are no SAR NGOs in the Asia-Pacific region, though the obligation to render assistance and carry out SAR always remains a state responsibility. Recently, ASEAN completed an agreement on maritime and aeronautical SAR that reflects many elements of the 1979 SAR treaty, creating a basis for improved coordination in the future.[46]

Effecting Mass Rescue

Performing mass rescue operations in conflict may place traditional SAR actors, such as coast guards, and actors less familiar with SAR, such as warships, in new situations. Humanitarians have a growing history in SAR operations that may inform operations and tactics. The lessons of these humanitarian NGOs should be considered for potential future application in the Asia-Pacific.

SOS Méditerranée, one of many humanitarian NGOs performing SAR operations in the Mediterranean, regularly takes hundreds of migrants and asylum-seekers fleeing conflict onboard the 69-meter Ocean Viking, a converted oil-rig support vessel. During these rescues, the people taken on board are fearful, desperate, and often do not share a common language with their rescuers or with each other. SOS

Méditerranée has developed communication and conflict de-escalation protocols to conduct orderly embarkations, delivery assistance, and disembarkation, all without the use of armed security. In nearly a decade of operation, they have never had a single, serious security incident from the migrants.[47] The International Federation of the Red Cross (IFRC) supports this effort through a Humanitarian Service Point at Sea.[48]



SOS Méditerranée performing a rescue.
Credit: Jérémie Lusseau, SOS Méditerranée

Onboard the Ocean Viking, IFRC provides post-rescue assistance, including first aid, emergency health care, maternal healthcare, food, essential household items, and information for post-disembarkation humanitarian assistance from Red Cross/Red Crescent National Societies. There are differences between the operational contexts of the Mediterranean and Asia-Pacific contexts—particularly in a scenario of large-scale combat in the latter—but the tactical approaches of NGOs like SOS Méditerranée offer lessons.

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Coordinating Merchant Shipping

Merchant shipping may be at risk during an Asia-Pacific conflict and may require guidance on areas of active combat. The global merchant fleet may also be an important partner for search-and-rescue. Coordinating merchant vessels often falls to Naval Cooperation and Guidance for Shipping (NCAGS), a function in the U.S. navy and nearly all of its allies. NCAGS serve to liaise with the shipping community and prepare for situations in which naval guidance to shipping is critical for the protection of shippers and crew. NCAGS can support maritime domain awareness and, in conflict, serve as a vital information link to communicate dangerous areas or recommended transit routes. NCAGS are linked by Regional Shipping Centers in Japan, South Korea, the Philippines, Taiwan, Australia, and New Zealand.[49] The Pacific and Indian Ocean Shipping Working Group (PACIOSWG) serves as useful forum for knowledge exchange and has been incorporated into some exercises, such as the biennial Rim of the Pacific exercise.[50] These exercises are important but often involve piracy or other low-intensity scenarios. Integrating NCAGS exercises in future naval exercises and deepening NCAGS's situational awareness of risks to seafarers in conflict can strengthen preparedness.

Misidentification of Rescue Craft in Armed Conflict

International humanitarian law protects coastal rescue craft and other vessels exclusively engaged in humanitarian operations, including search-and-rescue activities.[51] Despite longstanding protection of rescue craft in maritime custom, however, changes in warfare raise questions as to how rescue craft and similar humanitarian vessels would be protected in a modern conflict. These questions include those relating to official endorsement of and notification of rescue craft by a state; methods to identify rescue

craft and other humanitarian vessels; and questions around encrypted communications and other behaviors that could suggest military intelligence activity and a consequent misidentification.

The law applicable to conflict at sea requires that rescue craft operators must be run by the state—or be officially recognized by the state at least ten days prior to the start of conflict—and notified to conflict parties as such.[52] Such official state recognition and notification requirement is a potentially important practical step but could also serve as a constraint to humanitarian actors. The lack of legal protection for unrecognized rescue craft should not be conflated with a lack of legal protection for civilians, however, and parties to conflict remain obligated to distinguish civilians and not to target them.

In addition, methods to identify rescue vessels, hospital ships, and related craft were developed in an era of visual, line-of-sight warfare, when large painted emblems and white flags were sufficient to identify protected vessels. In an era of long-range, satellite-guided munitions and subsurface warfare, new identification methods need to be agreed. The 1977 First Additional Protocol to the Geneva Conventions developed optional identification methods, including the use of blue lights, secondary-surveillance radar (similar to modern, transponder-based automatic identification systems, "AIS"), and acoustic underwater signatures.[53] The International Committee of the Red Cross (ICRC) held a series of conferences in 1989-1990 that developed the technical details for the implementation of these measures.[54] While these methods are potential viable when used in combination, there is little state practice or established agreement on their use.

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The risk of misidentification also extends to agreed standards for assessing the behavior of rescue craft. Rescue craft are only protected as long as they avoid committing acts harmful to the enemy.[55] During the drafting of the Second Geneva Convention (relating to armed conflict at sea) and the First Additional Protocol of 1977, many states expressed concerns that blanket protections for rescue craft could be abused because these small, fast, difficult-to-identify craft could serve an intelligence function.[56] These concerns regarding humanitarian vessels led to bans on "secret codes" (encryption) for communication by military hospital ships.[57] While there is no explicit ban on the use of encryption by rescue craft, a similar logic could render such encryption evidence of intent to commit acts harmful to the enemy.

The debate over whether the ban on encryption remains in force continues.[58] During the Falkland Islands conflict, for example, British and Argentine hospital ships were not equipped with encrypted communications devices.[59] Passing information between military ships in need of assistance and hospital ships required relaying messages through headquarters, which would receive encrypted messages, remove any sensitive information, and relay them on public channels to hospital ships. The U.S. Department of Defense, for example, equips its hospital ships with encrypted communications but prohibits communications for military purposes or that would be harmful to the enemy.[60] The lack of clarity regarding what equipment, capabilities or specific acts by humanitarian vessels would serve

as indicators of harmful acts, however, remains concerning. Opening discussions on these matters in advance of conflict would be an important and concrete step towards improving protection at sea.

Risks Ashore

The Regional Refugee Regime

With the potential for thousands of civilians of many nationalities seeking to disembark in an Asia-Pacific port, visa, refugee or asylum status will be an important question. If ships carrying fleeing or rescued civilians are turned away, as happened during the Rohingya crisis in 2015, thousands of people could be left to perish at sea. Only 14 countries in the region have ratified the 1951 Refugee Convention.[61] Maritime refugees and asylum seekers in the region have generally been addressed through policy responses aimed at controlling irregular migration. Despite some efforts at coordination, the region's most successful efforts in a crisis—such as the 2015, Thailand-hosted Special Meeting on Irregular Migration in the Indian Ocean to address the peak of Rohingya movements—have been ad hoc.[62] It is unclear how quickly or easily regional countries would find common ground in a crisis involving conflict.[63] One of the only certainties is that the politics will be complex. For example, three regional countries party to the 1951 Refugee Convention—Japan, South Korea, and the Philippines—have historically hosted very few refugees.[64] At the same time, countries that never signed the Refugee Convention have emerged as some of Asia's largest refugee hosting countries, such as Thailand and Malaysia.

To plan for the civilian population movements at sea, regional actors need to be able to anticipate whether states are willing to accept evacuees, on what basis, and for what duration. For example, when U.S. forces evacuated over 80,000 individuals upon its exit from Vietnam in 1975, U.S. forces did not anticipate that the Philippines would be unwilling to disembark Vietnamese evacuees. The Philippines only agreed to do so after a negotiated agreement with the U.S. that the disembarkation would be temporary to enable U.S. ships to resupply for the onward journey to Guam.[65] To avoid a similar scenario, regional countries should factor disembarkation options in the region for evacuees in the event of conflict. This will involve complex politics, warranting close involvement of different agencies and departments within governments and between governments in the region.

The Use of Military Bases in Armed Conflict

A further complication of managing refugee flows in a future conflict is the danger of utilizing military bases for reception and transit in modern conflict. As highlighted in the above example involving Guam, U.S. military bases were useful hubs during the displacement during the Vietnam and Korean Wars. These served as controlled, secure environments where logistics, supplies and services could be scaled with the urgency of a military operation. In an age of long-range munitions, however, such regional bases may become targets. Any civilian transit hubs should ensure that the hubs are not part of facilities that could be identified (or easily misidentified) as military objectives.

Stranding in Foreign Ports

Seafarers may also disembark or be trapped by conflict in foreign ports. Seafarers' associations can play an important role in protecting seafaring civilians in these situations. While not as well-known as many

humanitarian NGOs, there is a network of seafarers' associations that provide basic needs, temporary housing, and counselling to seafarers around the world. Umbrella organizations like the International Seafarers' Welfare and Assistance Network (ISWAN) serve as entry points, with local and global affiliates.[66] Some of these are religiously based charities with global presence in ports around the world, such as the Mission to Seafarers and Stella Maris;[67] others are trade unions and trade union networks that support the welfare of their members, such as the Nautilus Federation, the Associated Marine Officers' and Seamen's Union of the Philippines (AMOSUP), and the National Union of Seafarers of India (NUSI).[68] During COVID, many of these organizations supported the launch of the Seafarers International Relief Fund, which was mobilized in 2022 to support seafarers in Ukraine.[69]



U.S. Navy Helicopter Sea Combat Squadron 9, conduct a simulated search and rescue recovery in the eastern Mediterranean Sea, October, 2023. Credit: DVIDS

Just as engaging with commercial shipping companies through NCAGS can improve coordination with the strategic levels of shipping, engaging with seafarer's associations can support engagement for protection at a more tactical level. Understanding where these organizations are, how they function, and what potential roles they might play in conflict are important for preparedness in conflict scenarios for the same reasons that understanding the presence and capabilities of humanitarians in land operations is essential.

Preparing for Contingencies

Legal, moral, and policy obligations all contribute to the imperative to prepare for civilian harm scenarios. One key differentiator of potential large-scale conflict in the Asia-Pacific region from other recent conflicts is the extent to which maritime territory will be contested and traversed. Parties to any such conflict should take steps to protect civilians, including avoiding strikes in or near populated areas and ensuring access to life-sustaining assistance for civilian populations. If conflict parties fail to respect these international legal protections, however, an Asia-Pacific conflict could result in significant risks to civilians at sea.

Anticipating, mitigating, and responding to these risks require concerted effort the U.S. government, regional governments, and regional and international humanitarian organizations. It will be critical to avoid ad hoc improvisation at a time when States are dealing with numerous other regional security risks. This section outlines a series of considerations to better prepare diplomatic, military, coast guard, and humanitarian actors to plan for SAR operations and other protective measures during conflict.

National cooperation and civil-military coordination on search-and-rescue

- *Learn from humanitarian SAR NGOs:* Humanitarian NGOs in the Mediterranean have developed an impressive set of practices for search-and-rescue and humanitarian assistance at sea. This includes the orderly rescue of hundreds of people at a time with no armed security and the provision of

immediate, life-saving aid. While not all these practices will be practical or replicable, navies and coast guards taking on SAR responsibilities may be able to learn from these experiences.

- *Clarify search-and-rescue responsibilities in the Western Pacific:* Search-and-rescue regions in the Western Pacific are poorly coordinated, with joint responsibility held by numerous countries without a clear delineation of geographic responsibility or communication procedures. While these mechanisms may be adequate in peacetime, the pace and urgency of conflict will require greater clarity for effective SAR operations on the high seas. Even if all regional governments do not reach agreement on contested maritime borders, operational agreements and coordination among a smaller group of allies and partners for SAR purposes may be sufficient to anticipate and avoid civilian distress and loss of life in the maritime domain.

Challenges of search-and-rescue in conflict

- *Find agreement on the identification of civilian rescue vessels:* Search-and-rescue in conflict, whether carried out by civilian or military vessels, will pose challenges. Civilian rescue craft, including Coast Guard vessels exclusively focused on civilian duties, will need to identify themselves in ways that ensure that they are not mistaken for military targets. While the use of visual emblems and communicating static coordinates is effective in land operations, maritime identification for surface, sub-surface, and aerial combatants requires additional mechanisms. There is no clear international agreement and state practice on the standards for such identification, but there are many modern options tabled for consideration. Discussion amongst regional stakeholders on methods to identify vessels exclusively engaged in SAR are an important, concrete step for the protection of civilians that potential adversaries can take in advance of a crisis. As with search and rescue regions, agreement on identification between an interested grouping of countries in the Asia-Pacific region can form a basis for broader consultations.

- *Clarify communication arrangements between military vessels and rescue craft coordinators that maintain civilian status for the latter:* Warships and other military assets may or may not be in a position to execute search-and-rescue, but their situational awareness will be critical to SAR efforts. Yet military vessels may of necessity communicate through encrypted messages and avoid providing sensitive information, such as their position. How such communications can inform rescue coordination efforts is an operational question that requires advanced planning to answer effectively. As with agreement on the identification of vessels exclusively engaged in SAR activities, agreement on specific communications actions that would render such vessels targetable is also an important step. Given historical concerns that rescue craft could serve as intelligence-gatherers, however, communication arrangements may be more sensitive. An effective agreement will require a broad and inclusive dialogue, but a smaller regional discussion could strengthen engagement on the issue.

Challenges of disembarkation in conflict

- *Lay the diplomatic and policy groundwork for refugee reception in crisis.* An Asia-Pacific conflict may result in significant numbers of maritime evacuees and refugees, requiring a coordinated regional response. The region has a limited pre-existing architecture for refugee disembarkation and a conflict may result in a further tightening of borders. Understanding the political and policy dynamics that will be needed for safe disembarkation will be essential for protection in a crisis. While sensitivities

may exist for a broad, public dialogue on this topic, countries in the region may be interested in coordinating contingency plans in the event of a humanitarian crisis.

- *Prepare contingency plans for sites of disembarkation in conflict:* Preparedness for large-scale displacement should always involve potential sites for the reception or transit of displaced persons, including access to basic needs (shelter, food, water, medical care, family reunification, language services) and visa- or asylum claims-processing. Displacement experts and humanitarian organizations are critical to consult in this regard. But the conflict context should also be considered. In past Asia-Pacific crises, the U.S. utilized bases in the region, including Guam. Such bases are potential targets in a conflict scenario, however. Contingency plans should be in place to ensure that displaced people are not proximate to facilities that could be considered military targets in a conflict.

Outreach with merchant seafarers

- *Reach out to seafarers associations and port-based welfare services as civil-military and humanitarian partners:* Seafarers are a varied group of civilians but many face circumstances that confront them with protection threats similar to other categories of displaced persons. A network of charities and welfare organizations catering to seafarers exists but is rarely engaged by the military or humanitarian communities. These organizations can play important roles in protecting seafarers from the worst effects of armed conflict. Military, coast guard, and humanitarian actors can better understand maritime protection issues by engaging with these groups.

- *Consider naval cooperation and guidance with merchant seafarers:* Civil-military relations are always important in conflict and these relationships are best established before the onset of combat. Merchant seafarers may receive little warning of an Asia-Pacific conflict and thus be caught in the opening violence. Procedures for military actors to coordinate with companies, ships, and their crews, such as through the NCAGS, will be vital.

CFE-DM work on the Protection of Civilians

This issue brief is part of a research workstream at the Center for Excellence in Disaster Management and Humanitarian Assistance (CFE-DM) on the Protection of Civilians. It is based on an extensive desk review of forecasted conflict risks in the Asia-Pacific region and past naval operations and their implications for protection of civilians. The brief is informed by key informant interviews with over 27 subject matter experts, including retired and active naval personnel, humanitarians, and academics, as well as roundtable discussions with U.S. military personnel. This issue brief also draws on open-source speculation for conflict in the Asia-Pacific region.[70] Such expert speculation is taken seriously and this issue brief focuses on the implications these conflict scenarios may have for civilian harm. Nothing in this issue brief, however, should be read as a position or expectation of the Department of Defense.

Endnotes

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16 U.S. Department of Defense, Law of War Manual (U.S. Department of Defense, 2016) § 7.4.4 (U.S. DOD Law of War Manual).

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Center for Excellence in Disaster Management & Humanitarian Assistance
456 Hornet Avenue, Building 76, Joint Base Pearl Harbor - Hickam, Hawaii 96860-3503
Telephone: 808.472.0518 | DSN: 315.472.0518
https://www.cfe-dmha.org
@cfedmha