

Chapter 36

False Colors and Dummy Ships: The Use of Ruse in Naval Warfare*

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“Okay, we have an all-black hull with “Lykes Lines” on the side, mid-ships. White superstructure with black diamond, a block L inside the diamond.’ He lifted his binoculars. ‘Lookout mast forward of the superstructure. Check. Superstructure is nicely raked. Electronics mast is not. Proper ensign and house flag. Black funnels. Winches all by the barge elevator—doesn’t say how many winches. Damn, she’s carrying a full load of barges, isn’t she? Paintwork looks a little shabby. Anyway, it all checks with the book; that’s a friendly.’”¹

This report, from Tom Clancy’s *Red Storm Rising*, is being delivered by the copilot of a P-3 Orion conducting a visual inspection and recognition pass on a merchant ship in the North Atlantic as war with the Soviet Union is about to erupt. Little does the copilot realize that the ship, which he believes to be an American seagoing barge carrier, is in fact Soviet. Concealed within her barges and hull are over one thousand air assault troops preparing to strike Iceland. Little does the copilot know that the shabby paintwork is only a few hours old and is, along with false colors and altered superstructure, part of an intricate scheme to pass the Soviet ship off as a “friendly.” The ruse works, right down to the Red Army major who speaks English with a Mississippi accent to the Orion crew over the VHF circuit.

The Commander’s Dilemma

The use of disguise in naval warfare is not new. Rather, because it capitalizes on the traditional force multiplier of surprise, deception has long been one of the most valuable weapons in a commander’s tactical arsenal. However, under the laws of naval warfare, not all forms of deception are legal. Hence, a commander must be able to distinguish between legal and illegal applications of deception.² Since the line between what is legal and what is not is indistinct, the commander’s task is difficult, and the heat of battle is hardly the ideal environment in which to make a detached, unemotional analysis of the law of naval warfare.

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Deception has often been a major contributor—if not the most decisive factor—to success in naval and land warfare. In the tactical sense, deception may be defined as the deliberate misrepresentation of reality to gain an advantage over the enemy.³ It can take as many forms as a fertile human mind can conjure, and it serves countless functions. It can be used to control the time and site of battle, to achieve surprise by misleading the enemy, to maximize tactical advantages or minimize disadvantages, or even to render attack unnecessary by inducing the enemy to surrender.⁴ Sun Tzu tells us that “[a]ll warfare is deception. Therefore, when capable, feign incapacity; when active, inactivity. When near, make it appear that you are far away; when far away, that you are near. Offer the enemy a bait to lure him; feign disorder and strike him. . . . When he is strong, avoid him. Anger his general and confuse him. . . . Pretend inferiority and encourage his arrogance.”⁵

One of the earliest recorded examples of the use of deception in naval warfare was in the Battle of Salamis in 480 B.C., when the vastly outnumbered Greeks feigned a withdrawal in order to lure Xerxes’ Persian fleet into a narrow channel. This maneuver contributed to a Greek victory by preventing the Persians from simultaneously deploying their entire fleet.⁶ Modern technology, such as electronic warfare, has added new twists to the art of deception in battle, but the underlying premise—surprise—remains the same. However, it is not enough for a commander to simply know the current techniques of deception; he must also know the current law. The lawful use of deception in battle may earn him accolades as an astute master of naval warfare, but its illegal use may make him a war criminal.

Deception: Ruse or Perfidy?

Those who write on the law of armed conflict generally classify the use of deception as either ruse, which is legal, or perfidy, which is not. Drawing a distinct line between these two is virtually impossible, since what is a permissible ruse in one situation may, with just a slight shift in circumstances, constitute perfidy in another.

Any commander, at sea, ashore, or aloft, must understand why international law is even concerned enough about the issue to distinguish between the two. It would seem to make more sense either to outlaw all forms of deception or to permit them all, rather than place commanders in the position of possibly violating international law by using some novel form of trickery which has neither been blessed nor condemned by the international legal community. However, the rationale underlying the prohibition against perfidy is that combatants are expected to behave in absolute good faith toward each other. This notion may seem contradictory to those unfamiliar with the law of armed conflict. Nevertheless, in order to minimize human suffering as much as possible

and to facilitate the restoration of peace, international law has placed limits on behavior during warfare.

Deception is not illegal *per se*,⁷ but rather is permissible so long as it does not violate some rule or principle of international law. *NWP 9, The Commander's Handbook on the Law of Naval Operations*, provides the commander with a basic introduction to this concept: "The law of armed conflict permits deceiving the enemy through stratagems and ruses of war intended to mislead him, deter him from taking action, or to induce him to act recklessly, provided the ruses do not violate rules of international law applicable to armed conflict."⁸ Obviously, a commander, especially one who operates without ready access to a judge advocate, must be familiar with the law of naval warfare in order to discern whether or not a proposed deception violates any principles of the law of armed conflict.

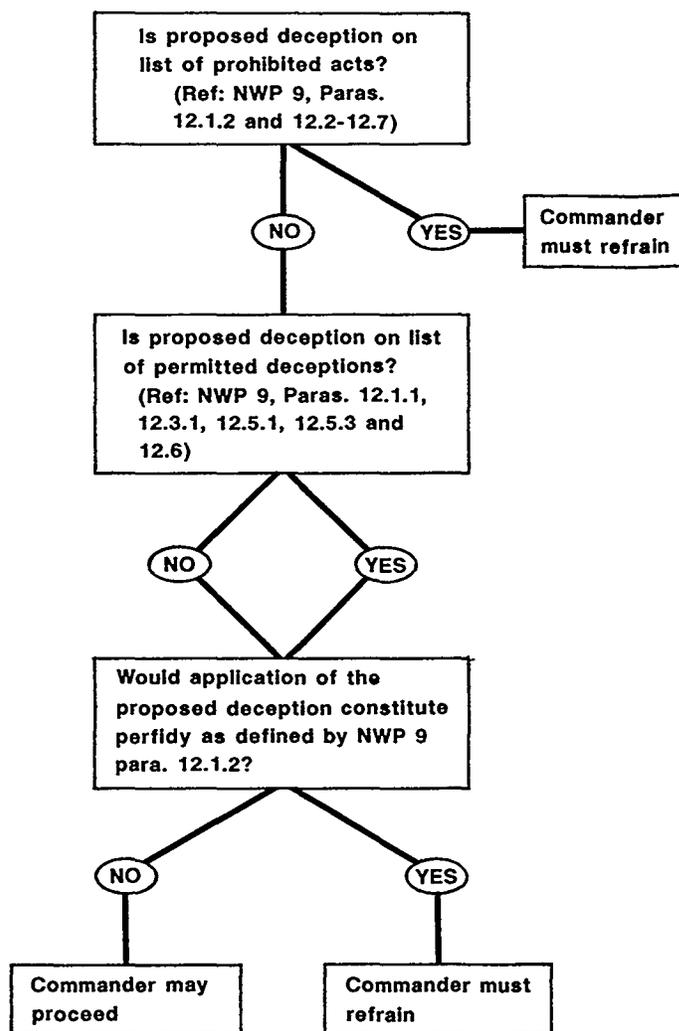
A Proposed Method for Analysis

A commander intending to use a novel form of deception must be able to determine whether his proposed action is legal. In order to do this, he must be familiar with various elements of the law pertaining to deception. At a minimum, these elements include the following:

- The requirement for good faith between combatants;
- The definition of perfidy;
- The reason perfidy is prohibited;
- The list of permitted deceptions under *NWP 9*;
- The list of prohibited deceptions under *NWP 9*; and
- Historical applications of perfidy and ruse.

The flowchart provides a method by which the commander, using the elements described above, can analyze whether his proposed deception is lawful. The commander starts with the assumption that the deception is lawful (based on paragraph 12.1 of *NWP 9* cited above). Next, he must ascertain whether it is on the *NWP 9* list of prohibited deceptions. If it is, then the commander must not take the action. If it is not on the prohibited list, the commander must then determine whether it is on the list of permitted deceptions or if on this list it has a logically related counterpart. Even if the proposed deception is on the list of permitted deceptions, it must still be examined for potential perfidy since, as was noted earlier, even permitted deceptions can, through a slight change in circumstances or events, become perfidy. Alternatively, if the proposed deception is not on the list of permitted ruses and does not have a logically related counterpart, the commander must examine it for potential perfidy. Thus, the mere presence of a proposed deception on the list of permissible ruses does not guarantee the absence of perfidy in a particular situation. Only after determining

ANALYSIS OF PROPOSED DECEPTION



that the deception does not constitute perfidy may the commander take the action he proposes.

Other people's experience in the application of deception is extremely useful for the commander's analysis. Although commanders ashore have traditionally employed a wider variety of deception than naval commanders,⁹ naval history provides ample precedent. A commander should not dismiss a 17th-century application of deception as unworthy of his attention. Even if the technique used in an old situation is no longer viable, the method for determining whether the

antecedent constituted perfidy or ruse will almost always apply to modern naval warfare.

Perfidy Defined

By far the most complicated step in the method is determining whether a proposed deception falls within the *NWP 9* definition of perfidy. Although *NWP 9* is not the only source which defines perfidy, it is the best starting point for the naval commander. It states that acts of perfidy are “deceptions designed to invite the confidence of the enemy to lead him to believe that he is entitled to, or is obliged to accord, protected status under the law of armed conflict, with the intent to betray that confidence.”¹⁰ The requirement for absolute good faith is obvious from this definition. Furthermore, this definition appears to require a specific intent to betray the enemy’s confidence in order for a violation to have occurred, which would seem to excuse the commander for accidental violations.

Many commentators have attempted to delineate where ruse ends and perfidy begins. One of the most noteworthy was Henry W. Halleck, who in 1861 stated the following: “Whenever we have expressly or tacitly engaged to speak truth to an enemy, it would be perfidy in us to deceive his confidence in our sincerity. But if the occasion imposes upon us no moral obligation to disclose to him the truth, we are justifiable in leading him into error, either by words or actions. . . . It is the breach of good faith, express or implied, which constitutes the perfidy, and gives to such acts the character of lies.”¹¹

Halleck’s definition of perfidy, however, has been criticized for emphasizing too much of one particular kind of deceit, that being false communications.¹² However, it is useful to read Halleck’s definition in conjunction with that proposed by William E. Hall in 1908: “As a general rule deceit is permitted against an enemy; and it is employed either to prepare the means of doing violent acts under favorable conditions, by misleading him before an attack, or to render attack unnecessary, by inducing him to surrender, or to come to terms, or to evacuate a place held by him. But under the customs of war it has been agreed that particular acts and signs shall have a specific meaning, in order that belligerent may carry on certain necessary intercourse; and it has been seen that persons and things associated with an army are sometimes exempted from liability to attack for special reasons. In these cases an understanding evidently exists that particular acts shall be done, or signs used, or characters assumed, for the appropriate purposes only, and it is consequently forbidden to employ them in deceiving an enemy.”¹³

Three examples will serve to demonstrate the breach of good faith required for an act to be considered perfidious. The first is the misuse of an internationally protected sign, such as the Red Cross emblem. *NWP 9* states that “misuse of protective signs, signals, and symbols in order to injure, kill, or capture the enemy

constitutes an act of perfidy."¹⁴ Misuse of the Red Cross emblem constitutes a breach of good faith because it undermines the effectiveness of this emblem during combat and jeopardizes the safety of noncombatants and the traditional immunity of protected medical activities, structures, and modes of medical transportation, such as hospital ships, ambulances, and medical aircraft. Thus, it would constitute an act of perfidy for a commander to use a hospital ship to transport troops, weapons, or ammunition with the intent to elude or attack enemy forces.¹⁵

The second example is the feigning of distress through the false use of internationally recognized distress signals such as MAYDAY and SOS,¹⁶ which evoke the traditional requirement for mariners to aid those in distress at sea. As with misuse of the Red Cross emblem, the misuse of a distress signal would undermine its effectiveness and would jeopardize the safety of neutral vessels.

A third breach of good faith is the misuse of a flag of truce. "The white flag has traditionally indicated a desire to communicate with the enemy and may indicate more particularly, depending upon the situation, a willingness to surrender. It raises expectations that the particular struggle is at an end or close to an end since the only proper use of the flag of truce or white flag in international law is to communicate to the enemy a desire to negotiate. Thus, the use of a flag of truce or white flag in order to deceive or mislead the enemy, or for any purpose other than to negotiate or surrender, has long been recognized as an act of treachery."¹⁷

These three examples demonstrate that perfidy, in its broadest sense, is the intentional and wrongful use against the enemy of his adherence to the law of war.

Permissible Ruses

Just as it is impossible to compile a list of all possible acts of deception which would constitute perfidy, it is also impossible to compile a list of every permissible ruse. *NWP 9* lists camouflage, deceptive lighting, dummy ships, dummy armament, decoys, simulated forces, feigned attacks and withdrawals, ambushes, false intelligence information, electronic deceptions, and utilization of enemy codes, passwords, and countersigns;¹⁸ but this list is hardly exhaustive. The Army's list contains several additional ruses which merit examination by naval commanders, including pretending to communicate with imaginary reinforcements, laying dummy mines, and carrying out deceptive supply movements.¹⁹ As noted earlier, even though a deception is cited as a permitted ruse by *NWP 9*, that fact alone does not guarantee its legality. The use of a ruse is still limited by the requirement for absolute good faith. Camouflage provides an example of how an otherwise lawful ruse can become an act of perfidy. Ordinarily a lawful ruse, the use of camouflage is limited by the restriction that a commander cannot use a protected

sign to falsely identify his warship as a hospital ship.²⁰ Similarly, an aircraft cannot conceal its national markings as an act of camouflage.²¹

False Colors and Dummy Ships

The use of false colors and dummy ships are two traditional naval ruses which continue to have merit in modern warfare, but which, under certain circumstances, could constitute perfidy. Although often used in tandem, each has proven invaluable in battle when used alone.²² Under the law of naval warfare, a belligerent warship not in combat may fly false colors, either those of the enemy or those of a neutral country; but there is an absolute prohibition against flying false colors while actually fighting. Thus, commanders are required to hoist their true colors upon going into action.²³ Failure to do so constitutes perfidy. For example, in 1783, the French frigate *Sybille* deceived the British man-of-war *Hussar* by flying the British flag and pretending to be a prize in distress. When the *Hussar* approached to lend assistance, the *Sybille* opened fire without first hoisting French colors. Despite this disadvantage, the *Hussar* overpowered and captured the French ship. The victorious British captain then accused the *Sybille's* captain of perfidy and publicly broke his sword.²⁴ A more recent example of perfidy by failure to hoist true colors occurred during World War I when the British ship *Baralong*, while flying U.S. colors (the United States then being at peace with Germany), fired on a surfaced German U-boat.²⁵

One might wonder whether the use of false colors continues to have validity as a tactic long after the age of sail has passed. This issue was discussed quite extensively at the Naval War College in the early 1900s. The conclusion drawn was that due to developments in tactics and technology, the risk of being lured by false colors was even greater in modern times than in the day of sail: "The war vessel of early days was also very different from that of to-day. The approach of the slow sailing vessel of the seventeenth century would allow time to determine its identity in most instances and to provide for action in case of mistake. A single shot from a gun of the early type into a vessel of its day would not, in general, have an effect corresponding to a shot sent into the complicated mechanism of a modern war vessel. The fighting in the period before the middle of the nineteenth century played a very different part in determining the issue of the conflict. Surprise was not, in early conditions, a matter of gravest importance. In the old days the contests were relatively long. In modern battles the first shot or those following soon after seem to have been very often the decisive one."²⁶

During World War II, when a warship might have found herself in action at any moment while at sea, U.S. warships always flew their colors while underway.

While the significance of the "first shot" is certainly greater today than it was 80 years ago, or even 40 years ago, the importance of visual contact with a target has diminished in modern naval warfare. In this era of over-the-horizon targeting,

it is commonly assumed that ships will open fire without ever sighting the opponent's colors. Although the heyday of false colors may have passed, the ruse still has some validity in naval engagements where distance is not a factor, or where visual identification is needed before actual engagement. In the Persian Gulf, for example, visual identification is a practical necessity because numerous navies sail in close waters with small "generic" gunboats of the same or similar class. Furthermore, since other means of identification continue to present difficulties in implementing over-the-horizon targeting, visual identification remains the most reliable means of distinguishing friend from foe.

The law of naval warfare also sanctions the disguising of a ship as a neutral or friendly vessel,²⁷ but there are limits on the extent to which this can lawfully be done. For instance, as already noted, disguising a warship as a hospital ship or some other protected vessel is not permitted.²⁸ Probably the most famous use of disguise occurred during World War I when the legendary German cruiser *Emden* sailed into Penang harbor in Malaya under cover of darkness, outfitted with a fake fourth funnel to disguise her as a British cruiser which regularly made port at Penang. Although there is some question as to whether she was flying British, Japanese, or no colors at all when she entered the harbor, it is generally agreed that she did, in fact hoist her true German colors before firing a torpedo into the Russian cruiser *Zhemchug* which was at anchor in the harbor.²⁹

Although disguising ships is hardly a 20th-century innovation, certainly its most ingenious applications occurred during World War I. In addition to the exploits of the *Emden*, a remarkable use of disguised ships was Great Britain's Q-ship program, which was established to combat the phenomenal success of the German U-boats in the early stages of the war.³⁰ These Q-ships (also known as "mystery ships") were former merchant vessels outfitted with concealed armament and manned by Royal Navy officers and enlisted personnel disguised as merchant mariners. The disguises given to the ships themselves were ingenious. In addition to superficial changes such as civilian paint jobs and false names, the Q-ships used creative devices such as dummy funnels and false housings over guns.³¹

The Q-ship's crew carried this ruse to full measure. When spotted by a surfaced U-boat, the Q-ship would allow herself to be shelled. Some of the crew played the part of the "panic party" by pretending to abandon ship. The remainder lay on the deck near their guns until the submarine closed, which sometimes did not happen for hours. Once the submarine was within range, the Q-ship's gun crews sprang into action, raised the British battle ensign, and opened fire. Although the Q-ships sank only twelve U-boats, the major impact of the program was a shift in German submarine tactics from surface gun attack to submerged torpedo attack.³² One of the actions of the Q-ship's panic party raises an interesting point: the panic party would often throw into the lowered boat a packet of what appeared to be the ship's papers. The intention was to lead the

U-boat's commanding officer into approaching his "abandoned victim" so closely that the "victim's" gunners could overwhelm him quickly. This practice of feigning surrender may have been one of the reasons why the Germans decried the Q-ship program as barbarous and contrary to the rules of civilized warfare.

Does disguising a ship still have validity as a modern ruse? Certainly Tom Clancy appears to think so, and he is not alone. The concept of disguising merchant ships during war continues to receive attention from commentators.³³ But, regardless of the technical merits of a particular form of deception, the commander must know under what circumstances the deception is lawful. Otherwise, he may face the same shame as the captain of the *Sybilie*, but with far more serious consequences than having his sword broken by a successful enemy. Under U.S. law, which is designed to fulfill the letter and spirit of the law of armed conflict, he must answer to his own countrymen as well. With a minimal degree of familiarization, however, a commander can both gain victory and avoid potential criminal liability long after the battle through the thoughtful application of deception within the parameters of the law.

Lieutenant Commander Hall was serving as a military judge with the Northeast Judicial Circuit, Navy-Marine Corps Trial Judiciary, in Philadelphia when this article was first published.

Notes

1. CLANCY, *RED STORM* 150 (1986).
2. Article 0605 of U.S. Navy Regulations, 1973, states that "At all times a commander shall observe, and require his command to observe the principles of international law. Where necessary to the fulfillment of this responsibility, a departure from other provisions of Navy Regulations is authorized." For a discussion of the naval commander's duties under international law, see Regan, *International Law and the Naval Commander*, U.S. Nav. Inst. Proc. 51-56 (August 1981).
3. HUGHES, *FLEET TACTICS: THEORY AND PRACTICE* 287 (1986). Since strategic deception is generally conducted on a much wider scale, it can be even more effective than tactical deception. "The term 'strategic deception' refers to instances during war or intense international competition when countries attempt to mask their diplomatic and military strategy either by confusing or misleading their opponents. The deceiver's overriding objective is to gain a strategic advantage by encouraging an opponent to respond inappropriately to the real state of affairs." *The Organization Approach to Strategic Deception: Implications for Theory and Policy*, in *STRATEGIC MILITARY DECEPTION* 70 (Daniel & Herbig eds. 1981).
4. MCDUGAL & FELICIANO, *LAW AND MINIMUM WORLD PUBLIC ORDER* 668 (1961).
5. SUN TZU, *THE ART OF WAR* 66 (Griffith trans. 1963) quoted in Stuart & Tow, *The Theory and Practice of Chinese Military Deception*, in *STRATEGIC MILITARY DECEPTION*.
6. POTTER, *SEA POWER: A NAVAL HISTORY* 3 (2nd ed. 1981).
7. Article 24 of the Hague Regulations states that "Ruses of war and the employment of measures necessary for obtaining information about the enemy and the country are considered permissible."
8. U.S. Navy Dept., NWP 9, *The Commander's Handbook on the Law of Naval Operations*, (Washington), para. 12.1.
9. See generally, SPAIGHT, *WAR RIGHTS ON LAND* at 152-156, 229, 241-242, 404, 433-434, and 453-454 (1911); GREENSPAN, *THE MODERN LAW OF LAND WARFARE* 319-320 (1959); and WHITEMAN, *10 DIGEST OF INTERNATIONAL LAW* 378-400 (1968).
10. NWP 9, para. 12.1.2. The growing emphasis on joint operations means that a naval commander must be familiar with not only the law of naval warfare, but the law of land warfare and the law of aerial warfare, as well. An example situation would be a naval officer as commander of a Joint Task Force such as JTF 120 during Operations Urgent Fury in Grenada in 1983. It is useful, therefore, to examine how the other armed forces define perfidy; with few exceptions, the law of naval warfare parallels both the law of land warfare and the law

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of aerial warfare on this issue, but the definitions vary slightly. The Air Force states that “like ruses, perfidy involves simulations, but it aims at falsely creating a situation in which the adversary, under international law, feels *obliged* [emphasis provided in original source] to take action or abstain from taking action, or because of protection under international law neglects to take precautions which are otherwise necessary.” AFP 110-31, para. 8-3. The Army states that “in general, a belligerent may resort to those measures from mystifying or misleading the enemy against which the enemy ought to take measures to protect himself,” and that “it would be an improper practice to secure an advantage over the enemy by deliberate lying or misleading conduct which involves a breach of faith, or when there is a moral obligation to speak the truth.” FM 20-10, paras. 49-50.

11. HALLECK, INTERNATIONAL LAW; OR, RULES REGULATING THE INTERCOURSE OF STATES IN PEACE AND WAR 402 (1861).

12. SPAIGHT, AIR POWER AND WAR RIGHTS 169 (3rd ed. 1947).

13. HALL, A TREATISE ON INTERNATIONAL LAW 533 (6th ed. 1909).

14. NWP 9, para. 12.2. Article 23 (f) of the Hague Regulations expressly prohibits improper use of the “distinctive badges of the Geneva Convention.”

15. NWP 9, para. 12.2.

16. *Ibid.*, para. 12.6.

17. AFP 110-31, para. 8-6. NWP 9, para. 11.10.4 states that customary international law recognizes the white flag as “symbolizing a request to cease fire, negotiate, or surrender.” Article 23(f) of the Hague Regulations states that “it is especially forbidden to make improper use of a flag of truce. . . .”

18. NWP 9, para. 12.1.1.

19. FM 27-10, para. 51.

20. NWP 9, para. 12.2.

21. NWP 9, para. 12.3.2.

22. One of the first commentaries on the use of false colors appeared in France in 1696. U.S. NAVAL WAR COLLEGE, INTERNATIONAL LAW TOPICS AND DISCUSSIONS 1906 at 9 (1907). One of the earliest recorded incidents of ship disguise was in 1672 when British Captain Knevet, in command of *Argier*, disguised his ship “by housing his guns, showing no colors, striking even his flagstaff, and working his ship with much apparent awkwardness,” and thus deceived a Dutch privateer. The practice was apparently very widespread during the Napoleonic era. CAMPBELL, MY MYSTERY SHIPS 8-9 (1929).

23. NWP 9, para. 12.3.1.

24. COLOMBOS, THE INTERNATIONAL LAW OF THE SEA 454 (1962).

25. The *Baralong* incident prompted great controversy in 1915, not only because of the reputed improper use of neutral colors in action, but also because of allegations that *Baralong's* captain ordered the massacre of the survivors of the U-boat. See COLES, SLAUGHTER AT SEA (1986).

26. U.S. NAVAL WAR COLLEGE, n. 22 at 7-8.

27. NWP 9, para. 12.3.

28. *Id.* at para. 12.2.

29. See generally, VAN DER VAT, GENTLEMEN OF WAR: THE AMAZING STORY OF CAPTAIN KARL VON MULLER AND THE SMS EMDEN 86 (1983), wherein it is reported that *Emden* was flying British colors prior to action; COLOMBOS, at 455, wherein it is reported that *Emden* was flying Japanese colors; and REVIEW OF REVIEWS, TWO THOUSAND QUESTIONS AND ANSWERS ABOUT THE WAR 133 (1918), wherein it is reported that *Emden* was flying no colors whatsoever.

30. Despite the countless historical precedents for disguising a ship in combat, one commentator has credited a trip to the London Zoo at the source of inspiration for the Q-ship program. Artist Sir John Lavery was working on shades of camouflage when, on a trip to the zoo, he noticed that from a distance in the evening light, he could not distinguish between a donkey and a zebra. He then concentrated on altering the shape of a warship so that it would appear to be an unarmed merchant ship, COLES, *supra* n. 25 at 41-42.

31. CAMPBELL, *supra* n. 22 at 46-51.

32. SIMS, THE VICTORY AT SEA 195 (1930). The Q-ship program was repeated in World War II, but with generally dismal results. For a description of the U.S. program in World War II, see MORISON, THE TWO-OCEAN WAR 132 (1963). For the British program see ROSKILL, 1 THE WAR AT SEA, 1939-1945 at 136-137 (1954). The Japanese also used Q-ships to lure American submarines. BLAIR, 1 SILENT VICTORY 505 (1975).

33. Regan *supra* n. 2 at 55 states: “In the opening stages of a major conflict, the legal use of ruses may have great importance. For example, high-value naval auxiliaries at sea at the outbreak of hostilities may show neutral colors and slap on a quick coat of paint. Such ships might escape immediate first-strike destruction and be available for logistic support.” Also, see generally Crossland, *Unconventional Warfare Afloat*, U.S. Nav. Inst. Proc. 39-40 (November 1981).