

## Annex A

### DEPARTMENT OF THE NAVY, OFFICE OF THE CHIEF OF NAVAL OPERATIONS

#### THE COMMANDER'S HANDBOOK ON THE LAW OF NAVAL OPERATIONS.

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#### GENERAL

**6.2.5 War Crimes under International Law.** For the purposes of this publication, war crimes are defined as those acts which violate the law of armed conflict, that is, the rules established by customary and conventional international law regulating the conduct of warfare, and which have been generally recognized as war crimes. Acts constituting war crimes may be committed by the armed forces of a belligerent or by individuals belonging to the civilian population. Belligerents have the obligation under international law to punish their own nationals, whether members of the armed forces or civilians, who commit war crimes. International law also provides that belligerents have the right to punish enemy armed forces personnel and enemy civilians who fall under their control for such offences.

The following acts are representative war crimes:

#### **7.5 ACQUIRING ENEMY CHARACTER**

**7.5.1** All vessels operating under an enemy flag, and all aircraft bearing enemy markings, possess enemy character. However, the fact that a merchant ship flies a neutral flag, or that an aircraft bears neutral markings, does not necessarily establish neutral character. Any merchant vessel or civilian aircraft owned or controlled by a belligerent possesses enemy character, regardless of whether it is operating under a neutral flag or bears neutral markings. Vessels and aircraft acquiring enemy character may be treated by an opposing belligerent as if they are in fact enemy vessels and aircraft. (Paragraphs 8.2.1 and 8.2.2 set forth the actions that may be taken against enemy vessels and aircraft.)

**7.5.2** Before summoning a vessel to lie to, the warship should hoist its national flag. The summons is made by firing a blank charge, by international flag signal (SN or SQ), or by other recognized means. The summoned vessel, if a neutral merchant ship, is bound to stop, lie to, display her colours, and not resist. (If the summoned vessel is an enemy ship, it is not so bound and may legally resist, even by force, but thereby assumes all risk of resulting damage or destruction.)

**8.2.1 Enemy Warships and Military Aircraft.** Enemy warships and military aircraft, including naval and military auxiliaries, are subject to attack, destruction, or capture anywhere beyond neutral territory. It is forbidden, however, to target an enemy warship or military aircraft that in good faith clearly conveys a timely offer of surrender. Once an enemy warship has clearly indicated a readiness to surrender by hauling down her flag, by hoisting a white flag, by surfacing (in the case of submarines), by stopping engines and responding to the attacker's signals, or by taking to lifeboats, the attack must be discontinued.

Accordingly, enemy merchant vessels may be attacked and destroyed by surface warships, either with or without prior warning, in any of the following circumstances:

1. Persistently refusing to stop upon being duly summoned to do so.

## **11.7 PRISONERS OF WAR**

Combatants cease to be subject to attack when they have individually laid down their arms to surrender, when they are no longer capable of resistance, or when the unit in which they are serving or embarked has surrendered or been captured. However, the law of armed conflict does not precisely define when surrender takes effect or how it may be accomplished in practical terms. Surrender involves an offer by the surrendering party (a unit or individual combatant) and an ability to accept on the part of the opponent. The latter may not refuse an offer of surrender when communicated, but that communication must be made at a time when it can be received and properly acted upon--an attempt to surrender in the midst of a hard-fought battle is neither easily communicated nor received. The issue is one of reasonableness.

**11.9.5 The White Flag.** Customary international law recognizes the white flag as symbolizing a request to cease-fire, negotiate, or surrender. Enemy forces displaying a white flag should be permitted an opportunity to surrender or to communicate a request for cease-fire or negotiation.

**12. Treacherous request for quarter.** (i.e., feigning surrender in order to gain a military advantage).

**12.1.2 Prohibited Deceptions.** The use of unlawful deceptions is called "perfidy." 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. Feigning surrender in order to lure the enemy into a trap is an act of perfidy.

## **12.3 NEUTRAL FLAGS, INSIGNIA, AND UNIFORMS**

**12.3.1 At Sea.** Under the customary international law of naval warfare, it is permissible for a belligerent warship to fly false colours and disguise its outward appearance in other ways in order to deceive the enemy into believing the vessel is of neutral nationality or is other than a warship. However, it is unlawful for a warship to go into action without first showing her true colours. Use of neutral flags, insignia, or uniforms during an actual armed engagement at sea is, therefore, forbidden.

## **12.5 ENEMY FLAGS, INSIGNIA, AND UNIFORMS**

**12.5.1 At Sea.** Naval surface and subsurface forces may fly enemy colours and display enemy markings to deceive the enemy. Warships must, however, display their true colours prior to an actual armed engagement.

## **12.7 FALSE CLAIMS OF NONCOMBATANT STATUS**

It is a violation of the law of armed conflict to kill, injure, or capture the enemy by false indication of an intent to surrender or by feigning shipwreck, sickness, wounds, or civilian status (but see paragraph 12.3.1). A surprise attack by a person feigning shipwreck, sickness, or wounds undermines the protected status of those rendered incapable of combat. Similarly, attacking enemy forces while posing as a civilian puts all civilians at hazard. Such acts of perfidy are punishable as war crimes.

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