

“Sailing Under False Colors” An Historic *Ruse De Guerre*

By Hank Whipple

In literature, we are charmed by the cunning ship’s captain who deceives his enemy and gains victory or escape from pending destruction and loss of his vessel by falsely identifying his ship by the flag he is flying. The flying of false colors was a frequent *ruse de guerre* that C.S. Forester had Horatio Hornblower and Patrick O’Brien had Jack Aubrey employ in their fictional Napoleonic wars naval engagements during the age of fighting sail. These fictional captains feigned nationality, merchantman status or quarantine in order to deceive a substantially more formidable enemy. The national flag flown by a ship at sea is its ensign or colors. What colors does she fly? What is her nationality? Ancient tradition and the law of the sea required that all ships fly their true colors so that they could be positively identified.

The scope of this article is to examine the etymology, some historical highlights and today’s relevancy of the everyday expression “flying false colors.” The *ruse de guerre* was resorted to by all navies during the age of fighting sail. Our focus will be primarily on its Anglo-American application. The terrestrial use of flying false colors is contrary to modern international law. However, its naval application is still condoned by the Geneva Conventions and encompasses only the use of flags but not modern electronic means of identification.

The fourth century B.C. Chinese military strategist Sun Tzu opined that all warfare is based on deception.¹ “In world military history, hardly a memorable battle was fought, far less won, without large reserves of craftiness, nor has a strategist ever become one of the immortals without having associated his name with some wily war plan.”²

During the age of fighting sail it was possible to disguise a ship’s physical appearance in an effort to fool the enemy and gain the weather gage on him. The “cut of her jib” could result in the identification of the nationality of the sighted vessel long before her colors could be ascertained.³ Warships looked similar from navy to navy, and indeed had frequently been captured and renamed. Captains would try to deceive each

other by posing as friend not foe.⁴ Many warships were converted commercial vessels or captured enemy warships. During the period of 1691 to 1815 there were a total of 5,552 British, French and Spanish warships of which 852 (or 15 %) had been captured from the enemy.⁵ Word of such events traveled all too slowly thereby aiding the ruse of the false ensign. Additionally, sailing ships were of a general design and the difficulty in reading of signal flags permitted this stratagem to allow the faux flagged vessel to gain a momentary advantage over its adversary. Once lured to within hailing distance the false colors came down simultaneously with the hoisting of the true colors and often an accompanying broadside.⁶ The gentlemanly rules of civilized warfare required the true colors to be raised before engaging in actual combat although the time gap might only be seconds. This was considered to be the honorable thing to do. The rules permitted, in addition to flying false colors, the wearing of enemy uniforms or civilian dress and disguising the ship's rigging or profile. However, the same rules forbade using a ruse to lure an enemy ship onto the rocks.⁷

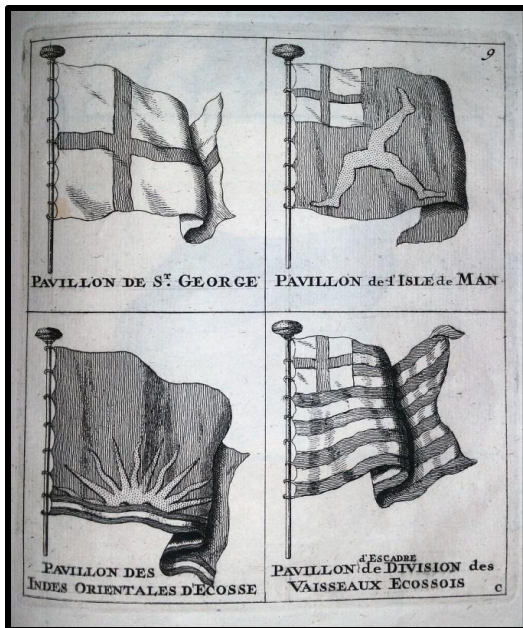


Figure 1. Maritime flags from L'Art de Batir...
Amsterdam: 1719.

“The flying of false colors ... was an old ruse used for centuries to both assist and defend against offensive actions by commerce raiders.”⁸ From the age of sail on into the twentieth century, warships often carried flags of many nations in their flag lockers in order to elude or deceive the enemy.⁹ In military parlance false colors means flying the national flag of some other nation thereby misidentifying your true nationality. The *ruse de guerre* of flying the national flag of the enemy or of a neutral is as old as the practice of naval-warfare itself.¹⁰

John Keegan when writing about the importance of real time intelligence to a military commander observes that “Sight is, of course, the principal and most immediate medium of real-time intelligence.” Strategic intelligence is a desirable commodity for the military commander.¹¹ Never-the-less, it had

become clear by 1918 that the future of naval communications lays with radio and not with flags.¹² “Accurate intelligence in the age of sail was a scarce commodity. Accurate intelligence is, of course, scarce at all times, but the sea, in the years before radar and radio, let alone satellite surveillance, was an arena of the unknown.”¹³ With the aid of a telescope even when visibility was good, visual recognition of friend or foe was only at relatively close quarters. A commander had no practical field of vision beyond the horizon. Twelve miles was the maximum distance at which there was inter-ship visibility, and, consequently, intercommunication or identification of national ensigns or signal flags from masthead to masthead.¹⁴

A few of the early recorded examples of the use of this *ruse de guerre*'s were its employment in the sixteenth century by the English captains John Hawkins and Sir Francis Drake. Hawkins when conducting his treasure seeking raid on the Spanish Main on 15 September of 1568 at San Juan de Ulua near Vera Cruz, Mexico ordered that no English flag be flown by any ship in his fleet or by any of the three captured Spanish ships as he hoped to stealthily enter the harbor before the garrison realized who he was. The ruse was a complete success. Drake, who was one of Hawkin's captains at San Juan, would attempt the same ruse in August of 1587 when entering Cadiz Bay with all banners furled so that the Spanish would not know who he was until it was too late to prevent him from sending his fireships against Spanish ships anchored in the bay. Once again the English achieved complete surprise.¹⁵

Two hundred years later and early in Captain James Cook's Second Great Voyage of Discovery there would be a reversal of the earlier English – Spanish roles with England being on the receiving end of the ruse. It was 23 July 1772 off the coast of Portugal with Cook's *HMS Resolution* in the lead followed, at a distance but within eyesight, by her consort the *HMS Adventure* commanded by Captain Tobias Furneaux. The *Adventure*'s log contains Furneaux's account of the incident. His ship was overtaken by a three Spanish ship squadron flying English colors and carrying a combined armament of almost two hundred guns. A shot across her bow caused the *Adventure* to hove to. The Spanish boarding officer asked Captain Furneaux what ship was that ahead. Furneaux replied that it was the *HMS Resolution* commanded by Captain James Cook. The Spanish knowing about and admiring Cook's exploration of the south

seas informed Captain Furneaux that Spain had the highest respect for Cook, intended no malice and that the British should proceed wishing them a *bon voyage*.¹⁶

During the American Revolution it was usually the Continental Navy that would use false colors in order to try to fool the vastly more superior Royal Navy. Captain Joshua Barney of the Pennsylvania state cruiser *Hyder-Ally* while descending the Delaware River on 8 April 1782 observed the much larger British sloop-of-war, *General Monk*, and the frigate *HMS Quebec* patrolling off Cape May blocking any passage to the sea. The British captains conferred deciding that the shallower draft *General Monk* should be the aggressor. Her attack was to be aided by the British privateer brig *Fair America*. In the shallow waters, the *General Monk* briefly ran aground and the privateer decided to chase a quarry other than the *Hyder-Ally*. After a heavy half hour's battle, the *Hyder-Ally* emerged victorious. Barney now turned his attention to the *HMS Quebec* which was cruising at the river's mouth about two miles away. Barney ordered his signalman to run the British Jack up on both ships in an attempt to have the *Quebec's* captain believe that the Royal Navy had triumphed. To further the ruse, the *Hyder-Ally* was placed astern of the *General Monk* in the position of naval submission. Barnes then used the coming of night to make good his escape.¹⁷

An attempted British false colors ruse did not deceive John Paul Jones. He was cruising the fast sailing, 70 foot sloop-of-war *Providence*, armed with 12 four-pound guns, off the Delaware coast when overtaken on 6 August 1776 by *HMS Solebay* carrying 26 twelve-pound guns. When within pistol shot, Jones raised the American ensign. The British captain also raised the American ensign and fired a few shots to leeward, the international signal for "I am friendly." Knowing that the Continental Navy had no frigates that size, Jones was not taken in and he beat a hasty retreat.¹⁸

On another occasion, Jones on 17 April 1778 while commanding the 116 foot, 308 ton, 18 gun, sloop-of-war *Ranger* was off the Isle of Man when he encountered the *HM Revenue Cutter Hussar* whose captain later reported that the captain of the *Ranger* was wearing a large white cocked hat of the French or Russian navy while flying the British Union flag at the top of its main masthead and from its mizzenmast a Dutch pennant. After maneuvering within range, *Ranger* fired a broadside but the nimble

Hussar escaped by sailing into water too shallow for the *Ranger* to follow, a trick Jones himself had previously used to save the *Providence*.¹⁹

Jones in the fall of 1779 was commanding the 152 foot, 42-gun frigate *Bonhomme Richard*, originally the East Indiaman *Duc de Duras*,²⁰ which was serving as a commerce raider. The intention was to terrorize British civilians along the coast at Leith, Scotland. He sailed up the Firth of Forth with his officers and himself dressed in Royal Navy uniforms while flying the white ensign of the Royal Navy.²¹

In January of 1790 Jones was on board the 20 gun sloop-of war *Ariel* which had been captured from the British by the French and then loaned to the Continental Navy. She encountered near the West Indies the faster and better armed British privateer *Triumph* out of New York. *Ariel* was loaded with French gun powder bound for America and could not out run the privateer. So Jones tried a ruse. His marines were kept out of sight, the guns were not run out, the ship was flying British colors with Jones wearing a British officer's uniform. Once overtaken by the privateer, Jones engaged her captain in conversation with the vessels being only thirty feet apart. Jones was trying to get Captain John Pindar to come on board. The ruse not working, Jones ran out the guns, the marines appeared, and the American flag was run up promptly followed by a broadside. After a brief encounter, *Triumph* surrendered hauling down its flag requesting quarter. *Ariel* ceased firing and while the American's were cheering, Pindar pulled a trick of his own by raising full sail and making a quick getaway. Jones would later object to Pindar's tactic, for to Jones it was one thing to use a ruse to get an opponent to surrender, but it was certainly not "gentlemanly" to pull a ruse of feigned surrender after the battle had been won fair and square. One might well wonder, however, how could Jones who had used false colors to gain the advantage in the first instance then complain about someone else pulling another ruse from the seaman's bag of tricks?²² The answer may be the Americans' loss of the prize money.²³

The flying of false colors came into play during the Barbary War when Lieutenant Commander Stephen Decatur had been ordered to torch the 157-foot, 36-gun frigate *USS Philadelphia* which had fallen into enemy hands at Tripoli in February of 1804. The vessels to be used were the prize *Intrepid*, a lateen rigged 64-ton, 4-gun, 60-foot ketch and the 93-foot, 16-gun, brig *Syren*. The *Syren* newly painted with her rig altered to

resemble a Moorish trader was flying British colors with the bulk of the crew out of sight and Decatur on the quarterdeck dressed in Maltese garments as the *Intrepid* entered the harbor of Tripoli while the *Siren* stood at her station at the entrance to the harbor. The ruse worked. *Intrepid* came along side, boarded, secured the *Philadelphia* after some hand-to-hand fighting and then set her afire. The *Intrepid* and her crew made good their escape from the inferno.²⁴

A different type of “false colors” involved the *USS Chesapeake*. The 153-foot, 44-gun ship was one of the six frigates authorized by Congress in 1794. She became the focal point of the “Chesapeake Incident” of June 22, 1807 while commanded by Commodore James Barron during the Quasi War with France. The frigate was outward-bound from Chesapeake Bay to the Mediterranean and headed for the open sea. She passed by at some distance a group of British men-of-war lying at anchor. The 50-gun *HMS Leopard* weighed anchor following the *Chesapeake*. The American’s deck was a shambles of unstowed gear and supplies, had many green crew and was totally unfit for any armed engagement. When the vessels were about ten miles out to sea, the *Leopard* closed the distance and signaled she had messages to send abroad. It was a common practice at that time for American and British warships to carry dispatches to foreign stations for one another. Upon gaining the American’s deck, the British lieutenant informed Barron that he had been ordered to search the vessel for Royal Navy deserters. Being contrary to U.S. Navy directives, Commodore Barron refused. Eventually three broadsides were fired by the British at the defenseless *Chesapeake* which had not fired a single shot. Three *Chesapeake* crewmen were killed and 18 wounded. Barron struck his colors, the British boarded and four Royal Navy “deserters” were removed.²⁵

The Union was the first combatant to hoist false colors during the American Civil War. The Navy sent the sidewheel sloop-of-war *USS Powhatan* from New York City with relief supplies for Fort Sumter at Charleston, SC at the start of the war. She carried 16 guns, weighed 3,765 tons and was one of the three fastest and heaviest steamships in the Union Navy.²⁶ Prior to clearing New York Harbor, a tug overtook her delivering a change of orders. She now was to go to Pensacola. In route, David D. Porter had her conspicuous gunport shutters painted over to disguise her as a British mail steamer.

Upon entering the harbor at Pensacola, the *Powhatan* was flying British colors. Porter's goal had been to try to use the ruse to run past the Confederate shore batteries.²⁷



Figure 2. From Maritime Flags of All Nations. London: 1853.

The flying of false colors was also a legitimate and common *ruse de guerre* of the Confederate Navy during the Civil War.²⁸ The twin paddlewheel steamer *SS Tennessee* was tied up at a wharf in New Orleans when the war commenced. She was promptly purchased by the Confederacy to be used as a blockade runner through Union lines. However, on 25 April 1862 before the vessel could be put into that endeavor, Admiral David

Farragut's fleet entered the Mississippi River from the Gulf of Mexico and captured the city along with the *Tennessee*. Her attempted ruse of flying the French Tricolor failed to fool Farragut. She became the *USS Tennessee* on 8 May 1862.²⁹

The Confederate 437-ton steam-barkentine commerce raider *CSS Sumter* was commanded by Raphael Semmes and carried four 32-pounders in broadside and an 8-inch pivot gun.³⁰ In her sail locker she possessed a complete set of the world's national flags and naval ensigns.³¹ When trying to enter the port of Morehead City, NC in the fall of 1861, the 1,000-ton side-wheeler *CSS Nashville*, commanded by Lieutenant Robert Pegram, ran the Union naval blockade while flying US colors.³² During 1861 and 1862 the *Sumter* would destroy or capture 18 Union commercial vessels while often using the ruse.³³

By flying the red ensign of the British merchant marine to avoid the restrictions of Britain's Foreign Enlistment Act,³⁴ the future Confederate commerce raider *CSS Florida* was able to successfully sail from England under the command of Lieutenant John Maffit. The *Florida* flew English colors until she sailed safely to a neutral, foreign port. The British colors came down when she was commissioned the 700-ton *CSS Florida* and the Stars and Bars of the Confederacy ascended to her peak on 17 August 1862. Her

armament consisted of two 7-inch Blakely rifles mounted in pivot with six 31-pounders in broadside. She would later run the blockade at Mobile while flying the English merchant red ensign as she passed the harbor fortifications of Fort Morgan and the four heavily armed Union gunboats: *USS Oneida*, *USS Winona*, *USS Rachel Seaman* and the *USS Cayuga*.³⁵ The *Florida* during 1862-1864 released eight, burned seven, bonded ³⁶one and recaptured two merchantmen.³⁷

Taking a trick from Maffit's ruses, one of his officers, Lieutenant Charles Read, commanding the captured prize *Clarence*, was able to capture the bark *Tacony* by hoisting the inverted US ensign feigning distress in order to lure the *Tacony* close enough for capture.

Another successful English built sail/steam Confederate commerce raider was the steel hull, 1,100 ton (English measurement), *CSS Shenandoah*, commanded by Lieutenant Commander James I. Waddell whose orders of October 1864 were to seek out and utterly destroy the Union whaling fleet thereby causing great economic damage to the economy of New England. Her armament consisted of four 8-inch, two 32-pounders and two 12-pounders.³⁸ In the course of her raiding career during 1864-1865, she would adversely affect 38 Union commercial ships, of which thirty were burned, two scuttled and six bonded with an estimated vessel and cargo loss of \$1.2 million (1865 US dollars having a 2014 value of \$18.3million) and the value of bonded vessels being \$118,600 (1865 US dollars having a 2014 value of \$1.75 million).³⁹ The *Shenandoah* departed England on 7 October 1864. Two weeks later while off Madeira Island she had her first opportunity to hoist one of her many assorted foreign ensigns. A bark was sighted that looked thoroughly American and the chase was on. Within an hour, the fast sailing raider had shortened the distance between the ships so that colors could be read. The "Mogul of London" was flying British colors. Because of her obvious Yankee look, Waddell was determined to board. He had English colors hoisted to allay any suspicions and a blank charge was fired to halt the *Mogul*. The boarding officer returned after checking her papers and reported she indeed was of British registry. She was of Yankee origin but had been sold or transferred to an English owner. Shortly thereafter the ships parted company.⁴⁰

The *Shenandoah* once in the North Pacific whaling grounds devastated the whaling fleets through the ruse de guerre of hoisting English, American and other foreign [non-Confederate] ensigns.⁴¹ To further the deception, Waddell often ordered his officers and crew to doff their gray caps and uniforms and don every article of blue clothing they could muster. Further, he would often disguise the ship's profile by lowering her smokestack⁴²

True to the gentlemanly rule of naval warfare, Waddell would always order the faux flag lowered and the Stars and Bars raised before commencing any armed action. Prisoners were always removed to the *Shenandoah* before destroying a ship. They then would be offloaded to a bonded or a neutral ship or port as soon as it was possible to do so. The *Shenandoah* would sink, burn, capture or contribute to the destruction of thirty eight ships, mostly whalers, and take more than a thousand prisoners. The last ship taken would be on 22 June 1865, some three months after Lee had surrendered at Appomattox. News in the Arctic in 1865 traveled slowly. It was on 8 August 1865 that a British ship informed Waddell that the Civil War was over.⁴³ Waddell, the crew and the *Shenandoah* arrived back in England on 6 November 1865. The ship was abandoned to the British who eventually sold her to the sultan of Zanzibar.⁴⁴

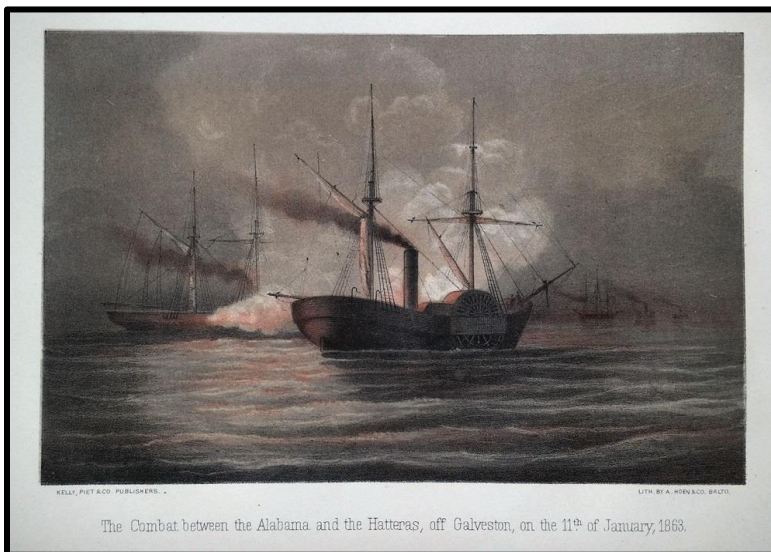


Figure 3 ALABAMA and the HATTERAS. From: My Adventures Afloat by Raphael Semmes.

The most successful of all of the Confederate commerce raiders was the *CSS Alabama* commanded by Captain Raphael Semmes. She was built in England for the Confederate Navy in 1862 as the barkentine *Enrica* having a screw propeller.

The *Alabama* was 220 feet long with a 31 foot 9 inch beam, displaced 1,050 tons and carried six 32-pounders, one 110-pounder, and one 68-pounder.⁴⁵ It was off Galveston on 11 January 1863 that she

observed five US warships bombarding the city. While flying the white ensign of the Royal Navy she was challenged to identify herself by the Union gunboat *Hatteras*. Semmes replied, “Her Britannic Majesty’s ship *Vixen*.” Lieutenant Commander Homer Blake, USN, was not convinced so a boat was sent over to investigate. The ruse was over, Semmes dropped the white ensign, raised the Stars and Bars, and then simultaneously fired a broadside into the *Hatteras* prior to making their escape.⁴⁶ The *Alabama* would take or sink 66 American prizes before she was sunk by the *USS Kearsarge* in a duel off Cherbourg, France on 19 June 1864. In the years 1862 through 1864, she would account for forty two Union ships burned, ten bonded, one sunk, one



Figure 4. The ALABAMA and the KEARSARGE from: My Adventures Afloat. By Raphael Semmes.

taken into the Confederate Navy, one released and one sold having an aggregate value of \$4,613,914 (1865 US dollars having a 2014 value of \$69 million) for burned vessels and \$562,250 (1865 US dollars having a 2014 value of \$8.4million) for bonded vessels.⁴⁷

The Confederate raiders, while frequently employing the faux flag ruse, seized or destroyed 244 Union ships for a total tonnage of 110,000 and their cargoes during the Civil War. Their economic impact was so severe that 800,000 tons of commercial Union ships were re-flagged to neutral nations because of the exorbitant risks and high insurance costs.⁴⁸ Many would never return to American registry when hostilities ceased. This was the start of the demise of the US merchant fleet which continues to this day. The ravaging of the whaling fleets was the coup de grace in an already dying industry. The American claims against Britain for reparations for the damages caused by the

Confederate raiders that had been provided by England were collectively known as the “Alabama Claims”. It took until September of 1872 to fully resolve the claims at a cost to Great Britain the sum of \$15.5 million (1872 US dollars having a 2014 value of \$232 million).⁴⁹

The effectiveness of flying faux colors was gradually reduced as navies began to each have their own specific classes of one-design ships. There were, arguably, “classes” of vessels dating back to 1677 when Samuel Pepys, Secretary of the Royal Navy, directed that British ships were to be built with a uniform tonnage, armament and overall design.⁵⁰ However, it was not until the last quarter of the nineteenth century with the advent of steel, steam-powered warships with cookie-cutter like designs recognizable by their distinct silhouettes that true classes of ships emerged. By WW I, the vast majority of naval vessels were being built as classes.⁵¹ However, it was the advent of electronic means of identifying friend from foe in the twentieth century that would eventually make the flying of false colors obsolete.

As late as World Wars I and II, the *ruse de guerre* of flying false colors was still in use. The British liner *Lusitania* on her final fateful voyage across the Atlantic was flying American colors. Secretary of State William J. Bryan in his letter of 10 February 1915 to the British strenuously objected to English merchantmen using the Stars and Stripes of neutral America. The terse British reply defending their use of the old *ruse de guerre* of navigating under false colors reminded Bryan of America’s identical practice throughout the Civil War.⁵²

The British Q-ships were part of England’s WWI anti-submarine campaign. They enjoyed temporary but diminishing success.⁵³ These small merchant ships were fitted with concealed armament and used by the British Navy during the First World War in home waters and the Mediterranean as a lure for U-boats. The holds of the vessels were usually filled with timber to provide additional buoyancy in the event of being torpedoed. The armament was concealed behind shutters, the officers and men wore plain clothes, and the ships sailed under the British red merchant ensign, the white naval ensign being broken out only when they revealed their true nature.”⁵⁴ The Q-ships of the Royal Navy often painted a neutral country’s commercial marks on their smokestack, changed the hull color, unrolled huge linen cloths carrying neutral colors along the ships’

sides, or simply hoisted a false national flag and having an appropriate name and hailing port on the stern. The 180 World War I Q-ships would only account for 11 U-boats sunk and approximately 60 damaged. After entering the war, America had only one decoy ship, the *Santee*. But true to the rules of gentlemanly naval warfare, the proper ensign was hoisted before firing commenced. During World War II, the Admiralty outfitted only eight decoy ships but none of them ever had a U-boat contact.⁵⁵

Auxiliary cruisers operated in both World Wars utilizing false colors to gain the advantage over their adversaries. The German commerce raiders of WW II posed as peaceful traders flying neutral flags, often Norwegian, and adopting different names in order to lure passing ships into their webs before they pounced. The *Mowe* accounted for the destruction of 123,000 tons of shipping in four months while the *Wolf* sank 135,000 tons between November 1916 and February 1918.⁵⁶

A notable World War II example was the German commerce raider *Kormoran* which had been converted from a merchantman to an auxiliary cruiser having carefully concealed armament. The *Kormoran* using the ruse surprised and sunk the Australian light cruiser *HMAS Sydney* in 1941 causing the greatest loss of life in the history of the Australian Navy. *Kormoran* was also lost as a result of the duel with the *Sidney*.⁵⁷

There have always been laws of war. “If legal theory takes an interest in warfare tactics, it is because it has long prescribed that the use of deception should have its limits, and that preserving a modicum of good faith is essential even among enemies.”⁵⁸ Throughout history, opposing nations have established ground rules for war, but until the nineteenth century these rules applied only to a particular conflict and the countries involved. With the 1864 Geneva Conventions, rules of war became international. Dating from the Middle Ages, “a knight always trusted the word of another knight, even if he were an enemy. Perfidy was considered a dishonor which could (never) be redeemed.”⁵⁹

In 1977, “a move was made to reaffirm and develop rules of humanitarian law (and) the opportunity was seized to draft a clear definition of the notion of perfidy.”⁶⁰ “Literally speaking, perfidy means the breaking of faith.”⁶¹ Perfidy is the deliberate misuse of an international law protection.⁶² The use of false national flags in terrestrial warfare was considered a perfidy and consequently banned by Section II, Chapter 1,

Article 23 of the Hague Convention With Respect To the Laws And Customs of War On Land (Hague II)(29 July 1899). Since the flying of false colors ruse has been barred for over a century by international law with respect to terrestrial warfare, is it now a violation of international law for warships to fly false colors?

There is no mention of this maritime *ruse de guerre* in the Geneva Conventions of 1864 or the Hague Conventions of 1899 or 1907. Currently, “(t)he rules regarding honor are basically concentrated in Articles 37, 38 and 39” of the Geneva Conventions of 1949.⁶³ They prohibit the killing, injuring or “capture of an adversary by resort to perfidy.”⁶⁴ “The following acts are examples of perfidy: feigning of civilian, non-combatant status or feigning protected status by use of emblems of neutral or other states not parties to the conflict.”⁶⁵ Article 39(2) of Part III prohibits the use “in armed conflict of the flags of neutrals or other states not parties to the conflict (while) engaging in attacks or in order to shield, favor, and impede military operations.” Up to this point, it would appear that the flying of false colors by a warship would be perfidious and, therefore, illegal under present international law. However, the article concludes with section 3 which states: “Nothing in this Article or in Article 37(1)(d) shall affect the existing generally recognized rules of international law ... applicable to the use of flags in the conduct of armed conflict at sea.” [Emphasis added] Consequently, pursuant to present international naval warfare law, as opposed to terrestrial warfare, the historic gentlemanly naval ruse of the flying of false colors is actually sanctioned. “As regards the law on naval warfare ... it is true that when a warship during pursuit displays the enemy flag or a neutral flag, such conduct is acceptable, or at least tolerated, whether the ship in question is pursuing or is trying to escape from it, though it is not accepted that fire should be opened in these conditions.”⁶⁶

While it is customary when engaged in battle or cruising under wartime conditions at sea to have the American national ensign displayed, both the United States Code and the Navy regulations pertaining to flying the ensign are silent with respect to the *ruse de guerre* of flying false colors in order to deceive the enemy.⁶⁷ The answer to our posited question lies elsewhere in the Navy’s rules.

The United States Navy’s *Commander’s Handbook on the Law of Naval Operations (NWP-Rev A)* at paragraph 12.3.1 reaffirms and uncritically endorses the

historic, continued and customary usage of flying false colors. It is based on Article 39(3) of Part III of the Geneva Conventions of 1949 and its Commentary Number 1582.⁶⁸

The paragraph states:

Under the customary international law of naval warfare, it is permissible for the belligerent warship to fly false colors 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 colors. Use of neutral flags, insignia, or uniforms during an actual armed engagement at sea is, therefore, forbidden.

The *Annotated Supplement* to the Navy's handbook at page 12-6 reiterates the historic ruse:

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

For over a century, terrestrial warfare has barred the flying of false colors. The reliance of modern armies on flags for purposes of identification no longer is a factor in modern land warfare rendering the issue moot in that venue. But what about modern identification such as satellite intelligence gathering and identification of friend or foe [IFF]. “(M)ost combatants in naval warfare up to the present have employed (variations of the) *ruse de guerre* – including most recently, electronic versions of the old trick.”⁶⁹ As on the land, flags alone today as a source of identification would make the opportunity to use the historic ruse remote. They no longer serve their historic function of primary identification. So why even maintain the naval flag exception to illegal perfidious acts for falsely gaining an adversary's confidence to his subsequent detriment? Are we able to substitute in Article 39(3) the term “electronic measures” for “flags”?

“The rules regarding honor are basically concentrated in Articles 37, 38, and 39” of Part III of the Geneva Conventions of 1949.⁷⁰ Article 38 focuses on recognized emblems and is not applicable to this inquiry. Perfidy is the subject of Article 37 and emblems of nationality are the subject of Article 39. The “feigning of a protected status by the use of signs ... of a neutral or other State not Parties to the conflict” is Article 37(1)(d). The dishonorable, and therefore the internationally illegal, thing to do is to intentionally “mislead an adversary or to induce him to act recklessly ...”⁷¹ A false electronic IFF signal, for example, would be a violation of this subsection as is illustrated by Commentary Number 1500 which, where applicable, lays out the three elements of a prohibited perfidy: (1) inviting the confidence of an adversary, (2) the intent to betray that confidence and (3) to in-fact betray that confidence to the other’s detriment. Can such an electronic ruse be salvaged by Article 39(3)?

One might argue tradition or the exigencies of modern naval warfare to support the present use of faux electronic “colors”. The better argument is that one cannot substitute the term “electronic means” for “flag” in the exception contained in Article 39(3). This is because the existence of electronic means of identification was well known when the Commissioners drafted the article and when 190 nations ratified it in 1977. The exception is specifically limited to flags and not flags or their equivalents. Had the Commissioners wanted to include electronic measures they would have done so.

We are by the process of elimination left with the permissible naval ruses of the alteration of ship silhouettes or disguising their national origin by hoisting false colors. It is questionable whether today anyone could get close enough to an adversary’s vessel for either of these visual ruses to be effective. However, terrorist boats or vessels flying false colors might be effective against a merchantman. Hopefully, no naval commander would allow any vessel to get close enough to the warship to be a threat regardless of the colors she may fly.

Naval types are often a bit traditionalist and might well keep an archaic rule in place, even if it is no longer useful, especially if it is harmless to do so. What remains of the historic *ruse de guerre* of flying false colors is an intriguing history of wily, aggressive captains who used the ploy to honorably gain a temporary military advantage over their adversaries.

Endnotes

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- ¹ Sun, Tzu, translated by Griffith, S.B., 1963, p. 66
- ² Politakis, George P., *Modern Aspects of the Laws of Naval Warfare and Maritime Neutrality*, The Graduate Institute of International Studies, Geneva, 1998, p. 268
- ³ Kemp, Peter, editor, *The Oxford Companion To Ships & The Sea*, Oxford University Press, London,, 1 p. 221
- ⁴ Herman, Arthur, *To Rule the Waves: How the British Navy Shaped the Modern World*, Harper Collins Publishing, Inc. New York, 2004, p. 203
- ⁵ Hill, J.R., General Editor *The Oxford Illustrated History of the Royal Navy*, Oxford University Press, Oxford, 1995, p. 125; Coggins, Jack, *Ships and Seamen of the American Revolution*, Stackpole Books, Harrisburg, Pa., 1969, p. 180
- ⁶ Coggins, p. 180
- ⁷ Thomas, Evan, *John Paul Jones*, Simon & Schuster, New York, 2003, p. 61
- ⁸ Chaffin, Tom, *Sea of Gray: The Around-the-World Odssey of the Confederate Raider Shenandoah*, Hill and Wang, New York, 2006, p. 83
- ⁹ While most nations have a single ensign, Great Britain has three: white for Royal Navy, red for the merchant marine and blue for naval auxiliary vessels of the merchant navy. Kemp, pp. 182, 287
- ¹⁰ Coggins,t p. 180; Wilson, Timothy, *Flags at Sea*, Naval Institute Press, Annapolis, MD, 1986, p. 10; Kemp, p.182; Isil, Olivia A., *When a Loose Cannon Flogs a Dead Horse There's the Devil to Pay*, International Marine Press, Camden, ME, 1996, p. 81; <http://en.wikipedia.org>; www.history.navy; <http://www.ouroceanworld.com>
- ¹¹ Keegan, John, *Intelligence in War*, Alfred A. Knopf, New York, 2003, p. 18
- ¹² Ibid, p. 20
- ¹³ Ibid, p. 26
- ¹⁴ Ibid, pp. 26 – 27; Maloney, Elbert S., *Dutton's Navigation & Piloting, 13th Ed*, Naval Institute Press, Annapolis, MD, 1978, p.138
- ¹⁵ Payne, Lincoln P., *Warships of the World to 1900*, Mariner Books, Boston, 2000, p. 149; Herman, Arthur, *To Rule the Waves: How the British Navy Shaped the Modern World*, Harper Collins Publishing, Inc., New York, 2004, pp. 9 and 112,
- ¹⁶ Aughton, Peter, *Resolution: The Story of Captain Cook's Second Voyage of Discovery*, Cold Spring Press, Cold Spring Harbor, NY, 2005, pp. 32 – 32; Beaglehole, J.C., *The Life of Captain James Cook*, Stanford University Press, Stanford, CA, 1974,p. 306

Cook's account is much more bland than Furneaux's. The *Resolution's* log entries state:

“Wednesday 22nd. ... the Master (of a French vessel) inform'd that he

had been brought too the day before by three Spanish Men of War
under English Colours. ...

“Thursday 23rd. ... At 2 o’Clock in the PM pass’d by the Spanish Ships
above mentioned the sternmost of which housed English colours and
fired a gun to leeward and soon after hoisted his own proper colours an
spoke with the Adventure.”

Beaglehole, J.C., Editor, *The Journals of Captain James Cook On His Voyages Of Discovery. Vol. II. The Voyage Of The Resolution And Adventure 1772 – 1773*, Hakluyt Society, Cambridge University Press, 1961, pp.18 – 19

Cook’s version, though less dramatic, would appear to be more accurate. This was a period in which England, France, and Spain were not at war and when protocol between ships of war was pretty well defined. What is curious is the Spanish use of false flags. It is worth noting that the location of the incident was still regarded by the Spanish as their maritime preserve, but they were also sending scientific expeditions into the Pacific as well as protecting their Manila-Acapulco trade route.

¹⁷ Norton, Louis Arthur, “A Victory ‘By the Rule of the Contrary’”, *Naval History*, April 2004, U.S. Naval Institute, Annapolis, MD, pp. 30 – 34. The *General Monk* was taken into the Continental Navy as the 32 gun ship *General Washington* which was reputedly a fast-sailer and a good ship. Chappelle, Howard I., *The History of The American Sailing Navy*, Bonanza Books, New York, 1944, p. 97

¹⁸ Chappelle, pp. 54-55; Morison, Samuel Eliot, *John Paul Jones*, Time Incorporated, New York, 1959, pp. 59 – 6; Thomas, pp. 59-61

¹⁹ Chappelle, pp. 86, 551 Morison, pp. 103, 136-137; Paine, p. 143; Thomas, pp. 117-118

²⁰ Chappelle, p. 97; Kemp, p. 95

²¹ Chappelle, pp. 97, 533; Morison, p. 208; Paine, p. 21; Thomas, p. 175

²² A feigned surrender that is not intended to and does not result in the death, injury or capture of an adversary is not a violation of Article 37(1)(a), Part III of the Geneva Conventions of 1949. Consequently, from a historical point, it was a permitted, and, therefore, gentlemanly, ruse .

²³ Chappelle, pp. 97, 533; Morison, pp. 293, 303 – 304, 309 – 310; Thomas, pp. 256 – 257

²⁴ Chappelle, pp.162, 184, 164,190- 193, 544, 549, 555; Martin, Tryone G., “A ‘Most Bold & Daring Act’”, *Naval History*, February 2004, U.S. Naval Institute, Annapolis, MD, pp. 20 – 23; Paine, p. 85

²⁵ Chappelle, pp. 129, 266, 535; Miller, Nathan, *U.S. Navy: An Illustrated History*, U.S. Naval Institute Press, Annapolis, MD, 1977, pp. 75 –76; Payne, p. 35

²⁶ Hearn, Chester G., *Gray Raiders of the Sea: How the Confederate Warships Destroyed the Union’s High Seas Commerce*, Louisiana University Press, Baton Rouge, LA, 1992, p. 11

²⁷ Musicant, Ivan, *Divided Waters*, Castle Books, Edison, NJ, 2000, pp. 26 – 27; Anderson, Bern, *By Sea and by River: The Naval History of the Civil War*, Plenum Publishing Corporation, New York, 1962, pp. 22 – 24; Paine, pp. 133-134

²⁸ Hoehling, A.A., *Damn The Torpedoes! Naval Incidents of the Civil War*, Gramercy Books, New York, 1989, p. 3

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- ²⁹ Vesilind, Priit J. *Lost Gold of the Republic*, Shipwreck Heritage Press, LLC, Las Vegas, NA, 2006. p 78
- ³⁰ Semmes, Raphael, *Memoirs of Service Afloat*, Louisiana State University Press, Baton Rouge, LA, 1868, p. 127; Hearn, p. 10; Paine, p. 169
- ³¹ Musicant, p. 327. As late as the Civil War because the weather quickly tore them to shreds in a few days, ships ensigns normally were not flown except in port, in battle, or for identification. Musicant, p. 112
- ³² Ibid, p. 332
- ³³ Hearn, p. 311
- ³⁴ The act was designed to prevent British citizens from fitting out, equipping, or arming ships for combat in wars where Britain remained neutral by impounding any ships that were ultimately bound for a belligerent nation. [Ibid, p. 102] The three British built Confederate commerce raiders “were masterpieces of design and technology, fast under sail or steam, self-contained and self-sufficient, capable of staying at sea for long periods without refueling.” [Ibid, p. xiii]
- 35 Ibid, pp. 72, 63; Musicant, p. 335; Paine, p. 59
- ³⁶ Bonding a vessel meant that the owners of the captured vessel through its captain would sign a bond to the effect that in exchange for the release of the vessel [and often taking the prisoners off the raider] the owners would pay to the raiders government the value of the ship and its cargo at the end of the hostilities.
- 37 Hearn, pp. 311 – 312; Musicant, p. 339
- 38 Paine, p. 161
- 39 Hearn, pp. 316-317
- 40 Schooler, Lynn, *The Last Shot*, Harper-Collins, New York, 2005, pp. 51-52
- ⁴¹ Hoehling, p. 180
- 42 Schooler, pp. 217, 227
- 43 Paine, p.169
- 44 Schooler, pp. 55, 67,83, 104, 163, 178, 203, 228, 230, 274, 296 – 297
- 45 Paine, p. 4
- ⁴⁶ Hoehling, p. 31
- 47 Hearn, pp. 315-316; Musicant, pp. 315-316, 343-353
- 48 Hearn, p. xv. Union merchant ships would also fly British colors in an attempt to avoid Confederate raiders. Semmes, p. 627
- 49 Hearn, p. 308; Schooler, pp. 299 – 300; Musicant, p. 367]
- 50 Goodwin, Peter, *Nelson’s Ships: A History of the Vessels in Which He Served 1771 - 1805*, Stackpole

Books, Mechanicsburg, PA, 2002; Parsons, Ian, Editor, *The Encyclopedia of Sea Warfare*, Thomas Y. Crowell Company, New York, 1975, pp. 21, 22, 26, 32; Kemp, p. 786; Ireland, Bernard, and Grove, Eric, *Jane's War At Sea: 1897 – 1997*, HarperCollins Publishers, London, 1997, p. 110

51 Politakis, p. 292

52 Hill, J.R., editor, *The Oxford Illustrated History of the Royal Navy*, Oxford University Press, Oxford, 1995, p. 310

53 Kemp, p. 677; Ireland, p. 106

54 Politakis, pp. 274-275, 277

55 Ibid, pp. 279-280

56 Janes, p. 150; <http://en.wikipedia.org>]

57 Ibid, p. 272

58 Commentary Number 1498 to the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949 (hereinafter "Commentary"); The commentaries to the protocols are designed to be an aid in interpreting the protocol itself. Politakis, pp. 299-300.

59 Politakis, p. 273

60 Commentary Number 1483

61 Commentary Number 1512

62 Commentary Number 1486

63 Part III, Article 37(1)(d)

64 Ibid

65 Commentary Number 1582

66 4 US Code 1 et seq; Navy Regulations Articles (1990), Chapter 1, respectively

67 Politakis, p. 313

⁶⁹ Chaffin, p. 84

69 Commentary Number 1486

70 Article 37(2)