The Club-K Anti-Ship Missile System: A Case Study in Perfidy and its Repression

*by Robert Clarke**

Introduction

The Club-K anti-ship missile system represents a new and dangerous means of naval warfare, and one which existing international humanitarian law (IHL) is ill-equipped to confront. Secreted inside the ubiquitous intermodal shipping container and placed on the deck of a cargo carrier, the missile system reveals itself only when the container roof opens, and the missile rises from concealment and launches.[1] As footage of test launches and displays at defense exhibitions illustrate, the Club-K's ease of transport and concealment offers obvious advantages for a belligerent in an asymmetric conflict by allowing a readily available launch platform to approach high-value warships unmolested and attack.[2]

While the only immediate victims of such an attack would be enemy combatants who are lawful targets under IHL, the weapon's chameleon-like nature and advertised method of employment indicate that it is likely to be used to prepare and execute an attack while feigning civilian status. Such tactics are an example of perfidy, deliberately inducing trust on the part of an adversary in order to injure, kill, or capture them.[3]

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A well-recognized breach of IHL, perfidy destroys the mutual trust on which all other rules depend for compliance, thereby sowing the seeds of further violations. In particular, this article submits that weapons like the Club-K would lead a belligerent, having recognized that apparently civilian vessels have been used to attack its forces, to suspect that other civilian vessels may be warships and attack them indiscriminately. Any military advantage gained from the use of such weapons would therefore come at the cost of increased risk to civilian life.

However, although it may undermine the distinction between warships and civilian vessels, the fact that the Club-K is likely to be used perfidiously would not necessarily inculpate the weapon's manufacturers. In particular, the structural discreteness of the armed forces would make it difficult to prove a mental nexus between the commanders who determine the method of attack and the arms makers who provide the means. Thus, while the protection of civilians requires an institutional separation between them and combatants, such a divide may prevent the repression of civilian activity which imperils that same protection.

Perfidy or Ruse

Question of Confidence

Although armies have employed deception since time immemorial, long-standing custom prohibits acts of treachery.[4] This juxtaposition is restated in Article 37 of Additional Protocol I of the Geneva Convention, under which belligerents may employ ruses of war but not "kill, injure or capture an adversary by resort to perfidy," that is, by exploiting the protection conferred by IHL.[5] Both Article 37 and the customary rule it embodies apply to naval warfare, and as the San Remo Manual observes, civilians at sea are generally entitled to the same protection in times of armed conflict as those on land.[6]

Perfidy is composed of three elements — the invitation of confidence, intention to betray that confidence, and fulfillment of that intention by killing, injuring, or capturing the adversary.[7] Although it is not perfidious to merely deploy the Club-K on a vessel, to use the weapon effectively its deceptive qualities must be parlayed into the preparation and execution of an attack under civilian guise. The example *par excellence* is to place the weapon on a converted merchant vessel, as depicted by the manufacturers,[8] and use the duo's benign appearance to deceive and attack an enemy warship. The nature of the weapon therefore induces resort to tactics that exploit the obligation of warships to distinguish themselves and to limit attacks to military objectives, and thus constitute killing or injuring by resort to perfidy.

Potential for Deception

The essence of perfidy is the invitation of confidence—the sowing of a belief in one's adversary that they are legally obliged to accord protection to the attacking party,[9] of which the feigning of civilian, non-combatant status is axiomatic.[10] It is a cardinal rule of IHL, implicit in the proposition that armed conflict is a state governed by law, that belligerents must distinguish military objectives from civilians and attack only

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the former.[11] Therefore, armed force may be used only against vessels for which nature, location, purpose, or use makes an effective contribution to military action and for which total or partial destruction, capture, or neutralization offers a definite military advantage.[12]

The corollary of this rule is that those bearing arms must distinguish themselves. Military forces on the battlefield constitute an exceptional subdivision of human society, in that as between themselves they may do acts ordinarily considered criminal, provided they are identifiable by insignia, open carriage of arms, and other means.[13] Both rules represent the same fundamental tenet—that warfare is a relation between states alone and so to wage "total war," that is, war without discrimination between a state's military organs and the civilian population, is prohibited.[14] All of the subsidiary protections extended to civilians flow from this legal and practical distinction between them and combatants.

Therefore, to be armed and participate in hostilities, warships must be operated by state naval forces, distinguished by external markings, and listed on a public register.[15] Warships may, in turn, be attacked at any time. Merchant vessels are ordinarily subject only to search and seizure but may not carry offensive weaponry or use armed force except in self-defense.[16] A merchant vessel's legal protection therefore depends on its practical exclusion from hostilities, and to arm it with anti-ship missiles and thereby integrate it into a belligerent's war effort exposes it to attack.[17] However, if weapons like the Club-K and other distinctively military features could be concealed, the vessel could maintain both a powerful armament and the pretense that it is legally protected, thus inviting the confidence of an adversary.

Betrayal and Intent

However, perfidy requires more than mere deception, and it is not perfidious to merely place a containerized missile launcher or other concealed armament on a vessel. The language of Additional Protocol I, which refers to killing or injuring "by resort to perfidy," imports a causal link between the betrayal of confidence and the killing or wounding of enemy personnel.[18] To constitute a single transaction and thus an instance of perfidy, the invitation of confidence must be the "proximate cause" of the subsequent attack.[19] Perfidy also has a subjective aspect, the intention to abuse the protection conferred by IHL.[20]

For these causal and subjective elements to be present, the Club-K must be an effective cloak for the launch vessel's true nature. As discussed above, it could conceal one obvious feature, but to invite and betray the confidence of an adversary the launch vessel would need to eschew *all* outward signs of military character, whether visual, acoustic, or electronic. In this respect, the Club-K differs from weapons which are of themselves inherently perfidious and unlawful, such as landmines disguised as innocuous items. To be effective, the Club-K must be married to other deceptive measures.[21]

Warships require an extensive suite of weapons to engage and defend against air and seaborne targets, as well as a correspondingly large crew.[22] Since the signature hull, superstructure, marks, lighting, and electronic emissions of a dedicated warship would deprive the Club-K of deceptive value, the only suitable launch vessel is that depicted by the weapon's manufacturers—a converted merchant vessel. Although the manufacturers insist that it cannot be placed on "any container carrier," they do expressly indicate that it is "designed for installation on the ships called up for military service" rather than dedicated warships such as "corvettes, frigates, destroyers [and] cruisers."[23] That is, it is intended to be deployed on merchant vessels requisitioned for naval service. Such conversion of civilian ships to military use, including participation in hostilities, is lawful provided that they are marked and registered as set out above.

Due to their design, however, merchant vessels are easily adaptable only to logistical, rather than combat functions.[24] And even if technically feasible, giving a merchant vessel all the combat capabilities of a true warship would, for the reasons set out above, imbue it with a conspicuously military appearance. To realize the deceptive potential of the Club-K, the attacker must rather eschew the ability to defend themselves and stake success on the launch vessel's civilian appearance. Notwithstanding the long range of Club-type missiles,[25] it is unlikely that the launch vessel could otherwise safely approach a superior enemy force. In the ordinary course of events, therefore, the abuse of confidence would be both a causal precondition of the attack and intended as the ideal or indeed only possible avenue for success.

Ruses of War

If using the Club-K to kill or injure under cover of civilian status is perfidious, there remains the question of when feigning such status passes from ruse of war to perfidy. Ruses—deceptive measures which neither infringe a rule of law nor invite the confidence of an adversary with respect to its protection—are expressly permitted by Additional Protocol I.[26] Submarines and landmines, for example, use deception more or less continually, but the analogy which the Club-K's manufacturers draw with them is incorrect—submarines and landmines conceal themselves using the natural environment, not by feigning civilian status. Moreover, as stated above, use of landmines disguised as innocuous items is prohibited.[27]

However, the established usages of naval warfare do allow warships to fly false flags and feign the appearance of merchant vessels provided that they show their "true colors" before going "into action," "actual armed engagement," or "launching an attack."[28] This is in contrast to hospital ships and other vessels having special protection, the imitation of which is prohibited at all times.[29] If IHL grants warships this license to invite the confidence of an adversary when not participating in hostilities, can the Club-K be used consistently therewith?

Total War

Since armed forces seldom publicize the deceptive measures they employ, such acts remain clandestine and thus incapable of inducing reliance by others.[30] One must therefore look to history for concrete state practice. For a weapon like the Club-K to appear only at the moment it is fired is consistent with the way that converted merchant vessels and enemy uniforms were used for deception during World War II, but the context in which such tactics were employed raises its own legal problems.

At sea, both sides employed converted merchant vessels which literally dropped the façade concealing their armament moments before opening fire.[31] British "Q-ships," for example, masqueraded as merchantmen to provoke German submarines to recklessly attack an apparently vulnerable target. However, the circumstances of total war then prevailing call into question the continued relevance of such practice.

These tactics were considered during the Nuremberg trial, in which admirals Karl Doenitz and Erich Raeder were charged with waging unrestricted submarine warfare. The International Military Tribunal (IMT) held that the total integration of Britain's merchant navy into the war effort exposed its vessels to attack because they constituted what would now be termed military objectives.[32] Since Germany conducted hostilities on precisely that basis, Q-ships could not and did not purport to be protected against attack—their appearance was designed to invite rather than discourage attack. Moreover, since they were justified as a reprisal for unrestricted submarine warfare, they provide no evidence of *opinio juris* and hence of customary law.[33]

Battlefield deception was also dealt with in the *Skorzeny Case*, so named for the German colonel whose commando wore Allied uniforms up until the moment of opening fire.[34] In this respect, it should be noted that the case did not concern imitation of civilians, which directly impinges on the principle of distinction. Nevertheless, the fact that Skorzeny was acquitted because his stratagem was regarded as lawful by several states does suggest that some deceptive measures could be lawfully employed as ruses as long as they were discontinued immediately before firing on an adversary.

Limited War

A significant number of states have since prohibited the use of enemy uniforms to "favor" or "impede" military operations, signifying a hardening of attitudes toward such deception even outside of combat *stricto sensu*.[35] And, of more direct relevance to the imitation of civilians, Article 44(3) of Additional Protocol I requires regular forces on land to distinguish themselves from civilians during military operations preparatory to an attack—a reflection of the importance now accorded to the principle of distinction.[36]

With respect to naval warfare, the San Remo Manual states that the Q-ship may no longer lawfully operate in the context of limited warfare. Such vessels are said to exemplify the "crucial element" of perfidy—the simulation of protected status while "an act of hostility is *prepared* and executed."[37] This notion—that perfidy includes deception during preparation of an attack—accords with Additional Protocol I, which refers to an act of deception done with *intent* to kill, wound or capture.[38]

Therefore, a vessel using the Club-K could not conceal its true nature up until the moment of launch. Modern law requires that the disguise be discarded once the intent to attack is formed and, at any rate, before preparation of the attack. Like many other rules embodied in Additional Protocol I, this is essentially a reflection of the greater protection now accorded to civilians and the world's rejection of total war. However, by effectively requiring a belligerent to act perfidiously, the Club-K would encourage exactly this method of warfare.

Perfidious methods of warfare not only expose combatants to being treacherously killed or wounded—they also undermine the longstanding compromise between belligerent rights of warships and neutral rights of free navigation.

The Cordon Sanitaire and Free Navigation of the High Seas

Perfidious methods of warfare not only expose combatants to being treacherously killed or wounded—they also undermine the longstanding compromise between belligerent rights of warships and neutral rights of free navigation. Naval warfare occurs largely in the international realm of the high seas, where the practice of re-flagging allows a belligerent to conceal both its warships and maritime supply lines.[39] Warships may therefore direct belligerent measures against vessels of actual or ostensible neutrality.[40] For reasons of self-defense, warships may also establish a *cordon sanitaire,* or exclusion zone, allowing them to pre-emptively attack approaching vessels.[41] The dangers inherent in such prerogatives are controlled by a regime safeguarding free navigation.[42]

Insofar as it corresponds to the point at which approaching vessels constitute threats whose destruction is militarily advantageous, the *cordon* is the geographical expression of the principle of distinction as the boundary of warfare. An excessive *cordon*, however, simply leads to indiscriminate attacks. The San Remo Manual affirms that the declaration of such zones does not abrogate the duty to distinguish between military objectives and other vessels.[43] However, that conclusion was not unanimous among its framers, and a belligerent anticipating that any merchant vessel may carry anti-ship missiles is likely to employ particularly drastic measures in self-defense—to the detriment of enemy and neutral shipping alike.

During the First Gulf War, excessive exclusion zones were repeatedly condemned for facilitating indiscriminate attacks on neutral vessels.[44] In a tragic epilogue, the intervention of neutral states would later affirm how easily tragedy can result from misidentification in a high-traffic maritime environment, with a number of civilian vessels being destroyed after approaching warships.[45] As the experience of the World Wars and more recent conflicts show, methods of war which erase the distinction between military and civilian vessels lead others—consciously or not—to reciprocate and are therefore to be denounced.[46]

Weapons of Deceit and International Law

Although belligerents may employ ruses, to use a concealed weapon such as the Club-K to prepare and execute an attack while feigning civilian status crosses the border from lawful deception to perfidy—the intentional abuse of legal protection to kill, injure, or capture an adversary. Only warships enjoy belligerent rights and are therefore always subject to attack. Merchant vessels are prohibited from participating in hostilities and are ordinarily subject only to search and seizure. Therefore, for a warship to imitate such vessels invites others to accord it concomitant protection.

Although such measures are permitted when not preparing or executing an attack, a vessel armed with the Club-K would most likely ensure its success by acting in a designedly treacherous fashion, feigning civilian status throughout an engagement. The objects and purposes of IHL dictate that such tactics be recognized as perfidious, for they would provoke belligerents to collapse the distinction between military and civilian vessels on which the very rule of law in naval warfare depends.[47]

This endangers not only vessels and abstract economic interests but also the life and security of civilians on the high seas. The victims of naval warfare during the World Wars are a sufficient testament to that fact—one of many that lead states to adopt rules ending the practice of total war. However, as more recent conflicts illustrate, those rules are only as strong as the good faith and trust which a belligerent reposes in adhering to them—trust which perfidy, more than any other violation of IHL, destroys.

Repression of Perfidious Methods of Warfare

Prosecution and Arms Control

If the Club-K is likely to be used perfidiously, this raises the question of how such acts can be repressed. Alongside explicit provision in the Rome Statute, perfidy has long been recognized as a war crime under customary law, opening up criminal prosecution as one remedy.[48] However, despite a marked resurgence in the post-Cold War era, war crimes trials are not free of legal problems.

The example of the Club-K exemplifies one such issue, namely establishing the responsibility of accomplices. Accomplices frequently play a vital role in facilitating a war crime, in particular by providing the means for its commission. Targeting both the principal offender and accomplices therefore multiplies the value of international law as a deterrent and crime prevention tool.[49] However, the *mens rea* required for criminal guilt under international law on complicity raises difficult questions of proof. Although arms control law presents an alternative, comprehensive prohibitions may be politically unachievable. Each avenue theoretically allows international law to be enforced on the battlefield by pursuing sanctions and criminal liability "behind the lines," but both illustrate the difficulty of doing so.

Complicity and Deterrence

Command and Supply

When considering prosecution for crimes committed in combat, attention often falls first on the commander who orders a military operation due to the control which he exercises over combatants who physically commit the crime. Just as the horrors of war are contained by the obligation of combatants to distinguish themselves, they are also controlled by the demand that combatants operate under responsible command. Indeed, it is the fact of a command hierarchy culminating in a supreme political authority that defines warfare as a relation between states.[50]

However, the State is not solely responsible for crimes committed by members of its armed forces—it is well-accepted that military commanders and civilian superiors are responsible for offences committed on their orders.[51] Nonetheless, given the law's record of inconsistent enforcement—including against popular military figures—one might reasonably risk prosecution for the prospect of military gain. Perfidy was, for example, committed systematically by Iraqi forces in the Third Gulf War.[52]

Unlike such individual combatants, a weapon as large and complex as an anti-ship missile cannot easily be made to look innocuous. However, having been consciously designed to mimic civilian objects, the Club-K provides a ready means to attack while feigning civilian status. Moreover, as discussed in Part I, successfully deploying the weapon from a merchant vessel, as envisaged by the manufacturers, appears to depend largely on resort to perfidy. In that respect, design decisions at the logistical stage can influence military decisions in combat. The best vehicle for deterrence may, therefore, be the businessperson who provides the weapon.[53] Arguably, if they play a major role in a chain of events likely to lead to a violation of IHL, they ought to be criminally responsible,[54] but would they be?

Manufacturer's Liability

International criminal law recognizes many doctrines of complicity, but this article focuses on aiding and abetting—the traditional basis for prosecuting providers of means. So as to avoid compounding a hypothetical situation with hypothetical or untested law, this article does not consider the prosecution of juridical persons or complicity under the nascent law of the Rome Statute of the International Criminal Court (ICC) but focuses on customary law on aiding and abetting by businesspersons acting through a corporate instrumentality.

The archetypal case in this context is *Zyklon B*, in which the manufacturers of the eponymous toxin were held responsible for its use in concentration camp gas chambers because they had actual knowledge of that use. This *mens rea* requirement—cognizance that the customer intends to use one's product to commit a crime—is broadly reflected in other Allied trials of German industrialists.[55]

However, as these trials illustrate, commercial actors present particular difficulties because they typically undertake "neutral" actions, providing material assistance, such as money or consumables, which is amenable to legitimate uses. In acquiring such an item, the customer might not thereby put the seller on notice of their intent to commit a war crime.

For example, at Nuremberg, the IMT held that to be implicated in a conspiracy to wage aggressive war, an accused had to know of a "concrete plan . . . clearly outlined in its criminal purpose."[56] Circumstances such as rearmament merely disclosed Hitler's militaristic ideology,[57] and businessmen who equipped

his armies were acquitted of aggression in the *IG Farben Case*.[58] By contrast, the *Zyklon B* accused knew of both the lethal properties of their insecticide and its ongoing use in the Nazi Holocaust, thus proving intent and knowledge sufficient to make them "concerned in" the commission of war crimes.[59]

The Club-K poses the same issue as the *IG Farben Case*, in that the formation of a concrete plan to use the weapon perfidiously would depend on tactical decisions made by the belligerent after it is supplied. And although the Club-K is marketed as a weapon of disguise, unlike warships, military vehicles and installations on land are not obliged to distinguish themselves, and therefore the weapon could lawfully be deployed from an apparently civilian truck or train as a deceptive trap.[60] At most, the manufacturers are likely to be aware that their product *might* be used perfidiously at some undefined point in the future.[61] In this respect, the Club-K stands in contrast to weapons that cannot but be used unlawfully, the aforementioned booby trap being the quintessential example.

In safeguarding humanity in time of armed conflict, then, there can be no substitute for inculcating among the armed forces a culture of respect for the rule of law, and education in its precepts.

This is not to say that the manufacturers will invariably be shielded by the fungibility of their wares. For example, German steel magnate Friedrich Flick was found to be complicit in the crimes of the Nazi SS, due to the considerable sums that he donated to its head, Heinrich Himmler. The fact that Flick was not aware of the specific activity to which the money was applied was held to be no defense because the notoriety of the SS was such as to charge him with knowledge that it would be criminal.[62]

Flick suggests that the manufacturers could be held responsible if the use to which the Club-K is put is simply the continuation of an established record of perfidy, common knowledge of which bridges the *mens rea* gap. On the other hand, it would not readily apply to a peacetime transaction where the possibility of perfidy is merely latent and the manufacturers, due to their structural separation from their customer's armed forces, are not privy to its plans. It is precisely due to chaotic and brutal nature of war that the principle of distinction must be respected. However, ironically, the entrenched separation of the military and civilian spheres can make it impossible to connect the acts of military commanders in the wartime context with the acts of civilian businesspeople who are deliberately excluded from it.

Arms Control Law — A De Lege Ferenda?

If a weapon's manufacturers cannot be made responsible for its subsequent perfidious use, the remedy may be to make their conduct the primary locus for legal sanctions, by prohibiting the development, manufacture, and distribution of the Club-K and similar arms outright, as has been done with chemical and biological weapons.[63] This course, however, poses a number of problems.

In particular, there is the definition of the banned item. Treaties typically refer to weapons "designed" to have certain technical characteristics or effects, such as poisoning.[64] Although a treaty might prohibit weapons designed to facilitate perfidy, this involves an inquiry into the state of mind of the manufacturers vis-à-vis the weapon's future use, bearing in mind that it has a range of possible applications. Such a definition would merely reframe, rather than overcome, the issues arising in criminal proceedings.

An alternative is to refer to weapons which outwardly resemble civilian objects, thus placing the emphasis on an objective characteristic rather than subjective questions and hypothetical situations. However, such a ban raises vexing policy questions. As discussed in Part I, the gravamen of perfidy and what distinguishes it from ruses is the deliberate exploitation of IHL to attack an adversary. Thus, whether it is lawful for a warship to feign civilian status depends on whether it is preparing an attack at the time.

A prohibition omitting any nexus to the distinction, which IHL draws between perfidy and ruse, would therefore tend to impede the use of legitimate forms of deception. Although this does not foreclose on any possibility of treaty action, the prerogative to use deception during armed conflict has generally been jealously guarded.[65] And, as illustrated by the United States' refusal to ban landmines without a geographical exception for the Korean De-Militarized Zone, states are often reticent to completely forego weapons with some residual military utility, even if it is narrowly circumscribed.[66]

Conclusion

The Club-K therefore poses a problematic issue for the law of naval warfare, both in terms of the limits of its lawful use and the repression of unlawful use. Since merchant vessels are not ordinarily exposed to attack, to deliberately exploit their appearance to penetrate a warship's defenses and attack it amounts to perfidy. Such conduct endangers the civilian shipping of all nations and is not only unlawful but deservedly criminal. As past conflicts illustrate, indiscriminate naval warfare occasions more than damaged vessels and abstract economic loss—it injures and kills individuals whose only protection in the international realm of the high seas is states' respect for the rule of law.

While this opens the door to prosecution of military commanders, the rules of complicity applied by international tribunals are unlikely to net the businesspeople who supply such arms due to the difficulty of proving that they knew of a plan to use the weapon perfidiously. Although arms control law may obviate the need to prove any objective and subjective nexus between supplying the weapon and using it treacherously, states are unlikely to eschew its very possession.

The example of criminal prosecution, in particular, illustrates that the separation of the military and civilian spheres that IHL aims to preserve can impede its own enforcement. Although the principle of distinction between combatants and civilians must be upheld, it may be difficult to do so by policing the civilians who operate on the periphery of armed conflict. In safeguarding humanity in time of armed conflict, then, there can be no substitute for inculcating among the armed forces a culture of respect for the rule of law and education in its precepts.

Endnotes

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[40] Hague Convention (XIII) Concerning the Rights and Duties of Neutral Powers in Naval War, Oct. 18, 1907, 1 Bevans 723; *see generally* Michael Bothe, *The Law of Neutrality, in* Handbook of International Humanitarian Law 581 (Dieter Fleck ed., 2008).

[41] *See generally* Walker, *supra* note 33, at 398–410.

[42] Hague Convention (XIII) *supra* note 40; Bothe, *supra* note 13, at 571.

[43] San Remo Manual, *supra* note 3, § 106.

[44] *E.g.* S.C. Res. 552, U.N. SCOR, U.N. Doc. S/RES/552 (June 1, 1984); S.C. Res. 582, U.N. SCOR, U.N. Doc. S/RES/582 (Feb. 24, 1986); S.C. Res. 598, U.N. SCOR, U.N. Doc. S/RES/598 (July 20, 1987).

[45] Walker, *supra* note 33, at 413–14.

[46] Matthew G. Morris, '*Hiding Amongst a Crowd' and the Illegality of Deceptive Lighting*, 54 Naval L. Rev. 235, 255–56 (2007).

[47] Oeter, *supra* note 14, at 227-28.

[48] Rome Statute of the International Criminal Court art. 8(2)(b)(xi). 8(2)(e)(ix), July 17, 1998, 2187 UNTS 90 [hereinafter Rome Statute]; 2 Customary International Humanitarian Law, *supra* note 4, 1447.

[49] 2 International Commission of Jurists, Corporate Complicity & Legal Accountability 12 (2008).

[50] Additional Protocol I, *supra* note 5, art. 43(1); *See* Ipsen, *Combatants and Non-Combatants,* Handbook of International Humanitarian Law, *supra* note 13, at 81.

[51] Additional Protocol I, *supra* note 5, arts. 86(2), 87; Rome Statute, *supra* note 48, art. 28.

[52] Off Target: The Conduct of the War and Civilian Casualties in Iraq, 1-12 (Human Rights Watch, 2003).

[53] Wim Huisman & Elies Van Sliedregt, *Rogue Traders: Dutch Businessmen, International Crimes and Corporate Complicity*, 8 J. Int'l Crim. Justice 803, 825–826 (2010).

[54] Steffen Wirth, *Co-perpetration in the Lubanga Trial Judgment*, 10 J. Int'l Crim. Justice 971, 978 (2012).

[55] Trial of Bruno Tesch and Two Others, (British Mil. Ct, 1946), 1 L.R.T.W.C., *supra* note 34, at 93. *See also* United States v. Flick, (Mil. Trib. IV, 1947), 6 Trials of War Criminals Before the Nuernberg Military Tribunals Under Control Council Law No. 10, at 1217 (U.S. Govt. Printing Off. ed. 1951). [hereinafter T.W.C.]; United States v. Krauch, (Mil. Trib. VI, 1948), 8 T.W.C. at 1137, 1141, 1146, 1153; United States v. Krupp, (Mil. Trib. IIIA, 1948), 9 T.W.C. at 1448–49.

[56] United States v. Goering, 1 IMT, *supra* note 32, at 225.

[57] *Goering*, 1 IMT, at 307–309; Kyle Rex Jacobson, *Doing Business With the Devil: The Challenges of Prosecuting Corporate Officials Whose Business Transactions Facilitate War Crimes and Crimes Against Humanity*, 56 A.F.L. Rev. 167, 175–177 (2005).

[58] *Krauch,* 8 T.W.C., at 1116; *cf. id.* at 1169, 1172.

[59] *Trial of Bruno Tesch*, 1 L.R.T.W.C, at 93.

[60] Fleck, *Ruses*, *supra* note 9, at 295-296; Program on Humanitarian Policy and Conflict Research at Harvard Univ., Commentary on the HPCR Manual on International Law Applicable to Air and Missile Warfare 257 § 116(e)(3) (2010) available at http://ihlresearch.org/amw/Commentary%20on%20the%20HPCR%20Manual.pdf.

[61] Christoph Burchard, *Ancillary and Neutral Business Contributions to 'Corporate-Political Core Crime': Initial Enquiries Concerning the Rome Statute*, 8 J. Int'l Crim. Justice 919, 944 (2010).

[62] United States v. Flick, (Mil. Trib. IV, 1947), 6 T.W.C. No. 10 at 1220–21 (U.S. Govt. Printing Off. ed. 1951).

[63] Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxic Weapons and on Their Destruction art. 1, Apr. 10, 1972, 1015 UNTS 163; Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction art. 1, Sept. 3, 1992, 1974 UNTS 45 [hereinafter Chemical Weapons Convention].

[64] *E.g.* Chemical Weapons Convention, *supra* note 63, art. 1(b).

[65] *See e.g.* 1 Pilloud et al., *supra* note 6, at § 1506.

[66] Thomas R. Phillips, *No Meeting of the Mines: An Analysis of the U.S. Policy Regarding the International Ban on Anti-Personnel Landmines (The Ottawa Convention)*, 13 Temp. Int'l & Comp. L.J. 25, 44–46 (1996).