

v.

**Government Targeted Brief
On Receipt of Intelligence
as a Requirement of
Aiding the Enemy
Enclosure 5**

29 March 2013

Encl 5 to
APPELLATE EXHIBIT 510
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COURTS-MARTIAL
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d. ENGAGING IN LOOTING OR PILLAGING

Discussion.—The words “looting or pillaging” mean unlawfully seizing or appropriating property which is located in enemy or occupied (friendly or enemy) territory and is either left behind or is owned by, or in the custody of, the enemy or occupied state, its inhabitants, or persons who are under its protection or who, immediately before the place where the act occurred had been occupied, were under the protection of the enemy or occupied state. The unauthorized removal or appropriation of any part of the equipment of a seized or captured vessel or the unlawful seizure or appropriation of property owned by or in the custody of the officers, crew, or passengers on board a seized or captured vessel, constitutes the offense of looting or pillaging wherever the vessel may be located at the time of the offense.

Proof.—(a) That the accused unlawfully seized or appropriated certain property; (b) that the property was located in enemy or occupied territory, or that it was on board a seized or captured vessel; and (c) that the property was left behind—or that it was owned by, or in the custody of, the enemy or occupied state or a person having a certain status with respect to the enemy or occupied state, or that it was part of the equipment of a seized or captured vessel, or was owned by, or in the custody of the officers, crew, or passengers on board a seized or captured vessel, as alleged.

183. ARTICLE 104—AIDING THE ENEMY

This article denounces offenses by all persons whether or not otherwise subject to military law. The trial of offenders may be by court-martial or by military commission.

a. AIDING OR ATTEMPTING TO AID THE ENEMY

Discussion.—“Enemy” imports citizens as well as members of military organizations and does not restrict itself to the enemy government or its armed forces. All the citizens of one belligerent are enemies of the government and of all the citizens of the other.

It is not a violation of this article, however, to furnish to prisoners of war subsistence, quarters, and other comforts or aid to which they are lawfully entitled.

To aid the enemy as used in this article is equivalent to furnishing it with the arms, ammunition, supplies, money, or other things as denounced in the article. It is immaterial whether the articles furnished are needed by the enemy or whether the transaction is a donation or sale.

Proof.—That the accused either directly or indirectly aided or attempted to aid the enemy with certain arms, ammunition, supplies, money, or other thing, as alleged.

b. HARBORING OR PROTECTING THE ENEMY

Discussion.—See 183a. An enemy is harbored or protected when, without proper authority, he is shielded, either physically or by use of any artifice, aid, or representation, from any injury or misfortune which in the chance of war may befall him. It must appear that the offense is knowingly committed, but circumstances sufficient to put a reasonable man on notice will be sufficient to charge the accused with notice.

Proof.—(a) That the accused, without proper authority, harbored or protected a certain person; (b) that the person so protected was an enemy; and (c) that the accused had notice or was chargeable with notice of that fact.

c. GIVING INTELLIGENCE TO THE ENEMY

Discussion.—See 183a. This is a particular case of corresponding with the enemy, rendered more heinous by the fact that the communication contains intelligence that may be useful to the enemy for any of the many reasons that make information valuable to belligerents. As in the preceding case, knowledge must be proved, and it is immaterial to the issue of guilt whether the intelligence was conveyed by direct or indirect means. The word “intelligence” imports that the information conveyed is true or implies the truth, at least in part.

Proof.—(a) That the accused, without proper authority, knowingly conveyed to the enemy certain information, as alleged; and (b) that the information was true or implied the truth, at least in part.

d. COMMUNICATING, CORRESPONDING, OR HOLDING INTERCOURSE WITH THE ENEMY

Discussion.—Communication, correspondence, or holding intercourse with the enemy does not necessarily import a mutual exchange of communication. The law requires absolute nonintercourse, and any unauthorized communication, no matter what may be its tenor or intent, is here denounced. The prohibition lies against any method of intercourse or communication whatsoever, and the offense is complete the moment the communication issues from the accused, whether it reaches its destination or not. The words “directly or indirectly” apply to this offense. It is essential to prove that the offense was knowingly committed.

Citizens of neutral powers resident in or visiting invaded or occupied territory can claim no immunity from the customary laws of war relating to communication with the enemy.

Proof.—(a) That the accused, without proper authority, communicated, corresponded, or held intercourse with a certain person; (b) that such person was an enemy; and (c) that the accused had notice or was chargeable with notice of this fact.