

The background image shows two thick, black, corrugated data cables with yellow reflective bands, laid out on a sandy ocean floor. The scene is illuminated with a blue light, creating a deep-sea atmosphere. The cables run parallel to each other, curving slightly towards the right side of the frame.

# Undersea data cables and the legal regime for protection

Rob McLaughlin



READY FOR SERVICE

- Why an issue for us?
- Current legal regime for protection of cables
  - 1884 Paris Convention
  - 1982 LOSC
  - The enforcement 'gap'
    - Noting that there is a different 'gap' in respect of IHL and cables...
- What legal measures might improve cable security and protection?
  - What will not work
  - What might work...

## Outline





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# The Stupidly Easy Way to Win World War III: 'Cut the Cables'

Cut Internet cables and you have the ultimate denial-of-service cyber weapon.

by [Steve Weintz](#)

**I**f, however, you wish to practice hybrid warfare—disruption and degradation with little overt engagement—then the ability to cut submarine cables at will and at depth gives you a very powerful weapon. Cut up undersea hydrophone networks and you deafen your adversary. Cut Internet cables and you have the ultimate denial-of-service cyber weapon.

## Why is this an issue for us?

- Dependency
- Risk high, resilience low
- Contested maritime space

# 1884 Paris Convention

- 1884 *Paris Convention* applies to submarine cables outside the Territorial Sea
- **Key obligation:** Implement the offences and powers in national law
- **Key limitation:** Does not apply to sovereign immune vessels and does not apply in times of hostilities
- **Key offence:** Article 2 – ‘break or injure a submarine cable, wilfully or by culpable negligence, in such manner as might interrupt or obstruct telegraphic communication, either wholly or partially...’
- **Key powers:**
  - Arts 8-9 – enforcement authority is the flag State of a vessel that commits the offence
  - But there is a relatively unused Article 10 ‘at sea visitation’ power (only one recorded use – by USS *Roy O Hale* on Soviet trawler *Novorossiisk* off Newfoundland in 1959)
    - for sovereign immune vessels
    - against other state’s merchant vessels
    - where ‘have reason to believe that an infraction of the measures provided for in the present Convention has been committed by a vessel other than a vessel of war’
    - But only to collect evidence – no powers of search or arrest

## U.S. AIDE MEMOIRE OF FEBRUARY 28

The Embassy of the United States of America has been instructed to inform the Ministry of Foreign Affairs of the Union of Soviet Socialist Republics of the following.

Between February 21-25, 1959, four telegraphic and one voice transatlantic cables were damaged and put out of service. Aerial investigation disclosed that the Soviet trawler *Novorossiisk* No. RT-99 was in the area of these cable difficulties.

In accordance with the “Convention for Protection of Submarine Cables” of 1884, to which the Soviet Union and the United States are parties, a U.S. naval vessel put a visiting party on board the *Novorossiisk* on February 26 to investigate whether the trawler had violated the Convention.

After discussion with the trawler Captain and examination of the log, the boarding officer from the U.S.S. *R.O. Hale* made an appropriate entry in the journal of the trawler as required by Article X of the Convention and the visiting party left the vessel. The trawler’s log indicated that the ship had been in the area of cable damage at the time of the last service interruption. It is understood that the trawler proceeded on its way without delay.

A cable repair ship is en route to the area of cable damage for final investigation and repair.

EMBASSY OF THE UNITED STATES OF AMERICA,  
*February 28, 1959.*

# 1982 LOSC – key *protection* provision

## *Article 113*

### *Breaking or injury of a submarine cable or pipeline*

Every State shall adopt the laws and regulations necessary to provide that the **breaking or injury by a ship flying its flag or by a person subject to its jurisdiction** of a submarine cable beneath the high seas **done wilfully or through culpable negligence**, in such a manner as to be liable to interrupt or obstruct telegraphic or telephonic communications, and similarly the breaking or injury of a submarine pipeline or high-voltage power cable, **shall be a punishable offence**. This provision shall apply also to conduct calculated or likely to result in such breaking or injury. However, it shall not apply to any break or injury caused by persons who acted merely with the legitimate object of saving their lives or their ships, after having taken all necessary precautions to avoid such break or injury.

# IHL and undersea cables?

- Context:
  - There is a long history of cutting telegraphic and telephonic cables as part of armed conflict
    - Recent suspicions around cable damage in Baltic Sea in connection to Ukraine – Russia war
    - PRC exercises near Taiwan have been focussed around cable node points, and reports of Taiwan cables cut in 2022 and 2023
  - There are assessments that several states have cable tapping and cutting capabilities
    - Russian *Losharik* submarine?
    - Reports about new US submarine?
    - PRC cable operations surface vessel and remote undersea vehicle capability?
- Only IHL provision that deals directly with undersea cables relates to shore landing points in occupied territory - 1907 *Hague IV Annex*

## Article 54

Art. 54. Submarine cables connecting an occupied territory with a neutral territory shall not be seized or destroyed except in the case of absolute necessity. They must likewise be restored and compensation fixed when peace is made.

- Otherwise, need to look to IHL and Law of Naval Warfare rules on
  - military objectives
  - proportionality





# What is to be done?

- What will probably not work
  - Amend 1982 LOSC art 110
  - Negotiate a 1982 LOSC Implementing Arrangement
  - Amend the 1988 *SUA Convention* (or the 2005 *Protocol*)
  - Amend the 1884 Paris Convention
  - Negotiate a specific submarine data cable protection convention
- What might work
  - Regional states accede to the Paris Convention
    - Access the visitation power in art 10