

# Rethinking the legal protection of submarine cables in armed conflict

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# The utility of cables and pipelines in armed conflict

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## Newport Manual

“Submarine cables and pipelines comprise critical undersea infrastructure on which the States connected by such cables and pipelines are highly dependent on, including for the conduct of hostilities.”

“Accordingly, there is a high probability that belligerents will take measures to deprive the enemy of gas and oil transported via pipelines, or of electricity and information provided via submarine cables.”

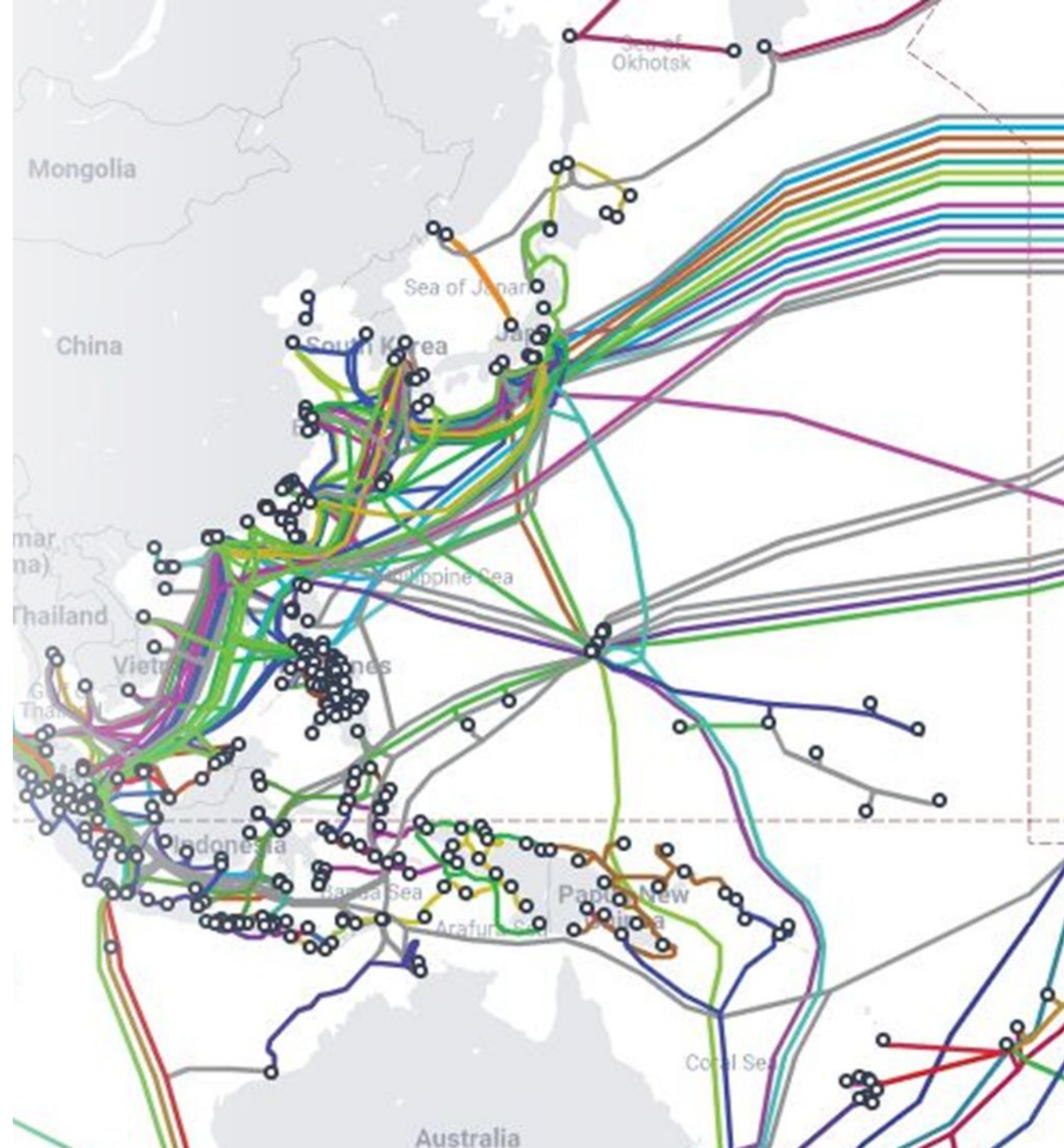
# What does the law tell us about submarine cables in armed conflict?

Actual treaty law

“Battle of the books”

Possible ways forward

A thought on pipelines





# Treaty Law

## 1884 Convention for the Protection of Submarine Telegraph Cables, Art 15:

‘It is understood that the stipulations of this Convention shall in no wise affect the liberty of action of belligerents.’

## 1907 Hague Regulations Respecting the Laws and Customs of War on Land, 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.







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## Battle of the books

- 1913 Oxford Manual
- San Remo Manual
- Tallinn Manual
- Newport Manual

# 1913 Oxford Manual on the Laws of Naval Warfare

Cables connecting the territories of the two belligerents may be cut outside neutral waters.

Cable connecting a neutral and belligerent territory may be cut only where strictly necessary and only within 3 nm of belligerent coast or on high seas under conditions of blockade.

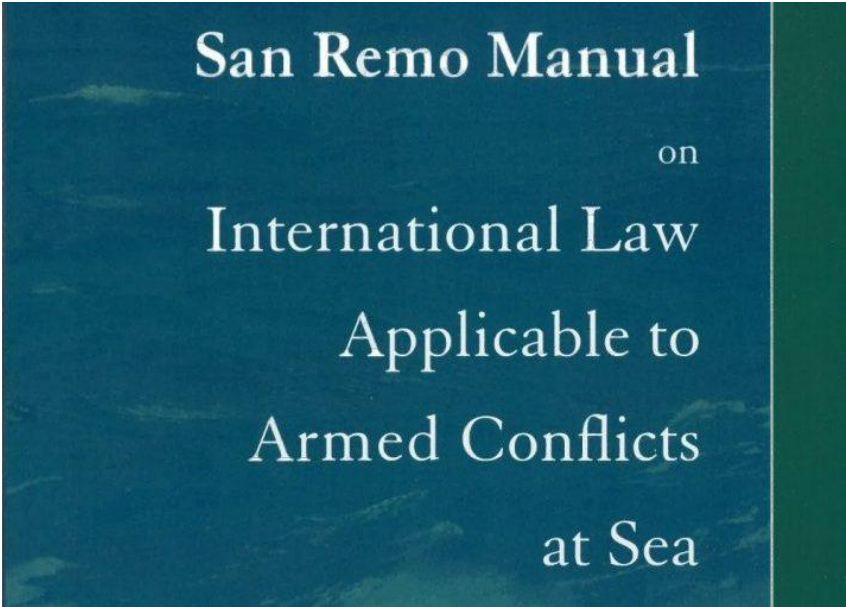
The status of cables is not affected by the nationality of their owners.

Cut cables should be restored and compensation made at end of conflict.



# San Remo Manual 1995

- Rule 37: 'Belligerents shall take care to avoid damage to cables and pipelines laid on the sea-bed which do not exclusively serve the belligerents'.
- Commentary: the rule 'recognises ... that cables or pipelines **exclusively** serving one or more of the belligerents might be legitimate military objectives'. Provenance?
- Enemy merchant vessels engaged in cable cutting may become military targets: Rule 60(a).

The image shows the front cover of the 'San Remo Manual on International Law Applicable to Armed Conflicts at Sea'. The cover has a dark blue background with a faint, lighter blue pattern that resembles a map of the world's oceans. The title is written in a white, serif font, centered on the cover. The text is arranged in five lines: 'San Remo Manual', 'on', 'International Law', 'Applicable to', and 'Armed Conflicts at Sea'.

San Remo Manual  
on  
International Law  
Applicable to  
Armed Conflicts  
at Sea



# Tallinn Manual on the International Law Applicable to Cyber Warfare 2.0

5. It is important to note that neutral cyber infrastructure located in neutral territory may lose its protection under Rule 153. Moreover, neutral cyber infrastructure located outside neutral territory, such as undersea cables, may be attacked if it constitutes a lawful military objective. Such infrastructure may also be subject to capture.





# Newport Manual on the Law of Naval Warfare (2<sup>nd</sup> ed)

Holds: “States party to a conflict may destroy bilateral cables lying outside neutral territorial seas connecting the enemy and neutral States ‘if the **necessities of war** require.’”

Notes Hague Rule 54: “submarine cables connecting an occupied territory with a neutral territory are normally protected from seizure or damage ‘except in the case of **absolute necessity**.’”

Considers this a wide exception and a “low bar”.

Relies only on 1902 Naval War College study.

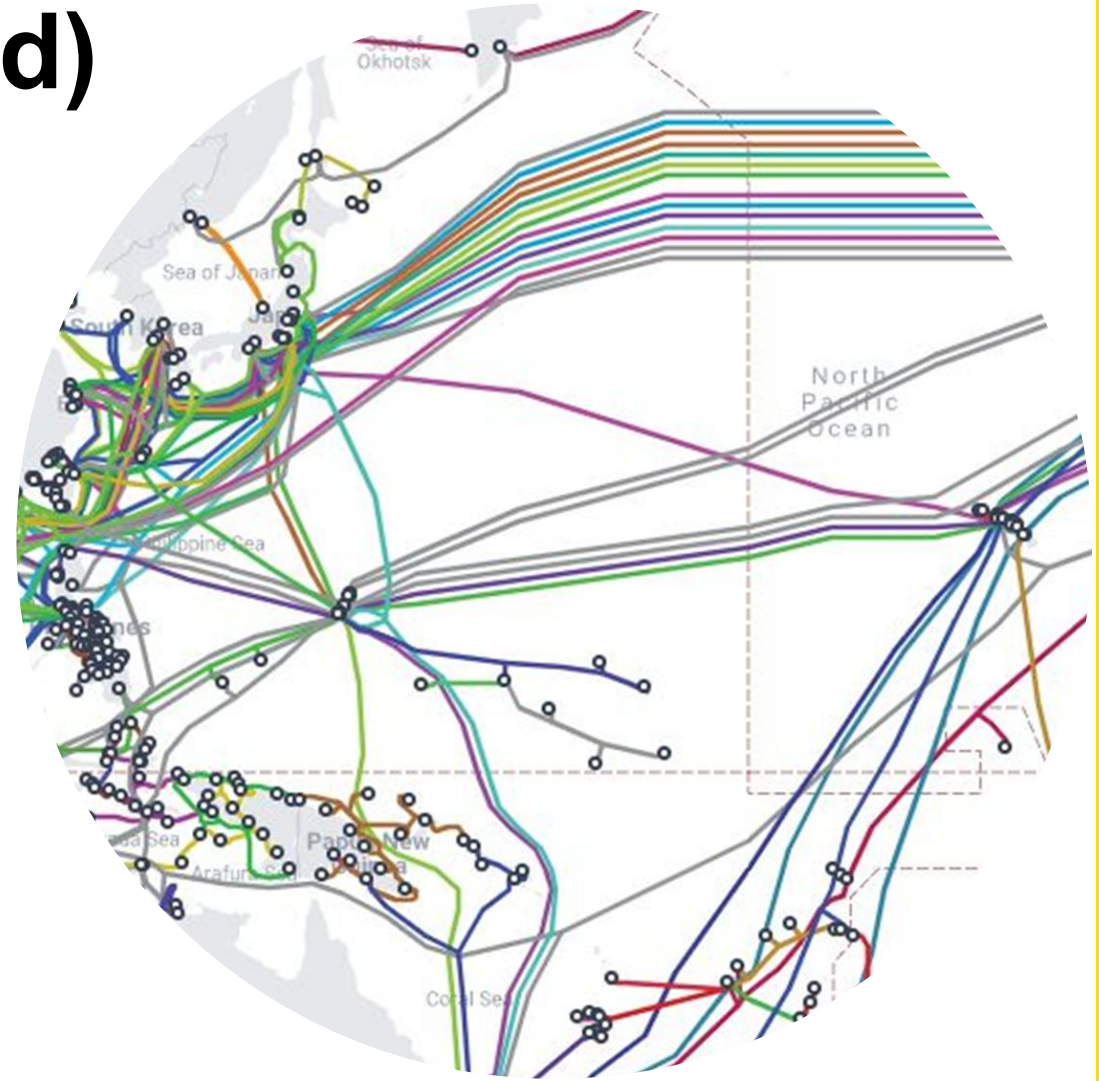


# Newport Manual on the Law of Naval Warfare (2<sup>nd</sup> ed)

Observes: “While cables connecting only neutral States that are not being used by a belligerent are inviolable, the globally connected nature of the Internet means that **it is impossible to determine whether a particular cable is (or is not) serving the enemy.**”

“Consequently, ‘there are **no discernible rules**’ against a **belligerent targeting neutral commercial submarine cables used by the enemy.**”

“**Economic or commercial losses** resulting from the destruction of a submarine cable normally do not qualify as collateral damage.”



# Newport Manual on the Law of Naval Warfare (2<sup>nd</sup> ed)

The problem:

While it holds cables can only be targeted according to ordinary LOAC rules – appears to embody a strong presumption of targetability, incl. through deference to past practice.





# Newport Manual on the Law of Naval Warfare (2<sup>nd</sup> ed)

Manual notes: “Military communications cables are military objects and may be targeted during armed conflict. **Most military communications cable traffic, however, travels through commercial submarine cables.**”

“Although civilian submarine cables are civilian objects, their common use by the armed forces means that they may make an **effective contribution to military action** and their disruption or destruction **may offer a definite military advantage.**”



# Possible ways forward

Neutrality

Proportionality

Status



# Possible ways forward

## Proportionality

Extensive cable cutting could cause severe and unpredictable disruption to data and financial flows, cloud services, etc

Not usually collateral damage, because 'attack' does not encompass economic harm etc

But national positions on cyber attack as armed attack?



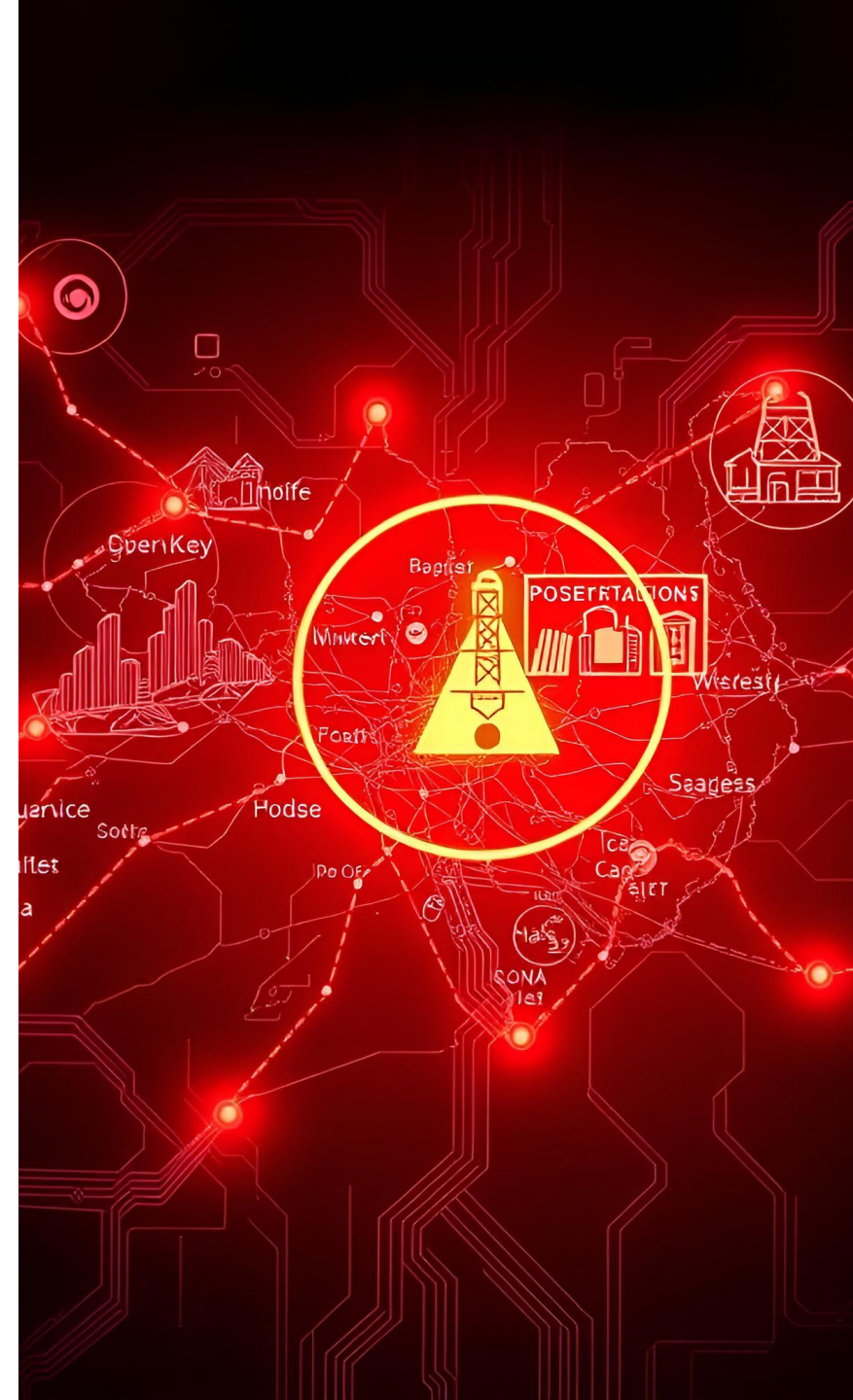


# French National Position on Cyberattack

“A cyberattack could be categorised as an armed attack if it caused substantial loss of life or considerable physical or **economic damage**.”

“That would be the case of an operation ... that caused a failure of critical infrastructure with significant consequences or consequences liable to **paralyse whole swathes of the country’s activity, trigger technological or ecological disasters** and claim numerous victims.”

Would appear to broaden concept of ‘armed attack’ - and therefore also ‘attack’ and ‘collateral damage’?



# Possible ways forward

Targeting problem:

**“... it is impossible to determine whether a particular cable is (or is not) serving the enemy”.**

“Military data through such cables is indistinguishable from ordinary commercial Internet traffic.”

“The specific pathways that data packets travel through commercial submarine cables cannot be predicted or controlled by the cable owners.”

In wartime one may not target roads, railways or bridges *per se*.

Can you ever satisfy Art 52, API?





# A thought on pipelines

Rule 68 of the Oslo Manual on Select Topics of the Law of Armed Conflict:

“During an armed conflict, submarine pipelines ... exclusively serving one or more belligerent States may – if it is militarily necessary – be seized or destroyed subject to the applicable principles and rules of LOAC, in particular distinction, proportionality and the obligation to take feasible precautions.”

Manual notes no express protection for pipelines connecting enemy territory, which is not occupied, with neutral territory.





# A thought on pipelines

Applicable LOAC very similar to cables, but questions of distinction and proportionality easier to judge.

However, duty of precaution in attack and – in relation to oil pipelines especially – towards the environment.

API Art 35(3): “It is prohibited to employ methods or means of warfare which are intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment”



# Thank you! Questions?

