

Could the Undersea Data Cable System be 'Neutral'?

CIL, 17 Sep 25

Session 5: Grey Zone Operations and Armed Conflicts

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- Context: Five reasons why is the possibility of cable network ‘neutrality’ an issue we might think about
 - Law of Naval Warfare (LoNW) and cables?
- Law: The four key components of neutrality at sea
 - How they might be relevant to the cable network?
- Application: How to think about cables as a ‘thing’ that could hold neutral status
- Practicality: What works against neutrality for the cable network?

Outline



July 29, 2018 | [Topic: Security](#) | [Blog Brand: The Buzz](#) | [Tags: Russia, China, Military, Technology, World, War, Fiber Optic Cable](#)

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](#)

If, 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.

1. Why is the possibility of cable network ‘neutrality’ an issue we might think about?

5 reasons

1. **History:** The cables always get cut

- So... if there is a way to give them a ‘flag’, there may be a way to assert better protection in the law of naval warfare (LoNW)

2. **Capability:** States have this capability

- So... we really ought to expect them to use it

3. **Nationality:** Cables really don’t have one for LoNW purposes

- So... this makes the key LoNW rule set offering protection and / or limiting situations for capture or attack, very hard to apply as the cables are not a ‘platform’ with a ‘flag’

4. **Consequences:** Potentially catastrophic / overwhelmingly beneficial (depending on your situation – target or attacker)

- So... the absence of a robust protective regime in LoNW makes them highly attractive as an object to be targeted

5. Scarcity of LoNW / LOAC that is directly on point:

- Only LOAC 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.

1995 San Remo Manual rule (very sparse):

37. Belligerents shall take care to avoid damage to cables and pipelines laid on the sea-bed which do not exclusively serve the belligerents.

2023/2025 Newport Manual commentary para 8.6.8.1:

sever or destroy submarine cables serving the enemy. 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.⁶⁰⁶ In such case, however, destruction of submarine cables that are deemed to be military objectives still requires the application of the principles of the LOAC, such as military necessity, distinction, and the rule of proportionality (see Chapter 2). Economic or commercial losses resulting from the destruction of a submarine cable normally do not qualify as collateral damage.⁶⁰⁷

2. Neutrality Law at Sea

THE NEUTRAL'S DUTY OF IMPARTIALITY

THE NEUTRAL'S DUTY TO ABSTAIN FROM SUPPLYING BELLIGERENTS WITH GOODS AND SERVICES

E. RESTRICTIONS ON THE USE OF NEUTRAL PORTS AND TERRITORIAL WATERS;⁵¹ NEUTRAL DUTIES OF PREVENTION

BELLIGERENT INTERFERENCE WITH PRIVATE NEUTRAL TRADE; NEUTRAL DUTIES OF ACQUIESCENCE

VIII. RELATIONS BETWEEN NEUTRAL AND BELLIGERENT STATES IN NAVAL WAR- FARE

A. THE CONCEPT OF NEUTRALITY

Under general international law states that refrain from participating in war occupy a status of neutrality. As a consequence of such non-participation international law imposes duties and confers rights upon both neutral and belligerent, and the law of neutrality comprises the totality of the duties imposed and the rights conferred upon participants and non-participants. It is to be observed, then, that although neutrality may be defined simply as the status of non-participation in war, the legal significance of such non-participation must be seen in the fact that it brings into operation numerous rules whose purpose is the regulation of neutral-belligerent relations. Not infrequently, however, these rules—the consequence of non-participation—have been identified with neutrality itself. In particular, there has long been a widespread tendency to identify neutrality with the principle of impartiality.

Challenges to applying these rules to cables?

- Impartiality? Issue of scale and origin of data traffic...
- Supplying belligerents with ... services?
- Duty of prevention re: traffic carried on a cable that passes through neutral TS / AW?
- Distinguishing neutral from belligerent 'trade' across the cable network?

3. Characterising (analogising) the cable network in terms LoNW and neutrality could more easily accommodate?

Type of 'thing' based options - which means we can talk about a nationality, and thus neutrality ... but as a sui generis object, or by analogy?

- **Communications?**

- US view in WWI – radio from neutral territory is a breach; allowing telegraph cable traffic is not - 'Cable is subject to hostile attack, so the responsibility falls on the belligerent and not upon the neutral to prevent cable communication'

- **Platforms / vessels?** - Hard to make this work due; approach to 'vessel' and 'platform' difficult as cables straddle all zones simultaneously

- **Post?** - Cable network carries much more than communications; also, post was carried by 'despatch boat'

- **Contraband?** – Long recognised as too complicated a proposition that would damage the concept of contraband - although German state cables taken up by Entente powers in WWI were designated non-compensable property of allies in 1919 Versailles Treaty

- A (new) piece of specified critical infrastructure 'containing' (or associated with?) a dangerous force?

- But a force that is dangerous in its removal rather than its release – a new concept in LOAC / LoNW

A 'left field' option?

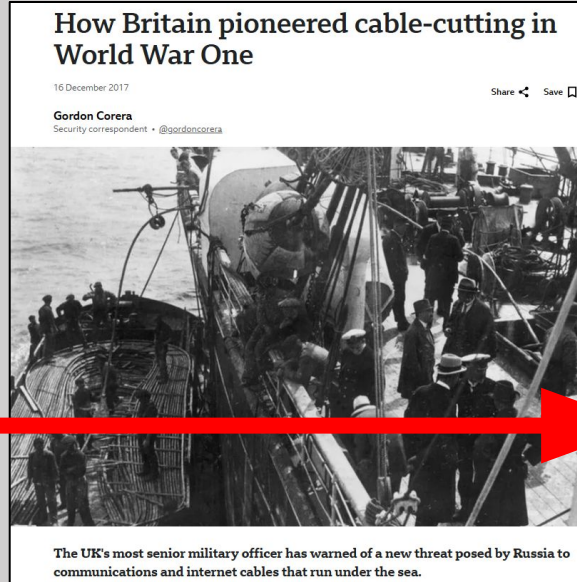
- Evolve, through CIL and soft law, a concept of an 'international' quasi-nationality for the cable system

- Analogy / model could be the neutrality-equivalent status of UN forces (or concept of a cartel vessel, or vessel on philanthropic mission – special protection)

- LoNW has previously evolved to incorporate this idea – eg SRM / Newport Manual on UN flagged vessels etc

4. But... five things that work against neutrality options for the cable system?

- History



- Capability



- Attractiveness as a target



- Fact that the issue has been known to, but inadequately addressed in, LoNW for 140 years (using 1884 Paris Convention art XV – does not apply during hostilities - as the start point of awareness)

- Indicates that it likely still remains in the (legal) 'too-hard basket'

- The existence of an alternative LoNW mechanism to govern cable network targetability

- ie proportionality and 'Military Objective' definition + proportionality requirement (but uncertainty re: reverberating effects...)

Conclusions?



Thank you

- Difficult to think about cables as a ‘thing’ that can hold a nationality
 - ...and thus neutral nationality
- There are exceptionally strong *counter-factors*
 - ... that seem to militate against cable network neutrality

Is it the same for pipelines? Probably yes, but...

- Pipelines are much more readily assessable as a LoNW targeting issue because (1) *proportionality assessment* is more defined; (2) affected states more limited; and (3) less about *reverberating effects*:
 - Less ‘global’ consequences of loss
 - More identifiable direct and localized physical consequences - including environmental