

Applicability and Proposed Adoption of the Tallinn Manual

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- Introduction.
 - In a world growing progressively more online, international law currently has a limited means for ruling on criminal cyber action.
 - * The United Nations Charter and Geneva Conventions deal, historically, with only kinetic warfare.
 - Cyber actions rarely have a direct or obvious kinetic counterpart with which to compare. This results in dissension among states, with no clear answers on how to classify a use of force or armed attack online, or even whether it's possible to launch an armed attack in cyber space.¹
 - Some states adopt a broad view of what constitutes illegal force while others have developed a much more exclusive classification.²
 - With no consensus on what constitutes illegal cyber activity, there can be no agreement on suitable international laws.
 - The Tallinn Manual aims to fill the void of defined international law when it comes to cyber activity. ³
 - * The Tallinn Manual was the effort of an international group of experts, upon encouragement from the North Atlantic Treaty Organization (NATO).⁴
- Challenges. Determine whether the Tallinn Manual is an effective tool beyond a theoretical use. Whether it retains usefulness when applied to a real life attack.
 - Consider, specifically, the actions and consequences of the Stuxnet Worm. Determine whether international law was broken, and if so, how severely.

1. Matthew C Waxman, "Cyber-Attacks and the Use of Force: Back to the Future of Article 2(4)," *Yale Journal of International Law* 36, no. 2 (2013), <http://www.yjil.org/docs/pub/36-2-waxman-cyber-attacks-and-the-use-of-force.pdf>, pages 431-435

2. Micael N. Schmitt, *Tallinn Manual on International Law Applicable to Cyber Warfare* (2013), page 17, para 3

3. *ibid.*, page 18, para 2

4. *ibid.*, page 16, para 1

- * Explain Stuxnet technically, briefly.
 - It was an attack to sabotage the programmable logic controllers (PLCs) at the Iran nuclear enrichment facility and significantly delay Iran's potential development of nuclear weapons.⁵
 - Stuxnet was not only extremely technically complex, it was also extremely expensive.⁶
- * Why Stuxnet deserves the focus.
 - Prime alternatives are Flame Malware⁷ and Russia's cyber attack on Georgia.⁸ Flame was used for only espionage, and that is generally considered legal under international law.⁹ Russia's cyber attack on Georgia, conversely, was used to further a kinetic attack and falls clearly into the category of armed conflict.¹⁰ These conclusions are unsurprising and do not feel controversial.
- * What were Stuxnet's goals and what it accomplished.
 - Cause damage to and slow development of Iran's nuclear development.¹¹
 - Iran refused to comment on whether it suffered damage from Stuxnet. Other reports conclude that their nuclear program likely did suffer significant setbacks.¹²
- * Legal issues related to Stuxnet, on which guidance is desired from the Tallinn Manual.
 - Intentional damage caused to a sovereign state's infrastructure. Was it illegal, a use of force, and/or armed?
 - The damage was intended to stifle development of military operations. How severe of a response is warranted?
 - The worm leaked into the wild and civilians, Kapersky even claimed

5. Symantec, "Stuxnet 0.5: Disrupting Uranium Processing at Natanz," 2013, accessed October 11, 2014, <http://www.symantec.com/connect/blogs/stuxnet-05-disrupting-uranium-processing-natanz>

6. Ben Flanagan, "Former CIA Chief Speaks Out on Iran Stuxnet Attack," 2011, accessed October 11, 2014, <http://www.thenational.ae/business/industry-insights/technology/former-cia-chief-speaks-out-on-iran-stuxnet-attack>

7. **flameForbes2013**

8. David J. Smith, "Russian Cyber Strategy and the War Against Georgia," 2014, accessed October 11, 2014, <http://www.atlanticcouncil.org/blogs/natosource/russian-cyber-policy-and-the-war-against-georgia>

9. Schmitt, *Tallinn Manual on International Law Applicable to Cyber Warfare*, rule 6, comment 4.

10. *ibid.*, page 94, para 6 and *ibid.*, rule 20.

11. David Kushner, "The Real Story of Stuxnet," 2013, accessed October 11, 2014, <http://spectrum.ieee.org/telecom/security/the-real-story-of-stuxnet/>

12. "Did Stuxnet Take Out 1,000 Centrifuges at the Natanz Enrichment Plant?," *Institute for Science and International Security* (2010), http://isis-online.org/uploads/isis-reports/documents/stuxnet_FEP_22Dec2010.pdf

- it's infected Russian nuclear facilities.¹³ What repercussions might this entail?
 - In kinetic warfare, belligerents cannot use neutral territory for transport of munitions, and it is a duty of the neutral state to ensure that is the case.¹⁴ Is it legal to move malware through the infrastructure of neutral states, and can those states be held responsible for allowing it?
- Description of Tallinn Manual as relevant to Stuxnet, a real life problem.
 - Where the Tallinn Manual meets the needs of an international cyber conflict doctrine in the case of Stuxnet.
 - * Unanimously determined to be in violation of international law and a use of force by the group of experts.¹⁵
 - * The manual goes on to say that the experts were unanimous in determining cyber operations alone might qualify as armed conflict.¹⁶ Tallinn Manual states:

An armed conflict exists whenever there are here are hostilities, which may include or be limited to cyber operations, occurring between two or more States.¹⁷
 - Tallinn Manual also comments directly that the experts were divided on whether Stuxnet qualified as an “armed attack”.¹⁸ Some experts felt it was justified as anticipatory self-defense.¹⁹
 - * Indiscriminate methods of cyber war are prohibited.²⁰ The infection of civilians’ computers does not violate this, because despite infection, the attack was performed only on specific Siemens systems (not civilian).²¹
 - If Kapersky’s claims that Stuxnet later infected Russian nuclear sites are true, however, Stuxnet did violate this rule, since it proves

13. 21st Century Wire, “More Stuxnet: US-Israeli Computer Virus Infected Russian Civilian Nuclear Power Plants,” 2013, accessed October 11, 2014, <http://21stcenturywire.com/2013/11/13/more-stuxnet-us-israeli-made-virus-infected-russian-civilian-nuclear-power-plants/>

14. See articles 2 and 5. Hague Convention, *Convention (V) respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land*. (1907), <https://www.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?action=openDocument&documentId=71929FBD2655E558C12563CD002D67AE>

15. Kim Zetter, “Legal Experts: Stuxnet Attack on Iran Was Illegal ‘Act of Force’,” 2013, accessed October 6, 2014, <http://www.wired.com/2013/03/stuxnet-act-of-force/>

16. Schmitt, *Tallinn Manual on International Law Applicable to Cyber Warfare*, rule 22, comment 15.

17. *ibid.*, rule 22.

18. *ibid.*, rule 22, comments 14 and 15.

19. See rule 13, comment 13. *ibid.*

20. *ibid.*, rule 43.

21. Kushner, “The Real Story of Stuxnet”

it was not limited in its effects as required by the law of armed conflict.²²

- Issues on which the Tallinn Manual was not conclusive.
 - * How might we determine what constitutes an armed cyber attack?
 - Tallinn Manual is clear that cyber operations could amount to an armed attack,²³ but provide no means to determine whether a specific operation crosses that threshold, or how an armed attack relates to a use of force (though that is a standing problem with kinetic warfare, just the same.)
 - * Who can be blamed in a cyber attack?
 - Tallinn Manual doesn't seem to mention a requirement of cyber combatants to identify themselves, and it's seems unlikely they would, anyway. Attribution is a big challenge.
 - There were likely other players involved, what of them? For example, if an attack by state A on B is routed through servers in state C, can B hold C accountable? Laws on kinetic warfare generally say yes, but cyberwar feels quite different in this regard. The Hague Conventions itself limits a neutral state's obligation to restrict the combatant use of telephone or wireless cables²⁴ Tallinn Manual states it must not *knowingly* allow conflicting parties to use its infrastructure.²⁵ The experts were split on whether that permits neutral states to passively allow such transmission, however.²⁶
- Proposed solution for resolving international cyber conflict.
 - The Tallinn Manual does an outstanding job of applying existing international law to the age of the internet, albeit lacking some defining detail. Without application to real life international conflict, though, it isn't obvious the Manual could reasonably be made much more detailed.
 - * For example, there is little guidance on determining if Stuxnet, or any operation, qualifies as an armed attack. Some views, seemingly including that of the United States,²⁷ suggest that a use of force and an

22. Wire, "More Stuxnet: US-Israeli Computer Virus Infected Russian Civilian Nuclear Power Plants" and Geneva Convention, *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)* (1977), <https://www.icrc.org/ihl/WebART/470-750065>

23. Schmitt, *Tallinn Manual on International Law Applicable to Cyber Warfare*, rule 22.

24. See article 8. Convention, *Convention (V) respecting the Rights and Duties of Neutral Powers and Persons in Case of War on Land*.

25. Schmitt, *Tallinn Manual on International Law Applicable to Cyber Warfare*. Rule 93.

26. *ibid.* Rule 93, comments 5 and 6.

27. Waxman, "Cyber-Attacks and the Use of Force: Back to the Future of Article 2(4)," page 433, para 4.

armed attack may be one in the same, even regarding kinetic conflict.²⁸

- Schmitt says these specifics were intentionally not included in the Tallinn Manual.²⁹
- Even though one in the same, the US has a relatively specific and permissive definition of a “use of force”.³⁰
- If we can assume an armed attack accompanies any use of force and warrants a response under Article 51, then the Tallinn Manual provides a fairly complete template to determine whether an operation qualifies.³¹
- Schmitt claimed that:

[...]the majority said that an attack, in the law of war, means you physically harm someone, you break something, you cause physical damage or you interfere in the functionality of an object such that it needs to be actually repaired.³²

This seems to qualify Stuxnet as an armed attack, yet other experts still disagreed it crossed the undefined threshold.

- The Tallinn Manual should be adopted as a starting point for ruling on international cyber conflict and used to evolve international law, just as the U.S. Constitution served as a starting point and was molded by hundreds of years of precedence.
 - The current members of the UN should be encouraged to sign a treaty adopting adherence to the Manual.
 - Violation of the Tallinn Manual should be ruled on by the UN Security Council, at which point any retaliation, up to and including that under Article 51, is a potential outcome.
 - There should be an official means to make amendments to the Manual, as necessary.
- Analysis of the solution.
 - The solution is neither perfect nor final, but as with all law, we must set up a solid base with which to work and progress over time. The established international law made preparation for the age of the internet possible, and

28. Harold Hongju Koh, “International Law in Cyberspace,” *Harvard International Law Journal Online* 54 (2012), <http://www.harvardilj.org/wp-content/uploads/2012/12/Koh-Speech-to-Publish1.pdf>, page 7, para 5

29. Mike Gollom, “Are there International Rules for Cyberwarfare? Existing laws apply to cyberweapons,” 2013, accessed October 19, 2014, <http://www.cbc.ca/news/world/are-there-international-rules-for-cyberwarfare-1.1323638>

30. Koh, “International Law in Cyberspace,” Question 3.

31. Schmitt, *Tallinn Manual on International Law Applicable to Cyber Warfare*, rule 11, esp. comment 9.

32. Gollom, “Are there International Rules for Cyberwarfare? Existing laws apply to cyberweapons,” para 4.

the Tallinn Manual offers that help. In the same way, the Tallinn Manual sets the stage for the tools we need in decades to come, as the world grows increasingly more reliant on the Internet.

- Schmitt implied he believes the standards for classifying armed attacks in cyberspace will evolve in coming years:

I anticipate that we'll see a lot of thresholds coming down that will allow states to respond more vibrantly to cyber attacks that might not be possible under the law as we found it.³³

- Ratifying additional amendments will likely always prove challenging, just as international concurrence tends to be, but it is still an important necessity as the cyber space continues to evolve in ways not yet considered.

- Conclusion

- Manual needs refinement and official acceptance, but is a tool worthy of forming international law.
- The efforts of the Tallinn Manual will give us confidence in the international arena that we, collectively, are continuing to act in cyber space in the spirit of already established and accepted laws.

33. *ibid.*, para 23.

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